Fund (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the Fund, and

(C) to the extent that a portion of the Fund is not currently needed for purposes described in subparagraph (A) or (B), making investments.

(5) Prohibitions against self-dealing

Under regulations prescribed by the Secretary, for purposes of section 4951 (and so much of this title as relates to such section), the Fund shall be treated in the same manner as a trust described in section 501(c)(21).

(6) Disqualification of Fund

In any case in which the Fund violates any provision of this section or section 4951, the Secretary may disqualify such Fund from the application of this section. In any case to which this paragraph applies, the Fund shall be treated as having distributed all of its funds on the date such determination takes effect.

(7) Termination upon completion

Upon substantial completion of the nuclear decommissioning of the nuclear powerplant with respect to which a Fund relates, the taxpayer shall terminate such Fund.

(f) Transfers into qualified funds

(1) In general

Notwithstanding subsection (b), any taxpayer maintaining a Fund to which this section applies with respect to a nuclear power plant may transfer into such Fund not more than an amount equal to the present value of the portion of the total nuclear decommissioning costs with respect to such nuclear power plant previously excluded for such nuclear power plant under subsection (d)(2)(A) as in effect immediately before the date of the enactment of this subsection.

(2) Deduction for amounts transferred

(A) In general

Except as provided in subparagraph (C), the deduction allowed by subsection (a) for any transfer permitted by this subsection shall be allowed ratably over the remaining estimated useful life (within the meaning of subsection (d)(2)(A)) of the nuclear power plant beginning with the taxable year during which the transfer is made.

(B) Denial of deduction for previously deducted amounts

No deduction shall be allowed for any transfer under this subsection of an amount for which a deduction was previously allowed to the taxpayer (or a predecessor) or a corresponding amount was not included in gross income of the taxpayer (or a predecessor). For purposes of the preceding sentence, a ratable portion of each transfer shall be treated as being from previously deducted or excluded amounts to the extent thereof.

(C) Transfers of qualified funds

If—

(i) any transfer permitted by this subsection is made to any Fund to which this section applies, and

(ii) such Fund is transferred thereafter,

any deduction under this subsection for taxable years ending after the date that such Fund is transferred shall be allowed to the transferor for the taxable year which includes such date.

(D) Special rules

(i) Gain or loss not recognized on transfers to Fund

No gain or loss shall be recognized on any transfer described in paragraph (1).

(ii) Transfers of appreciated property to Fund

If appreciated property is transferred in a transfer described in paragraph (1), the amount of the deduction shall not exceed the adjusted basis of such property.

(3) New ruling amount required

Paragraph (1) shall not apply to any transfer unless the taxpayer requests from the Secretary a new schedule of ruling amounts in connection with such transfer.

(4) No basis in qualified funds

Notwithstanding any other provision of law, the taxpayer's basis in any Fund to which this section applies shall not be increased by reason of any transfer permitted by this subsection.

(g) Nuclear powerplant

For purposes of this section, the term ''nuclear powerplant'' includes any unit thereof.

(h) Time when payments deemed made

For purposes of this section, a taxpayer shall be deemed to have made a payment to the Fund on the last day of a taxable year if such payment is made on account of such taxable year and is made within 2½ months after the close of such taxable year.

(Added Pub. L. 98–369, div. A, title I, § 91(c)(1), July 18, 1984, 98 Stat. 604; amended Pub. L. 99–514, title XVIII, § 1807(a)(4)(A)(i), (B)–(E)(vi), Oct. 22, 1986, 100 Stat. 2812, 2813; Pub. L. 102–486, title XIX, § 1917(a), (b), Oct. 24, 1992, 106 Stat. 3024, 3025; Pub. L. 104–188, title I, § 1704(j)(6), Aug. 20, 1996, 110 Stat. 1882; Pub. L. 109–58, title XIII, § 1310(a)–(e), Aug. 8, 2005, 119 Stat. 1007–1009.)

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (f)(1), is the date of enactment of Pub. L. 109–58, which was approved Aug. 8, 2005.

AMENDMENTS

2005—Subsec. (b). Pub. L. 109–58, § 1310(a), reenacted heading without change and amended text of subsec. (b) generally. Prior to amendment, text read as follows: ''The amount which a taxpayer may pay into the Fund for any taxable year shall not exceed the lesser of—

''(1) the amount of nuclear decommissioning costs allocable to the Fund which is included in the taxpayer's cost of service for ratemaking purposes for such taxable year, or

''(2) the ruling amount applicable to such taxable year.''

Subsec. (d)(1). Pub. L. 109–58, § 1310(c), inserted at end ''For purposes of the preceding sentence, the taxpayer shall request a schedule of ruling amounts upon each renewal of the operating license of the nuclear powerplant.''

Subsec. (d)(2)(A). Pub. L. 109–58, §1310(b)(2), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''fund that portion of the nuclear decommissioning costs of the taxpayer with respect to the nuclear powerplant which bears the same ratio to the total nuclear decommissioning costs with respect to such nuclear powerplant as the period for which the Fund is in effect bears to the estimated useful life of such nuclear powerplant, and''.

Subsec. (e)(2)(A). Pub. L. 109–58, §1310(e)(1), substituted ''rate of 20 percent'' for ''rate set forth in subparagraph (B)'' in introductory provisions.

Subsec. (e)(2)(B) to (D). Pub. L. 109–58, §1310(e)(2), (3), redesignated subpars. (C) and (D) as (B) and (C), respectively, and struck out heading and text of former subpar. (B). Text read as follows: ''For purposes of subparagraph (A), the rate set forth in this subparagraph is—

''(i) 22 percent in the case of taxable years beginning in calendar year 1994 or 1995, and

''(ii) 20 percent in the case of taxable years beginning after December 31, 1995.''

Subsec. (e)(3). Pub. L. 109–58, §1310(d), substituted ''Except as provided in subsection (f), the Fund'' for ''The Fund''.

Subsecs. (f) to (h). Pub. L. 109–58, §1310(b)(1), added subsec. (f) and redesignated former subsecs. (f) and (g) as (g) and (h), respectively.

1996—Subsec. (e)(2)(A). Pub. L. 104–188 provided that the amendment made by section 1917(b)(1) of Pub. L. 102–486 shall be applied as if ''at a rate'' appeared instead of ''at the rate'' in the material proposed to be stricken. See 1992 Amendment note below.

1992—Subsec. (e)(2)(A). Pub. L. 102–486, §1917(b)(1), which directed that subpar. (A) be amended by striking ''at the rate equal to the highest rate of tax specified in section 11(b)'' and inserting ''at the rate set forth in subparagraph (B)'', was executed by making the substitution for ''at a rate equal to the highest rate of tax specified in section 11(b)''. See 1996 Amendment note above.

Subsec. (e)(2)(B) to (D). Pub. L. 102–486, §1917(b)(2), added subpar. (B) and redesignated former subpars. (B) and (C) as (C) and (D), respectively.

Subsec. (e)(4)(C). Pub. L. 102–486, §1917(a), struck out before period at end ''described in section 501(c)(21)(B)(ii)''.

1986—Subsec. (a). Pub. L. 99–514, §1807(a)(4)(E)(i), substituted ''this section'' for ''this subsection''.

Subsec. (c)(1)(A). Pub. L. 99–514, §1807(a)(4)(B), substituted ''subsection (e)(4)(B)'' for ''subsection (e)(2)(B)''.

Subsec. (d). Pub. L. 99–514, §1807(a)(4)(E)(ii), substituted ''this section'' for ''this subsection'' in introductory text.

Subsec. (e). Pub. L. 99–514, §1807(a)(4)(E)(iii), substituted ''Reserve Fund'' for ''Trust Fund'' in heading.

Subsec. (e)(1). Pub. L. 99–514, §1807(a)(4)(E)(iv), substituted ''this section'' for ''this subsection'' and ''Reserve Fund'' for ''Trust Fund''.

Subsec. (e)(2). Pub. L. 99–514, §1807(a)(4)(C), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''There is imposed on the gross income of the Fund for any taxable year a tax at a rate equal to the maximum rate in effect under section 11(b), except that—

''(A) there shall not be included in the gross income of the Fund any payment to the Fund with respect to which a deduction is allowable under subsection (a), and

''(B) there shall be allowed as a deduction any amount paid by the Fund described in paragraph (4)(B) (other than to the taxpayer).''

Subsec. (e)(4)(C). Pub. L. 99–514, §1807(a)(4)(D), added subpar. (C).

Subsec. (e)(6). Pub. L. 99–514, §1807(a)(4)(E)(v), substituted ''this section'' for ''this subsection'' in two places and ''this paragraph'' for ''this subparagraph''.

Subsec. (f). Pub. L. 99–514, §1807(a)(4)(E)(vi), substituted ''For purposes of this section, the'' for ''The''.

Subsec. (g). Pub. L. 99–514, §1807(a)(4)(A)(i), added subsec. (g).

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–58, title XIII, §1310(f), Aug. 8, 2005, 119 Stat. 1009, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2005.''

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–486, title XIX, §1917(c), Oct. 24, 1992, 106 Stat. 3025, provided that:

''(1) SUBSECTION (a).—The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1992.

''(2) SUBSECTION (b).—The amendments made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1993. Section 15 of the Internal Revenue Code of 1986 shall not apply to any change in rate resulting from the amendment made by subsection (b).''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section effective July 18, 1984, with respect to taxable years ending after such date, see section 91(g)(5) of Pub. L. 98–369, as amended, set out as an Effective Date of 1984 Amendment note under section 461 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TRANSITIONAL RULE

Pub. L. 99–514, title XVIII, §1807(a)(4)(A)(ii), Oct. 22, 1986, 100 Stat. 2812, provided that: ''To the extent provided in regulations prescribed by the Secretary of the Treasury or his delegate, subsection (g) of section 468A of the Internal Revenue Code of 1954 [now 1986] (as added by clause (i)) shall be applied with respect to any payment on account of a taxable year beginning before January 1, 1987, as if it did not contain the requirement that the payment be made within 2½ months after the close of the taxable year. Such regulations may provide that, to the extent such payment to the Fund is made more than 2½ months after the close of the taxable year, any adjustment to the tax attributable to such payment shall not affect the amount of interest payable with respect to periods before the payment is made. Such regulations may provide appropriate adjustments to the deduction allowed under such section 468A for any such taxable year to take into account the fact that the payment to the Fund is made more than 2½ months after the close of the taxable year.''

§ 468B. Special rules for designated settlement funds

(a) In general

For purposes of section 461(h), economic performance shall be deemed to occur as qualified payments are made by the taxpayer to a designated settlement fund.

(b) Taxation of designated settlement fund

(1) In general

There is imposed on the gross income of any designated settlement fund for any taxable

year a tax at a rate equal to the maximum rate in effect for such taxable year under section 1(e).

(2) Certain expenses allowed

For purposes of paragraph (1), gross income for any taxable year shall be reduced by the amount of any administrative costs (including State and local taxes) and other incidental expenses of the designated settlement fund (including legal, accounting, and actuarial expenses)—

(A) which are incurred in connection with the operation of the fund, and

(B) which would be deductible under this chapter for purposes of determining the taxable income of a corporation.

No other deduction shall be allowed to the fund.

(3) Transfers to the fund

In the case of any qualified payment made to the fund—

(A) the amount of such payment shall not be treated as income of the designated settlement fund,

(B) the basis of the fund in any property which constitutes a qualified payment shall be equal to the fair market value of such property at the time of payment, and

(C) the fund shall be treated as the owner of the property in the fund (and any earnings thereon).

(4) Tax in lieu of other taxation

The tax imposed by paragraph (1) shall be in lieu of any other taxation under this subtitle of income from assets in the designated settlement fund.

(5) Coordination with subtitle F

For purposes of subtitle F—

(A) a designated settlement fund shall be treated as a corporation, and

(B) any tax imposed by this subsection shall be treated as a tax imposed by section 11.

(c) Deductions not allowed for transfer of insurance amounts

No deduction shall be allowable for any qualified payment by the taxpayer of any amounts received from the settlement of any insurance claim to the extent such amounts are excluded from the gross income of the taxpayer.

(d) Definitions

For purposes of this section—

(1) Qualified payment

The term ''qualified payment'' means any money or property which is transferred to any designated settlement fund pursuant to a court order, other than—

(A) any amount which may be transferred from the fund to the taxpayer (or any related person), or

(B) the transfer of any stock or indebtedness of the taxpayer (or any related person).

(2) Designated settlement fund

The term ''designated settlement fund'' means any fund—

(A) which is established pursuant to a court order and which extinguishes completely the taxpayer's tort liability with respect to claims described in subparagraph (D),

(B) with respect to which no amounts may be transferred other than in the form of qualified payments,

(C) which is administered by persons a majority of whom are independent of the taxpayer,

(D) which is established for the principal purpose of resolving and satisfying present and future claims against the taxpayer (or any related person or formerly related person) arising out of personal injury, death, or property damage,

(E) under the terms of which the taxpayer (or any related person) may not hold any beneficial interest in the income or corpus of the fund, and

(F) with respect to which an election is made under this section by the taxpayer.

An election under this section shall be made at such time and in such manner as the Secretary shall by regulation prescribe. Such an election, once made, may be revoked only with the consent of the Secretary.

(3) Related person

The term ''related person'' means a person related to the taxpayer within the meaning of section 267(b).

(e) Nonapplicability of section

This section (other than subsection (g)) shall not apply with respect to any liability of the taxpayer arising under any workers' compensation Act or any contested liability of the taxpayer within the meaning of section 461(f).

(f) Other funds

Except as provided in regulations, any payment in respect of a liability described in subsection (d)(2)(D) (and not described in subsection (e)) to a trust fund or escrow fund which is not a designated settlement fund shall not be treated as constituting economic performance.

(g) Clarification of taxation of certain funds

(1) In general

Except as provided in paragraph (2), nothing in any provision of law shall be construed as providing that an escrow account, settlement fund, or similar fund is not subject to current income tax. The Secretary shall prescribe regulations providing for the taxation of any such account or fund whether as a grantor trust or otherwise.

(2) Exemption from tax for certain settlement funds

An escrow account, settlement fund, or similar fund shall be treated as beneficially owned by the United States and shall be exempt from taxation under this subtitle if—

(A) it is established pursuant to a consent decree entered by a judge of a United States District Court,

(B) it is created for the receipt of settlement payments as directed by a government entity for the sole purpose of resolving or

satisfying one or more claims asserting liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980,

(C) the authority and control over the expenditure of funds therein (including the expenditure of contributions thereto and any net earnings thereon) is with such government entity, and

(D) upon termination, any remaining funds will be disbursed to such government entity for use in accordance with applicable law.

For purposes of this paragraph, the term ''government entity'' means the United States, any State or political subdivision thereof, the District of Columbia, any possession of the United States, and any agency or instrumentality of any of the foregoing.

(Added Pub. L. 99–514, title XVIII, §1807(a)(7)(A), Oct. 22, 1986, 100 Stat. 2814; amended Pub. L. 100–647, title I, §1018(f)(1), (2), (4), (5)(A), Nov. 10, 1988, 102 Stat. 3582; Pub. L. 101–508, title XI, §11702(e)(1), Nov. 5, 1990, 104 Stat. 1388–515; Pub. L. 109–222, title II, §201(a), May 17, 2006, 120 Stat. 347; Pub. L. 109–432, div. A, title IV, §409(a), Dec. 20, 2006, 120 Stat. 2963.)

REFERENCES IN TEXT

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, referred to in subsec. (g)(2)(B), is Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, as amended, which is classified principally to chapter 103 (§9601 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of Title 42 and Tables.

AMENDMENTS

2006—Subsec. (g). Pub. L. 109–222 reenacted heading without change and amended text of subsec. (g) generally. Prior to amendment, text read as follows: ''Nothing in any provision of law shall be construed as providing that an escrow account, settlement fund, or similar fund is not subject to current income tax. The Secretary shall prescribe regulations providing for the taxation of any such account or fund whether as a grantor trust or otherwise.''

Subsec. (g)(3). Pub. L. 109–432 struck out heading and text of par. (3). Text read as follows: ''Paragraph (2) shall not apply to accounts and funds established after December 31, 2010.''

1990—Subsec. (e). Pub. L. 101–508 substituted ''This section (other than subsection (g))'' for ''This section''.

1988—Subsec. (b)(2). Pub. L. 100–647, §1018(f)(4)(B), substituted ''No other'' for ''no other'' in concluding provisions.

Subsec. (b)(2)(B). Pub. L. 100–647, §1018(f)(4)(A), substituted ''a corporation.'' for ''the corporation,''.

Subsec. (d)(1)(A). Pub. L. 100–647, §1018(f)(1), inserted ''(or any related person)'' after ''taxpayer''.

Subsec. (d)(2)(A). Pub. L. 100–647, §1018(f)(2), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''which is established pursuant to a court order,''.

Subsec. (d)(2)(E). Pub. L. 100–647, §1018(f)(1), inserted ''(or any related person)'' after ''taxpayer''.

Subsec. (g). Pub. L. 100–647, §1018(f)(5)(A), added subsec. (g).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title IV, §409(b), Dec. 20, 2006, 120 Stat. 2963, provided that: ''The amendment made by this section [amending this section] shall take effect as if included in section 201 of the Tax Increase Prevention and Reconciliation Act of 2005 [Pub. L. 109–222].''

Pub. L. 109–222, title II, §201(b), May 17, 2006, 120 Stat. 348, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to accounts and funds established after the date of the enactment of this Act [May 17, 2006].''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 11702(j) of Pub. L. 101–508, set out as a note under section 59 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 48 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

SPECIAL RULE FOR TAXPAYER IN BANKRUPTCY REORGANIZATION

Pub. L. 99–514, title XVIII, §1807(a)(7)(C), Oct. 22, 1986, 100 Stat. 2816, as amended by Pub. L. 100–647, title I, §1018(f)(3), Nov. 10, 1988, 102 Stat. 3582, provided that: ''In the case of any settlement fund which is established for claimants against a corporation which filed a petition for reorganization under chapter 11 of title 11, United States Code, on August 26, 1982, and which filed with a United States district court a first amended and restated plan of reorganization before March 1, 1986—

''(i) any portion of such fund which is established pursuant to a court order and with qualified payments, which meets the requirements of subparagraphs (C) and (D) of section 468B(d)(2) of the Internal Revenue Code of 1954 [now 1986] (as added by this paragraph), and with respect to which an election is made under subparagraph (F) thereof, shall be treated as a designated settlement fund for purposes of section 468B of such Code,

''(ii) such corporation (or any successor thereof) shall be liable for the tax imposed by section 468B of such Code on such portion of the fund (and the fund shall not be liable for such tax), such tax shall be deductible by the corporation, and the rate of tax under section 468B of such Code for any taxable year shall be equal to 15 percent, and

''(iii) any transaction by any portion of the fund not described in clause (i) shall be treated as a transaction made by the corporation.''

CLARIFICATION OF LAW WITH RESPECT TO CERTAIN FUNDS

Pub. L. 99–514, title XVIII, §1807(a)(7)(D), Oct. 22, 1986, 100 Stat. 2816, provided that nothing in any provision of law be construed as providing that an escrow account, settlement fund, or similar fund established after Aug. 16, 1986, not be subject to current income tax and that

if contributions to such account or fund are not deductible then the account or fund be taxed as a grantor trust, prior to repeal by Pub. L. 100–647, title I, § 1018(f)(5)(B), Nov. 10, 1988, 102 Stat. 3582.

§ 469. Passive activity losses and credits limited

(a) Disallowance

(1) In general

If for any taxable year the taxpayer is described in paragraph (2), neither—

(A) the passive activity loss, nor

(B) the passive activity credit,

for the taxable year shall be allowed.

(2) Persons described

The following are described in this paragraph:

(A) any individual, estate, or trust,

(B) any closely held C corporation, and

(C) any personal service corporation.

(b) Disallowed loss or credit carried to next year

Except as otherwise provided in this section, any loss or credit from an activity which is disallowed under subsection (a) shall be treated as a deduction or credit allocable to such activity in the next taxable year.

(c) Passive activity defined

For purposes of this section—

(1) In general

The term ''passive activity'' means any activity—

(A) which involves the conduct of any trade or business, and

(B) in which the taxpayer does not materially participate.

(2) Passive activity includes any rental activity

Except as provided in paragraph (7), the term ''passive activity'' includes any rental activity.

(3) Working interests in oil and gas property

(A) In general

The term ''passive activity'' shall not include any working interest in any oil or gas property which the taxpayer holds directly or through an entity which does not limit the liability of the taxpayer with respect to such interest.

(B) Income in subsequent years

If any taxpayer has any loss for any taxable year from a working interest in any oil or gas property which is treated as a loss which is not from a passive activity, then any net income from such property (or any property the basis of which is determined in whole or in part by reference to the basis of such property) for any succeeding taxable year shall be treated as income of the taxpayer which is not from a passive activity. If the preceding sentence applies to the net income from any property for any taxable year, any credits allowable under subpart B (other than section 27(a)) or D of part IV of subchapter A for such taxable year which are attributable to such property shall be treated as credits not from a passive activity to the extent the amount of such credits does not exceed the regular tax liability of the taxpayer for the taxable year which is allocable to such net income.

(4) Material participation not required for paragraphs (2) and (3)

Paragraphs (2) and (3) shall be applied without regard to whether or not the taxpayer materially participates in the activity.

(5) Trade or business includes research and experimentation activity

For purposes of paragraph (1)(A), the term ''trade or business'' includes any activity involving research or experimentation (within the meaning of section 174).

(6) Activity in connection with trade or business or production of income

To the extent provided in regulations, for purposes of paragraph (1)(A), the term ''trade or business'' includes—

(A) any activity in connection with a trade or business, or

(B) any activity with respect to which expenses are allowable as a deduction under section 212.

(7) Special rules for taxpayers in real property business

(A) In general

If this paragraph applies to any taxpayer for a taxable year—

(i) paragraph (2) shall not apply to any rental real estate activity of such taxpayer for such taxable year, and

(ii) this section shall be applied as if each interest of the taxpayer in rental real estate were a separate activity.

Notwithstanding clause (ii), a taxpayer may elect to treat all interests in rental real estate as one activity. Nothing in the preceding provisions of this subparagraph shall be construed as affecting the determination of whether the taxpayer materially participates with respect to any interest in a limited partnership as a limited partner.

(B) Taxpayers to whom paragraph applies

This paragraph shall apply to a taxpayer for a taxable year if—

(i) more than one-half of the personal services performed in trades or businesses by the taxpayer during such taxable year are performed in real property trades or businesses in which the taxpayer materially participates, and

(ii) such taxpayer performs more than 750 hours of services during the taxable year in real property trades or businesses in which the taxpayer materially participates.

In the case of a joint return, the requirements of the preceding sentence are satisfied if and only if either spouse separately satisfies such requirements. For purposes of the preceding sentence, activities in which a spouse materially participates shall be determined under subsection (h).

(C) Real property trade or business

For purposes of this paragraph, the term ''real property trade or business'' means any

real property development, redevelopment, construction, reconstruction, acquisition, conversion, rental, operation, management, leasing, or brokerage trade or business.

(D) Special rules for subparagraph (B)

(i) Closely held C corporations

In the case of a closely held C corporation, the requirements of subparagraph (B) shall be treated as met for any taxable year if more than 50 percent of the gross receipts of such corporation for such taxable year are derived from real property trades or businesses in which the corporation materially participates.

(ii) Personal services as an employee

For purposes of subparagraph (B), personal services performed as an employee shall not be treated as performed in real property trades or businesses. The preceding sentence shall not apply if such employee is a 5-percent owner (as defined in section 416(i)(1)(B)) in the employer.

(d) Passive activity loss and credit defined

For purposes of this section—

(1) Passive activity loss

The term ''passive activity loss'' means the amount (if any) by which—

(A) the aggregate losses from all passive activities for the taxable year, exceed

(B) the aggregate income from all passive activities for such year.

(2) Passive activity credit

The term ''passive activity credit'' means the amount (if any) by which—

(A) the sum of the credits from all passive activities allowable for the taxable year under—

(i) subpart D of part IV of subchapter A, or

(ii) subpart B (other than section 27(a)) of such part IV, exceeds

(B) the regular tax liability of the taxpayer for the taxable year allocable to all passive activities.

(e) Special rules for determining income or loss from a passive activity

For purposes of this section—

(1) Certain income not treated as income from passive activity

In determining the income or loss from any activity—

(A) In general

There shall not be taken into account—

(i) any—

(I) gross income from interest, dividends, annuities, or royalties not derived in the ordinary course of a trade or business,

(II) expenses (other than interest) which are clearly and directly allocable to such gross income, and

(III) interest expense properly allocable to such gross income, and

(ii) gain or loss not derived in the ordinary course of a trade or business which is attributable to the disposition of property—

(I) producing income of a type described in clause (i), or

(II) held for investment.

For purposes of clause (ii), any interest in a passive activity shall not be treated as property held for investment.

(B) Return on working capital

For purposes of subparagraph (A), any income, gain, or loss which is attributable to an investment of working capital shall be treated as not derived in the ordinary course of a trade or business.

(2) Passive losses of certain closely held corporations may offset active income

(A) In general

If a closely held C corporation (other than a personal service corporation) has net active income for any taxable year, the passive activity loss of such taxpayer for such taxable year (determined without regard to this paragraph)—

(i) shall be allowable as a deduction against net active income, and

(ii) shall not be taken into account under subsection (a) to the extent so allowable as a deduction.

A similar rule shall apply in the case of any passive activity credit of the taxpayer.

(B) Net active income

For purposes of this paragraph, the term ''net active income'' means the taxable income of the taxpayer for the taxable year determined without regard to—

(i) any income or loss from a passive activity, and

(ii) any item of gross income, expense, gain, or loss described in paragraph (1)(A).

(3) Compensation for personal services

Earned income (within the meaning of section 911(d)(2)(A)) shall not be taken into account in computing the income or loss from a passive activity for any taxable year.

(4) Dividends reduced by dividends received deduction

For purposes of paragraphs (1) and (2), income from dividends shall be reduced by the amount of any dividends received deduction under section 243 or 245.

(f) Treatment of former passive activities

For purposes of this section—

(1) In general

If an activity is a former passive activity for any taxable year—

(A) any unused deduction allocable to such activity under subsection (b) shall be offset against the income from such activity for the taxable year,

(B) any unused credit allocable to such activity under subsection (b) shall be offset against the regular tax liability (computed after the application of paragraph (1)) allocable to such activity for the taxable year, and

(C) any such deduction or credit remaining after the application of subparagraphs (A) and (B) shall continue to be treated as arising from a passive activity.

(2) Change in status of closely held C corporation or personal service corporation

If a taxpayer ceases for any taxable year to be a closely held C corporation or personal service corporation, this section shall continue to apply to losses and credits to which this section applied for any preceding taxable year in the same manner as if such taxpayer continued to be a closely held C corporation or personal service corporation, whichever is applicable.

(3) Former passive activity

The term ''former passive activity'' means any activity which, with respect to the taxpayer—

(A) is not a passive activity for the taxable year, but

(B) was a passive activity for any prior taxable year.

(g) Dispositions of entire interest in passive activity

If during the taxable year a taxpayer disposes of his entire interest in any passive activity (or former passive activity), the following rules shall apply:

(1) Fully taxable transaction

(A) In general

If all gain or loss realized on such disposition is recognized, the excess of—

(i) any loss from such activity for such taxable year (determined after the application of subsection (b)), over

(ii) any net income or gain for such taxable year from all other passive activities (determined after the application of subsection (b)),

shall be treated as a loss which is not from a passive activity.

(B) Subparagraph (A) not to apply to disposition involving related party

If the taxpayer and the person acquiring the interest bear a relationship to each other described in section 267(b) or section 707(b)(1), then subparagraph (A) shall not apply to any loss of the taxpayer until the taxable year in which such interest is acquired (in a transaction described in subparagraph (A)) by another person who does not bear such a relationship to the taxpayer.

(C) Income from prior years

To the extent provided in regulations, income or gain from the activity for preceding taxable years shall be taken into account under subparagraph (A)(ii) for the taxable year to the extent necessary to prevent the avoidance of this section.

(2) Disposition by death

If an interest in the activity is transferred by reason of the death of the taxpayer—

(A) paragraph (1)(A) shall apply to losses described in paragraph (1)(A) to the extent such losses are greater than the excess (if any) of—

(i) the basis of such property in the hands of the transferee, over

(ii) the adjusted basis of such property immediately before the death of the taxpayer, and

(B) any losses to the extent of the excess described in subparagraph (A) shall not be allowed as a deduction for any taxable year.

(3) Installment sale of entire interest

In the case of an installment sale of an entire interest in an activity to which section 453 applies, paragraph (1) shall apply to the portion of such losses for each taxable year which bears the same ratio to all such losses as the gain recognized on such sale during such taxable year bears to the gross profit from such sale (realized or to be realized when payment is completed).

(h) Material participation defined

For purposes of this section—

(1) In general

A taxpayer shall be treated as materially participating in an activity only if the taxpayer is involved in the operations of the activity on a basis which is—

(A) regular,

(B) continuous, and

(C) substantial.

(2) Interests in limited partnerships

Except as provided in regulations, no interest in a limited partnership as a limited partner shall be treated as an interest with respect to which a taxpayer materially participates.

(3) Treatment of certain retired individuals and surviving spouses

A taxpayer shall be treated as materially participating in any farming activity for a taxable year if paragraph (4) or (5) of section 2032A(b) would cause the requirements of section 2032A(b)(1)(C)(ii) to be met with respect to real property used in such activity if such taxpayer had died during the taxable year.

(4) Certain closely held C corporations and personal service corporations

A closely held C corporation or personal service corporation shall be treated as materially participating in an activity only if—

(A) 1 or more shareholders holding stock representing more than 50 percent (by value) of the outstanding stock of such corporation materially participate in such activity, or

(B) in the case of a closely held C corporation (other than a personal service corporation), the requirements of section 465(c)(7)(C) (without regard to clause (iv)) are met with respect to such activity.

(5) Participation by spouse

In determining whether a taxpayer materially participates, the participation of the spouse of the taxpayer shall be taken into account.

(i) $25,000 offset for rental real estate activities

(1) In general

In the case of any natural person, subsection (a) shall not apply to that portion of the pas-

sive activity loss or the deduction equivalent (within the meaning of subsection (j)(5)) of the passive activity credit for any taxable year which is attributable to all rental real estate activities with respect to which such individual actively participated in such taxable year (and if any portion of such loss or credit arose in another taxable year, in such other taxable year).

(2) Dollar limitation

The aggregate amount to which paragraph (1) applies for any taxable year shall not exceed $25,000.

(3) Phase-out of exemption

(A) In general

In the case of any taxpayer, the $25,000 amount under paragraph (2) shall be reduced (but not below zero) by 50 percent of the amount by which the adjusted gross income of the taxpayer for the taxable year exceeds $100,000.

(B) Special phase-out of rehabilitation credit

In the case of any portion of the passive activity credit for any taxable year which is attributable to the rehabilitation credit determined under section 47, subparagraph (A) shall be applied by substituting ''$200,000'' for ''$100,000''.

(C) Exception for commercial revitalization deduction

Subparagraph (A) shall not apply to any portion of the passive activity loss for any taxable year which is attributable to the commercial revitalization deduction under section 1400I.

(D) Exception for low-income housing credit

Subparagraph (A) shall not apply to any portion of the passive activity credit for any taxable year which is attributable to any credit determined under section 42.

(E) Ordering rules to reflect exceptions and separate phase-outs

If subparagraph (B), (C), or (D) applies for a taxable year, paragraph (1) shall be applied—

(i) first to the portion of the passive activity loss to which subparagraph (C) does not apply,

(ii) second to the portion of such loss to which subparagraph (C) applies,

(iii) third to the portion of the passive activity credit to which subparagraph (B) or (D) does not apply,

(iv) fourth to the portion of such credit to which subparagraph (B) applies, and

(v) then to the portion of such credit to which subparagraph (D) applies.

(F) Adjusted gross income

For purposes of this paragraph, adjusted gross income shall be determined without regard to—

(i) any amount includible in gross income under section 86,

(ii) the amounts excludable from gross income under sections 135 and 137,

(iii) the amounts allowable as a deduction under sections 219, 221, 222, and 250, and

(iv) any passive activity loss or any loss allowable by reason of subsection (c)(7).

(4) Special rule for estates

(A) In general

In the case of taxable years of an estate ending less than 2 years after the date of the death of the decedent, this subsection shall apply to all rental real estate activities with respect to which such decedent actively participated before his death.

(B) Reduction for surviving spouse's exemption

For purposes of subparagraph (A), the $25,000 amount under paragraph (2) shall be reduced by the amount of the exemption under paragraph (1) (without regard to paragraph (3)) allowable to the surviving spouse of the decedent for the taxable year ending with or within the taxable year of the estate.

(5) Married individuals filing separately

(A) In general

Except as provided in subparagraph (B), in the case of any married individual filing a separate return, this subsection shall be applied by substituting—

(i) ''$12,500'' for ''$25,000'' each place it appears,

(ii) ''$50,000'' for ''$100,000'' in paragraph (3)(A), and

(iii) ''$100,000'' for ''$200,000'' in paragraph (3)(B).

(B) Taxpayers not living apart

This subsection shall not apply to a taxpayer who—

(i) is a married individual filing a separate return for any taxable year, and

(ii) does not live apart from his spouse at all times during such taxable year.

(6) Active participation

(A) In general

An individual shall not be treated as actively participating with respect to any interest in any rental real estate activity for any period if, at any time during such period, such interest (including any interest of the spouse of the individual) is less than 10 percent (by value) of all interests in such activity.

(B) No participation requirement for low-income housing, rehabilitation credit, or commercial revitalization deduction

Paragraphs (1) and (4)(A) shall be applied without regard to the active participation requirement in the case of—

(i) any credit determined under section 42 for any taxable year,

(ii) any rehabilitation credit determined under section 47, or

(iii) any deduction under section 1400I (relating to commercial revitalization deduction).

(C) Interest as a limited partner

Except as provided in regulations, no interest as a limited partner in a limited part-

nership shall be treated as an interest with respect to which the taxpayer actively participates.

(D) Participation by spouse

In determining whether a taxpayer actively participates, the participation of the spouse of the taxpayer shall be taken into account.

(j) Other definitions and special rules

For purposes of this section—

(1) Closely held C corporation

The term ''closely held C corporation'' means any C corporation described in section 465(a)(1)(B).

(2) Personal service corporation

The term ''personal service corporation'' has the meaning given such term by section 269A(b)(1), except that section 269A(b)(2) shall be applied—

(A) by substituting ''any'' for ''more than 10 percent'', and

(B) by substituting ''any'' for ''50 percent or more in value'' in section 318(a)(2)(C).

A corporation shall not be treated as a personal service corporation unless more than 10 percent of the stock (by value) in such corporation is held by employee-owners (within the meaning of section 269A(b)(2), as modified by the preceding sentence).

(3) Regular tax liability

The term ''regular tax liability'' has the meaning given such term by section 26(b).

(4) Allocation of passive activity loss and credit

The passive activity loss and the passive activity credit (and the $25,000 amount under subsection (i)) shall be allocated to activities, and within activities, on a pro rata basis in such manner as the Secretary may prescribe.

(5) Deduction equivalent

The deduction equivalent of credits from a passive activity for any taxable year is the amount which (if allowed as a deduction) would reduce the regular tax liability for such taxable year by an amount equal to such credits.

(6) Special rule for gifts

In the case of a disposition of any interest in a passive activity by gift—

(A) the basis of such interest immediately before the transfer shall be increased by the amount of any passive activity losses allocable to such interest with respect to which a deduction has not been allowed by reason of subsection (a), and

(B) such losses shall not be allowable as a deduction for any taxable year.

(7) Qualified residence interest

The passive activity loss of a taxpayer shall be computed without regard to qualified residence interest (within the meaning of section 163(h)(3)).

(8) Rental activity

The term ''rental activity'' means any activity where payments are principally for the use of tangible property.

(9) Election to increase basis of property by amount of disallowed credit

For purposes of determining gain or loss from a disposition of any property to which subsection (g)(1) applies, the transferor may elect to increase the basis of such property immediately before the transfer by an amount equal to the portion of any unused credit allowable under this chapter which reduced the basis of such property for the taxable year in which such credit arose. If the taxpayer elects the application of this paragraph, such portion of the passive activity credit of such taxpayer shall not be allowed for any taxable year.

(10) Coordination with section 280A

If a passive activity involves the use of a dwelling unit to which section 280A(c)(5) applies for any taxable year, any income, deduction, gain, or loss allocable to such use shall not be taken into account for purposes of this section for such taxable year.

(11) Aggregation of members of affiliated groups

Except as provided in regulations, all members of an affiliated group which files a consolidated return shall be treated as 1 corporation.

(12) Special rule for distributions by estates or trusts

If any interest in a passive activity is distributed by an estate or trust—

(A) the basis of such interest immediately before such distribution shall be increased by the amount of any passive activity losses allocable to such interest, and

(B) such losses shall not be allowable as a deduction for any taxable year.

(k) Separate application of section in case of publicly traded partnerships

(1) In general

This section shall be applied separately with respect to items attributable to each publicly traded partnership (and subsection (i) shall not apply with respect to items attributable to any such partnership). The preceding sentence shall not apply to any credit determined under section 42, or any rehabilitation credit determined under section 47, attributable to a publicly traded partnership to the extent the amount of any such credits exceeds the regular tax liability attributable to income from such partnership.

(2) Publicly traded partnership

For purposes of this section, the term ''publicly traded partnership'' means any partnership if—

(A) interests in such partnership are traded on an established securities market, or

(B) interests in such partnership are readily tradable on a secondary market (or the substantial equivalent thereof).

(3) Coordination with subsection (g)

For purposes of subsection (g), a taxpayer shall not be treated as having disposed of his entire interest in an activity of a publicly traded partnership until he disposes of his entire interest in such partnership.

(4) Application to regulated investment companies

For purposes of this section, a regulated investment company (as defined in section 851) holding an interest in a qualified publicly traded partnership (as defined in section 851(h)) shall be treated as a taxpayer described in subsection (a)(2) with respect to items attributable to such interest.

(*l*) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out provisions of this section, including regulations—

(1) which specify what constitutes an activity, material participation, or active participation for purposes of this section,

(2) which provide that certain items of gross income will not be taken into account in determining income or loss from any activity (and the treatment of expenses allocable to such income),

(3) requiring net income or gain from a limited partnership or other passive activity to be treated as not from a passive activity,

(4) which provide for the determination of the allocation of interest expense for purposes of this section, and

(5) which deal with changes in marital status and changes between joint returns and separate returns.

(Added Pub. L. 99–514, title V, §501(a), Oct. 22, 1986, 100 Stat. 2233; amended Pub. L. 100–203, title X, §10212(a), Dec. 22, 1987, 101 Stat. 1330–405; Pub. L. 100–647, title I, §1005(a)(1)–(9), (11), (12), title II, §2004(g), title VI, §6009(c)(3), Nov. 10, 1988, 102 Stat. 3387–3389, 3603, 3690; Pub. L. 101–239, title VII, §7109(a), Dec. 19, 1989, 103 Stat. 2322; Pub. L. 101–508, title XI, §§11704(a)(6), 11813(b)(16), Nov. 5, 1990, 104 Stat. 1388–518, 1388–555; Pub. L. 103–66, title XIII, §13143(a), (b), Aug. 10, 1993, 107 Stat. 440, 441; Pub. L. 104–188, title I, §§1704(d)(1), (e)(1), 1807(c)(4), Aug. 20, 1996, 110 Stat. 1878, 1902; Pub. L. 105–277, div. J, title IV, §4003(a)(2)(D), Oct. 21, 1998, 112 Stat. 2681–908; Pub. L. 106–554, §1(a)(7) [title I, §101(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–599; Pub. L. 107–16, title IV, §431(c)(3), June 7, 2001, 115 Stat. 68; Pub. L. 107–147, title IV, §412(a), Mar. 9, 2002, 116 Stat. 53; Pub. L. 108–357, title I, §102(d)(5), title III, §331(g), Oct. 22, 2004, 118 Stat. 1429, 1477; Pub. L. 113–295, div. A, title II, §221(a)(41)(G), (60)(A), Dec. 19, 2014, 128 Stat. 4044, 4047; Pub. L. 115–97, title I, §§13305(b)(1), 14202(b)(3), Dec. 22, 2017, 131 Stat. 2126, 2216.)

AMENDMENTS

2017—Subsec. (i)(3)(F)(iii). Pub. L. 115–97, §14202(b)(3), substituted ''222, and 250'' for ''and 222''.

Pub. L. 115–97, §13305(b)(1), struck out ''199,'' after ''sections''.

2014—Subsec. (e)(4). Pub. L. 113–295, §221(a)(41)(G), struck out '', 244,'' after ''section 243''.

Subsec. (m). Pub. L. 113–295, §221(a)(60)(A), struck out subsec. (m) which related to a phase-in of disallowance of losses and credits for interest held before the date of enactment of the Tax Reform Act of 1986.

2004—Subsec. (i)(3)(F)(iii). Pub. L. 108–357, §102(d)(5), inserted ''199,'' before ''219,''.

Subsec. (k)(4). Pub. L. 108–357, §331(g), added par. (4).

2002—Subsec. (i)(3)(E)(ii) to (iv). Pub. L. 107–147 added cls. (ii) to (iv) and struck out former cls. (ii) to (iv) which read as follows:

''(ii) second to the portion of the passive activity credit to which subparagraph (B) or (D) does not apply,

''(iii) third to the portion of such credit to which subparagraph (B) applies,

''(iv) fourth to the portion of such loss to which subparagraph (C) applies, and''.

2001—Subsec. (i)(3)(F)(iii). Pub. L. 107–16 substituted '', 221, and 222'' for ''and 221''.

2000—Subsec. (i)(3)(C) to (F). Pub. L. 106–554, §1(a)(7) [title I, §101(b)(1), (2)], added subpar. (C), redesignated former subpars. (C) to (E) as (D) to (F), respectively, and generally amended heading and text of subpar. (E), as redesignated. Prior to amendment, text read as follows: ''If subparagraph (B) or (C) applies for any taxable year, paragraph (1) shall be applied—

''(i) first to the passive activity loss,

''(ii) second to the portion of the passive activity credit to which subparagraph (B) or (C) does not apply,

''(iii) third to the portion of such credit to which subparagraph (B) applies, and

''(iv) then to the portion of such credit to which subparagraph (C) applies.''

Subsec. (i)(6)(B). Pub. L. 106–554, §1(a)(7) [title I, §101(b)(3)(B)], substituted '', rehabilitation credit, or commercial revitalization deduction'' for ''or rehabilitation credit'' in heading.

Subsec. (i)(6)(B)(iii). Pub. L. 106–554, §1(a)(7) [title I, §101(b)(3)(A)], added cl. (iii).

1998—Subsec. (i)(3)(E)(iii). Pub. L. 105–277 amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''any amount allowable as a deduction under section 219, and''.

1996—Subsec. (c)(3)(B). Pub. L. 104–188, §1704(d)(1), inserted at end ''If the preceding sentence applies to the net income from any property for any taxable year, any credits allowable under subpart B (other than section 27(a)) or D of part IV of subchapter A for such taxable year which are attributable to such property shall be treated as credits not from a passive activity to the extent the amount of such credits does not exceed the regular tax liability of the taxpayer for the taxable year which is allocable to such net income.''

Subsec. (g)(1)(A). Pub. L. 104–188, §1704(e)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''If all gain or loss realized on such disposition is recognized, the excess of—

''(i) the sum of—

''(I) any loss from such activity for such taxable year (determined after application of subsection (b)), plus

''(II) any loss realized on such disposition, over

''(ii) net income or gain for such taxable year from all passive activities (determined without regard to losses described in clause (i)),

shall be treated as a loss which is not from a passive activity.''

Subsec. (i)(3)(E)(ii). Pub. L. 104–188, §1807(c)(4), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''the amount excludable from gross income under section 135,''.

1993—Subsec. (c)(2). Pub. L. 103–66, §13143(b)(1), substituted ''Except as provided in paragraph (7), the'' for ''The''.

Subsec. (c)(7). Pub. L. 103–66, §13143(a), added par. (7).

Subsec. (i)(3)(E)(iv). Pub. L. 103–66, §13143(b)(2), inserted ''or any loss allowable by reason of subsection (c)(7)'' after ''loss''.

1990—Subsec. (i)(3)(B), (6)(B)(ii). Pub. L. 101–508, §11813(b)(16)(A), substituted ''rehabilitation credit determined under section 47'' for ''rehabilitation investment credit (within the meaning of section 48(*o*))''.

Subsec. (k)(1). Pub. L. 101–508, §11813(b)(16)(B), substituted ''rehabilitation credit determined under section 47'' for ''rehabilitation investment credit (within the meaning of section 48(*o*))''.

Subsec. (m)(3)(A). Pub. L. 101–508, §11704(a)(6), substituted ''pre-enactment'' for ''preenactment''.

1989—Subsec. (i)(3)(B), (C). Pub. L. 101–239 added subpars. (B) and (C) and struck out former subpars. (B) and (C) which read as follows:

''(B) SPECIAL PHASE-OUT OF LOW-INCOME HOUSING AND REHABILITATION CREDITS.—In the case of any portion of the passive activity credit for any taxable year which is attributable to any credit to which paragraph (6)(B) applies, subparagraph (A) shall be applied by substituting '$200,000' for '$100,000'.

''(C) ORDERING RULE TO REFLECT SEPARATE PHASE-OUTS.—If subparagraph (B) applies for any taxable year, paragraph (1) shall be applied—

''(i) first to the passive activity loss,

''(ii) second to the portion of the passive activity credit to which subparagraph (B) does not apply, and

''(iii) then to the portion of such credit to which subparagraph (B) applies.''

Subsec. (i)(3)(D), (E). Pub. L. 101–239 added subpar. (D) and redesignated former subpar. (D) as (E).

1988—Subsec. (e)(1)(A)(ii). Pub. L. 100–647, §1005(a)(1), inserted ''not derived in the ordinary course of a trade or business which is'' after ''gain or loss''.

Subsec. (g)(1)(A). Pub. L. 100–647, §1005(a)(2)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''If all gain or loss realized on such disposition is recognized, any loss from such activity which has not previously been allowed as a deduction (and in the case of a passive activity for the taxable year, any loss realized on such disposition) shall not be treated as a passive activity loss and shall be allowable as a deduction against income in the following order:

''(i) Income or gain from the passive activity for the taxable year (including any gain recognized on the disposition).

''(ii) Net income or gain for the taxable year from all passive activities.

''(iii) Any other income or gain.''

Subsec. (g)(1)(C). Pub. L. 100–647, §1005(a)(2)(B), substituted ''Income from prior years'' for ''Coordination with section 1211'' in heading and amended text generally. Prior to amendment, text read as follows: ''In the case of any loss realized on the disposition of an interest in a passive activity, section 1211 shall be applied before subparagraph (A) is applied.''

Subsec. (g)(2)(A). Pub. L. 100–647, §1005(a)(3), substituted ''paragraph (1)(A)'' for ''paragraph (1)'' and ''to losses described in paragraph (1)(A)'' for ''to such losses''.

Subsec. (g)(3). Pub. L. 100–647, §1005(a)(4), substituted ''(realized or to be realized'' for ''realized (or to be realized)'' and ''is completed)'' for ''is completed''.

Subsec. (h)(4). Pub. L. 100–647, §1005(a)(5), inserted ''only'' before ''if''.

Subsec. (i)(1). Pub. L. 100–647, §1005(a)(6), substituted ''in such taxable year (and if any portion of such loss or credit arose in another taxable year, in such other taxable year)'' for ''in the taxable year in which such portion of such loss or credit arose''.

Subsec. (i)(3)(D). Pub. L. 100–647, §6009(c)(3), added cl. (ii) and redesignated former cls. (ii) and (iii) as (iii) and (iv), respectively.

Subsec. (i)(6)(C). Pub. L. 100–647, §1005(a)(7), substituted ''Except as provided in regulations, no'' for ''No''.

Subsec. (j)(6)(A). Pub. L. 100–647, §1005(a)(8), inserted ''with respect to which a deduction has not been allowed by reason of subsection (a)'' after ''to such interest''.

Subsec. (j)(10), (11). Pub. L. 100–647, §1005(a)(9), added pars. (10) and (11).

Subsec. (j)(12). Pub. L. 100–647, §1005(a)(11), added par. (12).

Subsec. (k)(3). Pub. L. 100–647, §2004(g), added par. (3).

Subsec. (m). Pub. L. 100–647, §1005(a)(12), substituted ''interest'' for ''interests'' in heading.

Subsec. (m)(1). Pub. L. 100–647, §1005(a)(12), added par. (1) and struck out former par. (1) which read as follows: ''In the case of any passive activity loss or credit for any taxable year beginning in calendar years 1987 through 1990 which—

''(A) is attributable to a pre-enactment interest, but

''(B) is not attributable to a carryforward to such taxable year of any loss or credit which was disallowed under this section for a preceding taxable year,

there shall be disallowed under subsection (a) only the applicable percentage of the amount which (but for this subsection) would have been disallowed under subsection (a) for such taxable year.''

Subsec. (m)(2). Pub. L. 100–647, §1005(a)(12), added par. (2) and struck out former par. (2) which resulted in substituting ''65'', ''40'', ''20'', and ''10'' for ''35'', ''60'', ''80'', and ''90'' respectively, in second column.

Subsec. (m)(3)(A). Pub. L. 100–647, §1005(a)(12), added subpar. (A) and struck out former subpar. (A) which read as follows: ''The portion of the passive activity loss for any taxable year which is attributable to pre-enactment interests shall be equal to the lesser of—

''(i) the passive activity loss for such taxable year, or

''(ii) the passive activity loss for such taxable year determined by taking into account only pre-enactment interests.

For purposes of this subparagraph, the deduction equivalent (within the meaning of subsection (j)(5)) of a passive activity credit shall be taken into account.''

1987—Subsecs. (k) to (m). Pub. L. 100–203 added subsec. (k) and redesignated former subsecs. (k) and (*l*) as (*l*) and (m), respectively.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 13305(b)(1) of Pub. L. 115–97 applicable to taxable years beginning after Dec. 31, 2017, see section 13305(c) of Pub. L. 115–97, set out as a note under section 74 of this title.

Amendment by section 14202(b)(3) of Pub. L. 115–97 applicable to taxable years beginning after Dec. 31, 2017, see section 14202(c) of Pub. L. 115–97, set out as a note under section 172 of this title.

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by section 221(a)(41)(G) of Pub. L. 113–295 not applicable to preferred stock issued before Oct. 1, 1942 (determined in the same manner as under section 247 of this title as in effect before its repeal by Pub. L. 113–295), see section 221(a)(41)(K) of Pub. L. 113–295, set out as a note under section 172 of this title.

Except as otherwise provided in section 221(a) of Pub. L. 113–295, amendment by Pub. L. 113–295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113–295, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 102(d)(5) of Pub. L. 108–357 applicable to taxable years beginning after Dec. 31, 2004, see section 102(e) of Pub. L. 108–357, set out as a note under section 56 of this title.

Pub. L. 108–357, title III, §331(h), Oct. 22, 2004, 118 Stat. 1477, provided that: ''The amendments made by this section [amending this section and sections 851 and 7704 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Community Renewal Tax Relief Act of 2000 [H.R. 5662, as enacted by Pub. L. 106–554], to which such amendment relates, see section 412(e) of Pub. L. 107–147, set out as a note under section 151 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to payments made in taxable years beginning after Dec. 31, 2001, see section 431(d) of Pub. L. 107–16, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–277 effective as if included in the provision of the Taxpayer Relief Act of 1997, Pub.

L. 105–34, to which such amendment relates, see section 4003(*l*) of Pub. L. 105–277, set out as a note under section 86 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title XVII, §1704(d)(2), Aug. 20, 1996, 110 Stat. 1878, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1986.''

Pub. L. 104–188, title XVII, §1704(e)(2), Aug. 20, 1996, 110 Stat. 1879, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1986.''

Amendment by section 1807(c)(4) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1807(e) of Pub. L. 104–188, set out as an Effective Date note under section 23 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13143(c), Aug. 10, 1993, 107 Stat. 441, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1993.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11813(b)(16) of Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7109(b), Dec. 19, 1989, 103 Stat. 2322, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to property placed in service after December 31, 1989, in taxable years ending after such date.

''(2) SPECIAL RULE WHERE INTEREST HELD IN PASS-THRU ENTITY.—In the case of a taxpayer who holds an indirect interest in property described in paragraph (1), the amendments made by this section shall apply only if such interest is acquired after December 31, 1989.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1005(a)(1)–(9), (11), (12) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 2004(g) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

Amendment by section 6009(c)(3) of Pub. L. 100–647 applicable to taxable years beginning after Dec. 31, 1989, see section 6009(d) of Pub. L. 100–647, set out as a note under section 86 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 effective as if included in the amendments made by section 501 of the Tax Reform Act of 1986, Pub. L. 99–514, see section 10212(c) of Pub. L. 100–203, set out as a note under section 58 of this title.

EFFECTIVE DATE

Pub. L. 99–514, title V, §501(c), Oct. 22, 1986, 100 Stat. 2241, as amended by Pub. L. 100–647, title I, §1005(a)(10), title IV, §4003(b)(2), Nov. 10, 1988, 102 Stat. 3388, 3644, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1986.

''(2) SPECIAL RULE FOR CARRYOVERS.—The amendments made by this section shall not apply to any loss, deduction, or credit carried to a taxable year beginning after December 31, 1986, from a taxable year beginning before January 1, 1987.

''[(3) Repealed. Pub. L. 100–647, title IV, §4003(b)(2), Nov. 10, 1988, 102 Stat. 3644.]

''(4) INCOME FROM SALES OF PASSIVE ACTIVITIES IN TAXABLE YEARS BEGINNING BEFORE JANUARY 1, 1987.—If—

''(A) gain is recognized in a taxable year beginning after December 31, 1986, from a sale or exchange of an interest in an activity in a taxable year beginning before January 1, 1987, and

''(B) such gain would have been treated as gain from a passive activity had section 469 of the Internal Revenue Code of 1986 (as added by this section) been in effect for the taxable year in which the sale or exchange occurred and for all succeeding taxable years,

then such gain shall be treated as gain from a passive activity for purposes of such section.''

SAVINGS PROVISION

For provisions that nothing in amendment by section 11813(b)(16) of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

AMOUNTS ATTRIBUTABLE TO ACTIVITIES SUBJECT TO LIMITATIONS UNDER SECTION 469 TREATED AS DEDUCTION ALLOCABLE TO SUCH ACTIVITY

Pub. L. 100–647, title I, §1005(c)(11), Nov. 10, 1988, 102 Stat. 3392, provided that: ''If—

''(A) any amount was disallowed as a deduction under section 163(d) of the Internal Revenue Code of 1954 [now 1986] (as in effect on the day before the date of the enactment of the Reform Act [Oct. 22, 1986]),

''(B) such amount would (but for this paragraph) be treated as investment interest paid or accrued by the taxpayer in the taxpayer's first taxable year beginning after December 31, 1986, and

''(C) the taxpayer makes an election under this paragraph at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe,

to the extent such amount is attributable to an activity subject to the limitations of section 469 of the 1986 Code, such amount shall not be treated as investment interest but shall be treated as a deduction allocable to such activity for such first taxable year. [Former] Subsection (m) of section 469 of the 1986 Code and section 501(c)(2) of the Reform Act [Pub. L. 99–514, set out as an Effective Date note above] shall not apply to any amount so treated.''

TRANSITIONAL RULE FOR LOW-INCOME HOUSING

Pub. L. 99–514, title V, §502, Oct. 22, 1986, 100 Stat. 2241, as amended by Pub. L. 99–509, title VIII, §8073(a), Oct. 21, 1986, 100 Stat. 1965; Pub. L. 100–647, title I, §1005(b), Nov. 10, 1988, 102 Stat. 3389, provided that:

''(a) GENERAL RULE.—Any loss sustained by a qualified investor with respect to an interest in a qualified low-income housing project for any taxable year in the relief period shall not be treated as a loss from a passive activity for purposes of section 469 of the Internal Revenue Code of 1986.

''(b) RELIEF PERIOD.—For purposes of subsection (a), the term 'relief period' means the period beginning with the taxable year in which the investor made his initial investment in the qualified low-income housing project and ending with whichever of the following is the earliest—

''(1) the 6th taxable year after the taxable year in which the investor made his initial investment,

''(2) the 1st taxable year after the taxable year in which the investor is obligated to make his last investment, or

''(3) the taxable year preceding the 1st taxable year for which such project ceased to be a qualified low-income housing project.

''(c) QUALIFIED LOW-INCOME HOUSING PROJECT.—For purposes of this section, the term 'qualified low-income housing project' means any project if—

''(1) such project meets the requirements of clause (i), (ii), (iii), or (iv) of section 1250(a)(1)(B) [of the Internal Revenue Code of 1986] as of the date placed in service and for each taxable year thereafter which begins after 1986 and for which a passive loss may be allowable with respect to such project,

''(2) the operator certifies to the Secretary of the Treasury or his delegate that such project met the requirements of paragraph (1) on the date of the enactment of this Act [Oct. 22, 1986] (or, if later, when placed in service) and annually thereafter,

''(3) such project is constructed or acquired pursuant to a binding written contract entered into on or before August 16, 1986, and

''(4) such project is placed in service before January 1, 1989.

''(d) QUALIFIED INVESTOR.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified investor' means any natural person who holds (directly or through 1 or more entities) an interest in a qualified low-income housing project—

''(A) if—

''(i) in the case of a project placed in service on or before August 16, 1986, such person held an interest in such project on August 16, 1986, and such person made his initial investment after December 31, 1983, or

''(ii) in the case of a project placed in service after August 16, 1986, such person made his initial investment after December 31, 1983, and such person held an interest in such project on December 31, 1986, and

''(B) if such investor is required to make payments after December 31, 1986, of 50 percent or more of the total original obligated investment for such interest.

For purposes of subparagraph (A), a person shall be treated as holding an interest on August 16, 1986, or December 31, 1986, if on such date such person had a binding contract to acquire such interest.

''(2) TREATMENT OF ESTATES.—The estate of a decedent shall succeed to the treatment under this section of the decedent but only with respect to the 1st 2 taxable years of such estate ending after the date of the decedent's death.

''(3) SPECIAL RULE FOR CERTAIN PARTNERSHIPS.—In the case of any property which is held by a partnership—

''(A) which placed such property in service on or after December 31, 1985, and before August 17, 1986, and continuously held such property through the close of the taxable year for which the determination is being made, and

''(B) which was not treated as a new partnership or as terminated at any time on or after the date on which such property was placed in service and through the close of the taxable year for which the determination is being made,

paragraph (1)(A)(i) shall be applied by substituting 'December 31, 1988' for 'August 16, 1986' the 2nd place it appears.

''(4) SPECIAL RULE FOR CERTAIN RURAL HOUSING.—In the case of any interest in a qualified low-income housing project which—

''(A) is assisted under section 515 of the Housing Act of 1949 [42 U.S.C. 1485] (relating to the Farmers' Home Administration Program), and

''(B) is located in a town with a population of less than 10,000 and which is not part of a metropolitan statistical area,

paragraph (1)(B) shall be applied by substituting '35 percent' for '50 percent' and subsection (b)(1) shall be applied by substituting '5th taxable year' for '6th taxable year'. The preceding sentence shall not apply to any interest unless, on December 31, 1986, at least one-half of the number of payments required with respect to such interest remain to be paid.

''(e) SPECIAL RULES.—

''(1) WHERE MORE THAN 1 BUILDING IN PROJECT.—If there is more than 1 building in any project, the determination of when such project is placed in service shall be based on when the 1st building in such project is placed in service.

''(2) ONLY CASH AND OTHER PROPERTY TAKEN INTO ACCOUNT.—In determining the amount any person invests in (or is obligated to invest in) any interest, only cash and other property shall be taken into account.

''(3) COORDINATION WITH CREDIT.—No low-income housing credit shall be determined under section 42 of the Internal Revenue Code of 1986 with respect to any project with respect to which any person has been allowed any benefit under this section.''

[Pub. L. 99–509, title VIII, § 8073(b), Oct. 21, 1986, 100 Stat. 1965, provided that: ''The amendment made by subsection (a) [amending section 502 of Pub. L. 99–514, set out above] shall take effect as if included in section 502 of the Tax Reform Act of 1986 on the date of its enactment [Oct. 22, 1986].'']

§ 470. Limitation on deductions allocable to property used by governments or other tax-exempt entities

(a) Limitation on losses

Except as otherwise provided in this section, a tax-exempt use loss for any taxable year shall not be allowed.

(b) Disallowed loss carried to next year

Any tax-exempt use loss with respect to any tax-exempt use property which is disallowed under subsection (a) for any taxable year shall be treated as a deduction with respect to such property in the next taxable year.

(c) Definitions

For purposes of this section—

(1) Tax-exempt use loss

The term ''tax-exempt use loss'' means, with respect to any taxable year, the amount (if any) by which—

(A) the sum of—

(i) the aggregate deductions (other than interest) directly allocable to a tax-exempt use property, plus

(ii) the aggregate deductions for interest properly allocable to such property, exceed

(B) the aggregate income from such property.

(2) Tax-exempt use property

(A) In general

The term ''tax-exempt use property'' has the meaning given to such term by section 168(h), except that such section shall be applied—

(i) without regard to paragraphs (1)(C) and (3) thereof, and

(ii) as if section 197 intangible property (as defined in section 197), and property described in paragraph (1)(B) or (2) of section 167(f), were tangible property.

(B) Exception for partnerships

Such term shall not include any property which would (but for this subparagraph) be

tax-exempt use property solely by reason of section 168(h)(6).

(C) Cross reference

For treatment of partnerships as leases to which section 168(h) applies, see section 7701(e).

(d) Exception for certain leases

This section shall not apply to any lease of property which meets the requirements of all of the following paragraphs:

(1) Availability of funds

(A) In general

A lease of property meets the requirements of this paragraph if (at all times during the lease term) not more than an allowable amount of funds are—

(i) subject to any arrangement referred to in subparagraph (B), or

(ii) set aside or expected to be set aside,

to or for the benefit of the lessor or any lender, or to or for the benefit of the lessee to satisfy the lessee's obligations or options under the lease. For purposes of clause (ii), funds shall be treated as set aside or expected to be set aside only if a reasonable person would conclude, based on the facts and circumstances, that such funds are set aside or expected to be set aside.

(B) Arrangements

The arrangements referred to in this subparagraph include a defeasance arrangement, a loan by the lessee to the lessor or any lender, a deposit arrangement, a letter of credit collateralized with cash or cash equivalents, a payment undertaking agreement, prepaid rent (within the meaning of the regulations under section 467), a sinking fund arrangement, a guaranteed investment contract, financial guaranty insurance, and any similar arrangement (whether or not such arrangement provides credit support).

(C) Allowable amount

(i) In general

Except as otherwise provided in this subparagraph, the term ''allowable amount'' means an amount equal to 20 percent of the lessor's adjusted basis in the property at the time the lease is entered into.

(ii) Higher amount permitted in certain cases

To the extent provided in regulations, a higher percentage shall be permitted under clause (i) where necessary because of the credit-worthiness of the lessee. In no event may such regulations permit a percentage of more than 50 percent.

(iii) Option to purchase

If under the lease the lessee has the option to purchase the property for a fixed price or for other than the fair market value of the property (determined at the time of exercise), the allowable amount at the time such option may be exercised may not exceed 50 percent of the price at which such option may be exercised.

(iv) No allowable amount for certain arrangements

The allowable amount shall be zero with respect to any arrangement which involves—

(I) a loan from the lessee to the lessor or a lender,

(II) any deposit received, letter of credit issued, or payment undertaking agreement entered into by a lender otherwise involved in the transaction, or

(III) in the case of a transaction which involves a lender, any credit support made available to the lessor in which any such lender does not have a claim that is senior to the lessor.

For purposes of subclause (I), the term ''loan'' shall not include any amount treated as a loan under section 467 with respect to a section 467 rental agreement.

(2) Lessor must make substantial equity investment

(A) In general

A lease of property meets the requirements of this paragraph if—

(i) the lessor—

(I) has at the time the lease is entered into an unconditional at-risk equity investment (as determined by the Secretary) in the property of at least 20 percent of the lessor's adjusted basis in the property as of that time, and

(II) maintains such investment throughout the term of the lease, and

(ii) the fair market value of the property at the end of the lease term is reasonably expected to be equal to at least 20 percent of such basis.

(B) Risk of loss

For purposes of clause (ii),[1] the fair market value at the end of the lease term shall be reduced to the extent that a person other than the lessor bears a risk of loss in the value of the property.

(C) Paragraph not to apply to short-term leases

This paragraph shall not apply to any lease with a lease term of 5 years or less.

(3) Lessee may not bear more than minimal risk of loss

(A) In general

A lease of property meets the requirements of this paragraph if there is no arrangement under which the lessee bears—

(i) any portion of the loss that would occur if the fair market value of the leased property were 25 percent less than its reasonably expected fair market value at the time the lease is terminated, or

(ii) more than 50 percent of the loss that would occur if the fair market value of the leased property at the time the lease is terminated were zero.

(B) Exception

The Secretary may by regulations provide that the requirements of this paragraph are

[1] So in original. Probably should be ''subparagraph (A)(ii)''.

not met where the lessee bears more than a minimal risk of loss.

(C) Paragraph not to apply to short-term leases

This paragraph shall not apply to any lease with a lease term of 5 years or less.

(4) Property with more than 7-year class life

In the case of a lease—

(A) of property with a class life (as defined in section 168(i)(1)) of more than 7 years, other than fixed-wing aircraft and vessels, and

(B) under which the lessee has the option to purchase the property,

the lease meets the requirements of this paragraph only if the purchase price under the option equals the fair market value of the property (determined at the time of exercise).

(e) Special rules

(1) Treatment of former tax-exempt use property

(A) In general

In the case of any former tax-exempt use property—

(i) any deduction allowable under subsection (b) with respect to such property for any taxable year shall be allowed only to the extent of any net income (without regard to such deduction) from such property for such taxable year, and

(ii) any portion of such unused deduction remaining after application of clause (i) shall be treated as a deduction allowable under subsection (b) with respect to such property in the next taxable year.

(B) Former tax-exempt use property

For purposes of this subsection, the term ''former tax-exempt use property'' means any property which—

(i) is not tax-exempt use property for the taxable year, but

(ii) was tax-exempt use property for any prior taxable year.

(2) Disposition of entire interest in property

If during the taxable year a taxpayer disposes of the taxpayer's entire interest in tax-exempt use property (or former tax-exempt use property), rules similar to the rules of section 469(g) shall apply for purposes of this section.

(3) Coordination with section 469

This section shall be applied before the application of section 469.

(4) Coordination with sections 1031 and 1033

(A) In general

Sections 1031(a) and 1033(a) shall not apply if—

(i) the exchanged or converted property is tax-exempt use property subject to a lease which was entered into before March 13, 2004, and which would not have met the requirements of subsection (d) had such requirements been in effect when the lease was entered into, or

(ii) the replacement property is tax-exempt use property subject to a lease which does not meet the requirements of subsection (d).

(B) Adjusted basis

In the case of property acquired by the lessor in a transaction to which section 1031 or 1033 applies, the adjusted basis of such property for purposes of this section shall be equal to the lesser of—

(i) the fair market value of the property as of the beginning of the lease term, or

(ii) the amount which would be the lessor's adjusted basis if such sections did not apply to such transaction.

(f) Other definitions

For purposes of this section—

(1) Related parties

The terms ''lessor'', ''lessee'', and ''lender'' each include any related party (within the meaning of section 197(f)(9)(C)(i)).

(2) Lease term

The term ''lease term'' has the meaning given to such term by section 168(i)(3).

(3) Lender

The term ''lender'' means, with respect to any lease, a person that makes a loan to the lessor which is secured (or economically similar to being secured) by the lease or the leased property.

(4) Loan

The term ''loan'' includes any similar arrangement.

(g) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations which—

(1) allow in appropriate cases the aggregation of property subject to the same lease, and

(2) provide for the determination of the allocation of interest expense for purposes of this section.

(Added Pub. L. 108–357, title VIII, § 848(a), Oct. 22, 2004, 118 Stat. 1602; amended Pub. L. 110–172, § 7(c), Dec. 29, 2007, 121 Stat. 2482.)

AMENDMENTS

2007—Subsec. (c)(2). Pub. L. 110–172, § 7(c)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The term 'tax-exempt use property' has the meaning given to such term by section 168(h), except that such section shall be applied—

''(A) without regard to paragraphs (1)(C) and (3) thereof, and

''(B) as if property described in—

''(i) section 167(f)(1)(B),

''(ii) section 167(f)(2), and

''(iii) section 197 intangible,

were tangible property.

Such term shall not include property which would (but for this sentence) be tax-exempt use property solely by reason of section 168(h)(6) if any credit is allowable under section 42 or 47 with respect to such property.''

Subsec. (d)(1)(A). Pub. L. 110–172, § 7(c)(2), in introductory provisions, substituted ''(at all times during the lease term)'' for ''(at any time during the lease term)''.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–172 effective as if included in the provision of the American Jobs Creation Act of

2004, Pub. L. 108–357, to which such amendment relates, see section 7(e) of Pub. L. 110–172, set out as a note under section 1092 of this title.

EFFECTIVE DATE

Pub. L. 108–357, title VIII, § 849, Oct. 22, 2004, 118 Stat. 1606, as amended by Pub. L. 109–135, title IV, § 403(ff), Dec. 21, 2005, 119 Stat. 2631, provided that:

''(a) IN GENERAL.—Except as provided in this section, the amendments made by this part [part III (§§ 847–849) of subtitle B of title VIII of Pub. L. 108–357, enacting this section and amending sections 167, 168, and 197 of this title] shall apply to leases entered into after March 12, 2004, and in the case of property treated as tax-exempt use property other than by reason of a lease, to property acquired after March 12, 2004.

''(b) EXCEPTION.—

''(1) IN GENERAL.—The amendments made by this part shall not apply to qualified transportation property.

''(2) QUALIFIED TRANSPORTATION PROPERTY.—For purposes of paragraph (1), the term 'qualified transportation property' means domestic property subject to a lease with respect to which a formal application—

''(A) was submitted for approval to the Federal Transit Administration (an agency of the Department of Transportation) after June 30, 2003, and before March 13, 2004,

''(B) is approved by the Federal Transit Administration before January 1, 2006, and

''(C) includes a description of such property and the value of such property.

''(3) EXCHANGES AND CONVERSION OF TAX-EXEMPT USE PROPERTY.—Section 470(e)(4) of the Internal Revenue Code of 1986, as added by section 848, shall apply to property exchanged or converted after the date of the enactment of this Act [Oct. 22, 2004].

''(4) INTANGIBLES AND INDIAN TRIBAL GOVERNMENTS.—The amendments made subsections (b)(2), (b)(3), and (e) of section 847 [amending sections 167, 168, and 197 of this title], and the treatment of property described in clauses (ii) and (iii) of section 470(c)(2)(B) of the Internal Revenue Code of 1986 (as added by section 848) as tangible property, shall apply to leases entered into after October 3, 2004.''

SUBPART D—INVENTORIES

Sec.
471. General rule for inventories.
472. Last-in, first-out inventories.
473. Qualified liquidations of LIFO inventories.
474. Simplified dollar-value LIFO method for certain small businesses.
475. Mark to market accounting method for dealers in securities.

AMENDMENTS

1993—Pub. L. 103–66, title XIII, § 13223(b)(2), Aug. 10, 1993, 107 Stat. 484, added item 475.

1986—Pub. L. 99–514, title VIII, § 802(b), Oct. 22, 1986, 100 Stat. 2350, substituted ''Simplified dollar-value LIFO method for certain small businesses'' for ''Election by certain small businesses to use one inventory pool'' in item 474.

1981—Pub. L. 97–34, title II, § 237(b), Aug. 13, 1981, 95 Stat. 253, added item 474.

1980—Pub. L. 96–223, title IV, § 403(a)(2), Apr. 2, 1980, 94 Stat. 304, added item 473.

§ 471. General rule for inventories

(a) General rule

Whenever in the opinion of the Secretary the use of inventories is necessary in order clearly to determine the income of any taxpayer, inventories shall be taken by such taxpayer on such basis as the Secretary may prescribe as conforming as nearly as may be to the best accounting practice in the trade or business and as most clearly reflecting the income.

(b) Estimates of inventory shrinkage permitted

A method of determining inventories shall not be treated as failing to clearly reflect income solely because it utilizes estimates of inventory shrinkage that are confirmed by a physical count only after the last day of the taxable year if—

(1) the taxpayer normally does a physical count of inventories at each location on a regular and consistent basis, and

(2) the taxpayer makes proper adjustments to such inventories and to its estimating methods to the extent such estimates are greater than or less than the actual shrinkage.

(c) Exemption for certain small businesses

(1) In general

In the case of any taxpayer (other than a tax shelter prohibited from using the cash receipts and disbursements method of accounting under section 448(a)(3)) which meets the gross receipts test of section 448(c) for any taxable year—

(A) subsection (a) shall not apply with respect to such taxpayer for such taxable year, and

(B) the taxpayer's method of accounting for inventory for such taxable year shall not be treated as failing to clearly reflect income if such method either—

(i) treats inventory as non-incidental materials and supplies, or

(ii) conforms to such taxpayer's method of accounting reflected in an applicable financial statement of the taxpayer with respect to such taxable year or, if the taxpayer does not have any applicable financial statement with respect to such taxable year, the books and records of the taxpayer prepared in accordance with the taxpayer's accounting procedures.

(2) Applicable financial statement

For purposes of this subsection, the term ''applicable financial statement'' has the meaning given the term in section 451(b)(3).

(3) Application of gross receipts test to individuals, etc.

In the case of any taxpayer which is not a corporation or a partnership, the gross receipts test of section 448(c) shall be applied in the same manner as if each trade or business of such taxpayer were a corporation or partnership.

(4) Coordination with section 481

Any change in method of accounting made pursuant to this subsection shall be treated for purposes of section 481 as initiated by the taxpayer and made with the consent of the Secretary.

(d) Cross reference

For rules relating to capitalization of direct and indirect costs of property, see section 263A.

(Aug. 16, 1954, ch. 736, 68A Stat. 159; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90

Stat. 1834; Pub. L. 99–514, title VIII, § 803(b)(4), Oct. 22, 1986, 100 Stat. 2356; Pub. L. 105–34, title IX, § 961(a), Aug. 5, 1997, 111 Stat. 891; Pub. L. 115–97, title I, § 13102(c), Dec. 22, 2017, 131 Stat. 2103.)

AMENDMENTS

2017—Subsecs. (c), (d). Pub. L. 115–97 added subsec. (c) and redesignated former subsec. (c) as (d).

1997—Subsecs. (b), (c). Pub. L. 105–34 added subsec. (b) and redesignated former subsec. (b) as (c).

1986—Pub. L. 99–514 designated existing provisions as subsec. (a) and added subsec. (b).

1976—Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary'' wherever appearing.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–97 applicable to taxable years beginning after Dec. 31, 2017, see section 13102(e) of Pub. L. 115–97, set out as a note under section 263A of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title IX, § 961(b)(1), Aug. 5, 1997, 111 Stat. 891, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1986 AMENDMENT

If any interest costs incurred after Dec. 31, 1986, are attributable to costs incurred before Jan. 1, 1987, the amendment by Pub. L. 99–514 is applicable to such interest costs only to the extent such interest costs are attributable to costs which were required to be capitalized under section 263 of the Internal Revenue Code of 1954 and which would have been taken into account in applying section 189 of the Internal Revenue Code of 1954 (as in effect before its repeal by section 803 of Pub. L. 99–514) or, if applicable, section 266 of such Code, see section 7831(d)(2) of Pub. L. 101–239, set out as an Effective Date note under section 263A of this title.

Amendment by Pub. L. 99–514 applicable to costs incurred after Dec. 31, 1986, in taxable years ending after such date, except as otherwise provided, see section 803(d) of Pub. L. 99–514, set out as an Effective Date note under section 263A of this title.

COORDINATION WITH SECTION 481

Pub. L. 105–34, title IX, § 961(b)(2), Aug. 5, 1997, 111 Stat. 891, provided that: ''In the case of any taxpayer permitted by this section [amending this section and enacting provisions set out as a note above] to change its method of accounting to a permissible method for any taxable year—

''(A) such changes shall be treated as initiated by the taxpayer,

''(B) such changes shall be treated as made with the consent of the Secretary of the Treasury, and

''(C) the period for taking into account the adjustments under section 481 [26 U.S.C. 481] by reason of such change shall be 4 years.''

STUDY OF ACCOUNTING METHODS FOR INVENTORY; REPORT NOT LATER THAN DECEMBER 31, 1982

Pub. L. 97–34, title II, § 238, Aug. 13, 1981, 95 Stat. 254, directed Secretary of the Treasury to conduct a study of methods of tax accounting for inventory with a view towards development of simplified methods and to report to Congress, not later than Dec. 31, 1982, prior to repeal by Pub. L. 100–647, title VI, § 6252(a)(2), Nov. 10, 1988, 102 Stat. 3752.

§ 472. Last-in, first-out inventories

(a) Authorization

A taxpayer may use the method provided in subsection (b) (whether or not such method has been prescribed under section 471) in inventorying goods specified in an application to use such method filed at such time and in such manner as the Secretary may prescribe. The change to, and the use of, such method shall be in accordance with such regulations as the Secretary may prescribe as necessary in order that the use of such method may clearly reflect income.

(b) Method applicable

In inventorying goods specified in the application described in subsection (a), the taxpayer shall:

(1) Treat those remaining on hand at the close of the taxable year as being: First, those included in the opening inventory of the taxable year (in the order of acquisition) to the extent thereof; and second, those acquired in the taxable year;

(2) Inventory them at cost; and

(3) Treat those included in the opening inventory of the taxable year in which such method is first used as having been acquired at the same time and determine their cost by the average cost method.

(c) Condition

Subsection (a) shall apply only if the taxpayer establishes to the satisfaction of the Secretary that the taxpayer has used no procedure other than that specified in paragraphs (1) and (3) of subsection (b) in inventorying such goods to ascertain the income, profit, or loss of the first taxable year for which the method described in subsection (b) is to be used, for the purpose of a report or statement covering such taxable year—

(1) to shareholders, partners, or other proprietors, or to beneficiaries, or

(2) for credit purposes.

(d) 3-year averaging for increases in inventory value

The beginning inventory for the first taxable year for which the method described in subsection (b) is used shall be valued at cost. Any change in the inventory amount resulting from the application of the preceding sentence shall be taken into account ratably in each of the 3 taxable years beginning with the first taxable year for which the method described in subsection (b) is first used.

(e) Subsequent inventories

If a taxpayer, having complied with subsection (a), uses the method described in subsection (b) for any taxable year, then such method shall be used in all subsequent taxable years unless—

(1) with the approval of the Secretary a change to a different method is authorized; or,

(2) the Secretary determines that the taxpayer has used for any such subsequent taxable year some procedure other than that specified in paragraph (1) of subsection (b) in inventorying the goods specified in the application to ascertain the income, profit, or loss of such subsequent taxable year for the purpose of a report or statement covering such taxable year (A) to shareholders, partners, or other proprietors, or beneficiaries, or (B) for credit purposes; and requires a change to a method different from that prescribed in sub-

section (b) beginning with such subsequent taxable year or any taxable year thereafter.

If paragraph (1) or (2) of this subsection applies, the change to, and the use of, the different method shall be in accordance with such regulations as the Secretary may prescribe as necessary in order that the use of such method may clearly reflect income.

(f) Use of government price indexes in pricing inventory

The Secretary shall prescribe regulations permitting the use of suitable published governmental indexes in such manner and circumstances as determined by the Secretary for purposes of the method described in subsection (b).

(g) Conformity rules applied on controlled group basis

(1) In general

Except as otherwise provided in regulations, all members of the same group of financially related corporations shall be treated as 1 taxpayer for purposes of subsections (c) and (e)(2).

(2) Group of financially related corporations

For purposes of paragraph (1), the term ''group of financially related corporations'' means—

(A) any affiliated group as defined in section 1504 determined by substituting ''50 percent'' for ''80 percent'' each place it appears in section 1504(a) and without regard to section 1504(b), and

(B) any other group of corporations which consolidate or combine for purposes of financial statements.

(Aug. 16, 1954, ch. 736, 68A Stat. 159; Pub. L. 94–455, title XIX, §§1901(b)(36)(A), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1802, 1834; Pub. L. 97–34, title II, §§235, 236(a), Aug. 13, 1981, 95 Stat. 252; Pub. L. 98–369, div. A, title I, §95(a), July 18, 1984, 98 Stat. 616.)

AMENDMENTS

1984—Subsec. (g). Pub. L. 98–369 added subsec. (g).

1981—Subsec. (d). Pub. L. 97–34, §236(a), substituted ''3-year averaging for increases in inventory value'' for ''Preceding closing inventory'' in heading, substituted first sentence reading ''The beginning inventory for the first taxable year for which the method described in subsection (b) is used shall be valued at cost.'' for ''In determining income for the taxable year preceding the taxable year for which the method described in subsection (b) is first used, the closing inventory of such preceding year of the goods specified in the application referred to in subsection (a) shall be at cost.'' and inserted ''Any change in the inventory amount resulting from the application of the preceding sentence shall be taken into account ratably in each of the 3 taxable years beginning with the first taxable year for which the method described in subsection (b) is first used.''

Subsec. (f). Pub. L. 97–34, §235, added subsec. (f).

1976—Subsecs. (a), (c), (e). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' wherever appearing.

Subsec. (f). Pub. L. 94–455, §1901(b)(36)(A), struck out subsec. (f) which provided for a cross reference relating to involuntary liquidation and replacement of LIFO inventories.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §95(b), July 18, 1984, 98 Stat. 616, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [July 18, 1984].''

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title II, §236(b), Aug. 13, 1981, 95 Stat. 252, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1981.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(b)(36)(A) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

§473. Qualified liquidations of LIFO inventories

(a) General rule

If, for any liquidation year—

(1) there is a qualified liquidation of goods which the taxpayer inventories under the LIFO method, and

(2) the taxpayer elects to have the provisions of this section apply with respect to such liquidation,

then the gross income of the taxpayer for such taxable year shall be adjusted as provided in subsection (b).

(b) Adjustment for replacements

If the liquidated goods are replaced (in whole or in part) during any replacement year and such replacement is reflected in the closing inventory for such year, then the gross income for the liquidation year shall be—

(1) decreased by an amount equal to the excess of—

(A) the aggregate replacement cost of the liquidated goods so replaced during such year, over

(B) the aggregate cost of such goods reflected in the opening inventory of the liquidation year, or

(2) increased by an amount equal to the excess of—

(A) the aggregate cost reflected in such opening inventory of the liquidated goods so replaced during such year, over

(B) such aggregate replacement cost.

(c) Qualified liquidation defined

For purposes of this section—

(1) In general

The term ''qualified liquidation'' means—

(A) a decrease in the closing inventory of the liquidation year from the opening inventory of such year, but only if

(B) the taxpayer establishes to the satisfaction of the Secretary that such decrease is directly and primarily attributable to a qualified inventory interruption.

(2) Qualified inventory interruption defined

(A) In general

The term ''qualified inventory interruption'' means a regulation, request, or interruption described in subparagraph (B) but only to the extent provided in the notice published pursuant to subparagraph (B).

(B) Determination by Secretary

Whenever the Secretary, after consultation with the appropriate Federal officers, determines—

(i) that—

(I) any Department of Energy regulation or request with respect to energy supplies, or

(II) any embargo, international boycott, or other major foreign trade interruption,

has made difficult or impossible the replacement during the liquidation year of any class of goods for any class of taxpayers, and

(ii) that the application of this section to that class of goods and taxpayers is necessary to carry out the purposes of this section,

he shall publish a notice of such determinations in the Federal Register, together with the period to be affected by such notice.

(d) Other definitions and special rules

For purposes of this section—

(1) Liquidation year

The term ''liquidation year'' means the taxable year in which occurs the qualified liquidation to which this section applies.

(2) Replacement year

The term ''replacement year'' means any taxable year in the replacement period; except that such term shall not include any taxable year after the taxable year in which replacement of the liquidated goods is completed.

(3) Replacement period

The term ''replacement period'' means the shorter of—

(A) the period of the 3 taxable years following the liquidation year, or

(B) the period specified by the Secretary in a notice published in the Federal Register with respect to that qualified inventory interruption.

Any period specified by the Secretary under subparagraph (B) may be modified by the Secretary in a subsequent notice published in the Federal Register.

(4) LIFO method

The term ''LIFO method'' means the method of inventorying goods described in section 472.

(5) Election

(A) In general

An election under subsection (a) shall be made subject to such conditions, and in such manner and form and at such time, as the Secretary may prescribe by regulation.

(B) Irrevocable election

An election under this section shall be irrevocable and shall be binding for the liquidation year and for all determinations for prior and subsequent taxable years insofar as such determinations are affected by the adjustments under this section.

(e) Replacement; inventory basis

For purposes of this chapter—

(1) Replacements

If the closing inventory of the taxpayer for any replacement year reflects an increase over the opening inventory of such goods for such year, the goods reflecting such increase shall be considered, in the order of their acquisition, as having been acquired in replacement of the goods most recently liquidated (whether or not in a qualified liquidation) and not previously replaced.

(2) Amount at which replacement goods taken into account

In the case of any qualified liquidation, any goods considered under paragraph (1) as having been acquired in replacement of the goods liquidated in such liquidation shall be taken into purchases and included in the closing inventory of the taxpayer for the replacement year at the inventory cost basis of the goods replaced.

(f) Special rules for application of adjustments

(1) Period of limitations

If—

(A) an adjustment is required under this section for any taxable year by reason of the replacement of liquidated goods during any replacement year, and

(B) the assessment of a deficiency, or the allowance of a credit or refund of an overpayment of tax attributable to such adjustment, for any taxable year, is otherwise prevented by the operation of any law or rule of law (other than section 7122, relating to compromises),

then such deficiency may be assessed, or credit or refund allowed, within the period prescribed for assessing a deficiency or allowing a credit or refund for the replacement year if a notice for deficiency is mailed, or claim for refund is filed, within such period.

(2) Interest

Solely for purposes of determining interest on any overpayment or underpayment attributable to an adjustment made under this section, such overpayment or underpayment shall be treated as an overpayment or underpayment (as the case may be) for the replacement year.

(g) Coordination with section 472

The Secretary shall prescribe such regulations as may be necessary to coordinate the provisions of this section with the provisions of section 472.

(Added Pub. L. 96–223, title IV, § 403(a)(1), Apr. 2, 1980, 94 Stat. 302.)

EFFECTIVE DATE

Pub. L. 96–223, title IV, § 403(a)(3), Apr. 2, 1980, 94 Stat. 304, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by paragraphs (1) and (2) [enacting this section] shall apply to qualified liquidations (within the meaning of section 473(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) in taxable years ending after October 31, 1979.''

§ 474. Simplified dollar-value LIFO method for certain small businesses

(a) General rule

An eligible small business may elect to use the simplified dollar-value method of pricing inventories for purposes of the LIFO method.

(b) Simplified dollar-value method of pricing inventories

For purposes of this section—

(1) In general

The simplified dollar-value method of pricing inventories is a dollar-value method of pricing inventories under which—

(A) the taxpayer maintains a separate inventory pool for items in each major category in the applicable Government price index, and

(B) the adjustment for each such separate pool is based on the change from the preceding taxable year in the component of such index for the major category.

(2) Applicable Government price index

The term ''applicable Government price index'' means—

(A) except as provided in subparagraph (B), the Producer Price Index published by the Bureau of Labor Statistics, or

(B) in the case of a retailer using the retail method, the Consumer Price Index published by the Bureau of Labor Statistics.

(3) Major category

The term ''major category'' means—

(A) in the case of the Producer Price Index, any of the 2-digit standard industrial classifications in the Producer Prices Data Report, or

(B) in the case of the Consumer Price Index, any of the general expenditure categories in the Consumer Price Index Detailed Report.

(c) Eligible small business

For purposes of this section, a taxpayer is an eligible small business for any taxable year if the average annual gross receipts of the taxpayer for the 3 preceding taxable years do not exceed $5,000,000. For purposes of the preceding sentence, rules similar to the rules of section 448(c)(3) shall apply.

(d) Special rules

For purposes of this section—

(1) Controlled groups

(A) In general

In the case of a taxpayer which is a member of a controlled group, all persons which are component members of such group shall be treated as 1 taxpayer for purposes of determining the gross receipts of the taxpayer.

(B) Controlled group defined

For purposes of subparagraph (A), persons shall be treated as being component members of a controlled group if such persons would be treated as a single employer under section 52.

(2) Election

(A) In general

The election under this section may be made without the consent of the Secretary.

(B) Period to which election applies

The election under this section shall apply—

(i) to the taxable year for which it is made, and

(ii) to all subsequent taxable years for which the taxpayer is an eligible small business,

unless the taxpayer secures the consent of the Secretary to the revocation of such election.

(3) LIFO method

The term ''LIFO method'' means the method provided by section 472(b).

(4) Transitional rules

(A) In general

In the case of a year of change under this section—

(i) the inventory pools shall—

(I) in the case of the 1st taxable year to which such an election applies, be established in accordance with the major categories in the applicable Government price index, or

(II) in the case of the 1st taxable year after such election ceases to apply, be established in the manner provided by regulations under section 472;

(ii) the aggregate dollar amount of the taxpayer's inventory as of the beginning of the year of change shall be the same as the aggregate dollar value as of the close of the taxable year preceding the year of change, and

(iii) the year of change shall be treated as a new base year in accordance with procedures provided by regulations under section 472.

(B) Year of change

For purposes of this paragraph, the year of change under this section is—

(i) the 1st taxable year to which an election under this section applies, or

(ii) in the case of a cessation of such an election, the 1st taxable year after such election ceases to apply.

(Added Pub. L. 97–34, title II, §237(a), Aug. 13, 1981, 95 Stat. 252; amended Pub. L. 99–514, title VIII, §802(a), Oct. 22, 1986, 100 Stat. 2348.)

AMENDMENTS

1986—Pub. L. 99–514 amended section generally, substituting provisions relating to election by eligible small business to use simplified dollar-value method of pricing inventories for purposes of LIFO method for provisions relating to election by eligible small business which uses dollar-value method of pricing inventories under method provided by section 472(b) of this title to use one inventory pool for any trade or business of such eligible small business.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title VIII, §802(c), Oct. 22, 1986, 100 Stat. 2350, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1986.

''(2) TREATMENT OF TAXPAYERS WHO MADE ELECTIONS UNDER EXISTING SECTION 474.—The amendments made by this section shall not apply to any taxpayer who made an election under section 474 of the Internal Revenue Code of 1954 (as in effect on the day before the date of

the enactment of this Act [Oct. 22, 1986]) for any period during which such election is in effect. Notwithstanding any provision of such section 474 (as so in effect), an election under such section may be revoked without the consent of the Secretary.''

EFFECTIVE DATE

Pub. L. 97–34, title II, § 237(c), Aug. 13, 1981, 95 Stat. 253, provided that: ''The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1981.''

§ 475. Mark to market accounting method for dealers in securities

(a) General rule

Notwithstanding any other provision of this subpart, the following rules shall apply to securities held by a dealer in securities:

(1) Any security which is inventory in the hands of the dealer shall be included in inventory at its fair market value.

(2) In the case of any security which is not inventory in the hands of the dealer and which is held at the close of any taxable year—

(A) the dealer shall recognize gain or loss as if such security were sold for its fair market value on the last business day of such taxable year, and

(B) any gain or loss shall be taken into account for such taxable year.

Proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account under the preceding sentence. The Secretary may provide by regulations for the application of this paragraph at times other than the times provided in this paragraph.

(b) Exceptions

(1) In general

Subsection (a) shall not apply to—

(A) any security held for investment,

(B)(i) any security described in subsection (c)(2)(C) which is acquired (including originated) by the taxpayer in the ordinary course of a trade or business of the taxpayer and which is not held for sale, and (ii) any obligation to acquire a security described in clause (i) if such obligation is entered into in the ordinary course of such trade or business and is not held for sale, and

(C) any security which is a hedge with respect to—

(i) a security to which subsection (a) does not apply, or

(ii) a position, right to income, or a liability which is not a security in the hands of the taxpayer.

To the extent provided in regulations, subparagraph (C) shall not apply to any security held by a person in its capacity as a dealer in securities.

(2) Identification required

A security shall not be treated as described in subparagraph (A), (B), or (C) of paragraph (1), as the case may be, unless such security is clearly identified in the dealer's records as being described in such subparagraph before the close of the day on which it was acquired, originated, or entered into (or such other time as the Secretary may by regulations prescribe).

(3) Securities subsequently not exempt

If a security ceases to be described in paragraph (1) at any time after it was identified as such under paragraph (2), subsection (a) shall apply to any changes in value of the security occurring after the cessation.

(4) Special rule for property held for investment

To the extent provided in regulations, subparagraph (A) of paragraph (1) shall not apply to any security described in subparagraph (D) or (E) of subsection (c)(2) which is held by a dealer in such securities.

(c) Definitions

For purposes of this section—

(1) Dealer in securities defined

The term ''dealer in securities'' means a taxpayer who—

(A) regularly purchases securities from or sells securities to customers in the ordinary course of a trade or business; or

(B) regularly offers to enter into, assume, offset, assign or otherwise terminate positions in securities with customers in the ordinary course of a trade or business.

(2) Security defined

The term ''security'' means any—

(A) share of stock in a corporation;

(B) partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust;

(C) note, bond, debenture, or other evidence of indebtedness;

(D) interest rate, currency, or equity notional principal contract;

(E) evidence of an interest in, or a derivative financial instrument in, any security described in subparagraph (A), (B), (C), or (D), or any currency, including any option, forward contract, short position, and any similar financial instrument in such a security or currency; and

(F) position which—

(i) is not a security described in subparagraph (A), (B), (C), (D), or (E),

(ii) is a hedge with respect to such a security, and

(iii) is clearly identified in the dealer's records as being described in this subparagraph before the close of the day on which it was acquired or entered into (or such other time as the Secretary may by regulations prescribe).

Subparagraph (E) shall not include any contract to which section 1256(a) applies.

(3) Hedge

The term ''hedge'' means any position which manages the dealer's risk of interest rate or price changes or currency fluctuations, including any position which is reasonably expected to become a hedge within 60 days after the acquisition of the position.

(4) Special rules for certain receivables

(A) In general

Paragraph (2)(C) shall not include any nonfinancial customer paper.

(B) Nonfinancial customer paper

For purposes of subparagraph (A), the term ''nonfinancial customer paper'' means any receivable which—

(i) is a note, bond, debenture, or other evidence of indebtedness;

(ii) arises out of the sale of nonfinancial goods or services by a person the principal activity of which is the selling or providing of nonfinancial goods or services; and

(iii) is held by such person (or a person who bears a relationship to such person described in section 267(b) or 707(b)) at all times since issue.

(d) Special rules

For purposes of this section—

(1) Coordination with certain rules

The rules of sections 263(g), 263A, and 1256(a) shall not apply to securities to which subsection (a) applies, and section 1091 shall not apply (and section 1092 shall apply) to any loss recognized under subsection (a).

(2) Improper identification

If a taxpayer—

(A) identifies any security under subsection (b)(2) as being described in subsection (b)(1) and such security is not so described, or

(B) fails under subsection (c)(2)(F)(iii) to identify any position which is described in subsection (c)(2)(F) (without regard to clause (iii) thereof) at the time such identification is required,

the provisions of subsection (a) shall apply to such security or position, except that any loss under this section prior to the disposition of the security or position shall be recognized only to the extent of gain previously recognized under this section (and not previously taken into account under this paragraph) with respect to such security or position.

(3) Character of gain or loss

(A) In general

Except as provided in subparagraph (B) or section 1236(b)—

(i) In general

Any gain or loss with respect to a security under subsection (a)(2) shall be treated as ordinary income or loss.

(ii) Special rule for dispositions

If—

(I) gain or loss is recognized with respect to a security before the close of the taxable year, and

(II) subsection (a)(2) would have applied if the security were held as of the close of the taxable year,

such gain or loss shall be treated as ordinary income or loss.

(B) Exception

Subparagraph (A) shall not apply to any gain or loss which is allocable to a period during which—

(i) the security is described in subsection (b)(1)(C) (without regard to subsection (b)(2)),

(ii) the security is held by a person other than in connection with its activities as a dealer in securities, or

(iii) the security is improperly identified (within the meaning of subparagraph (A) or (B) of paragraph (2)).

(e) Election of mark to market for dealers in commodities

(1) In general

In the case of a dealer in commodities who elects the application of this subsection, this section shall apply to commodities held by such dealer in the same manner as this section applies to securities held by a dealer in securities.

(2) Commodity

For purposes of this subsection and subsection (f), the term ''commodity'' means—

(A) any commodity which is actively traded (within the meaning of section 1092(d)(1));

(B) any notional principal contract with respect to any commodity described in subparagraph (A);

(C) any evidence of an interest in, or a derivative instrument in, any commodity described in subparagraph (A) or (B), including any option, forward contract, futures contract, short position, and any similar instrument in such a commodity; and

(D) any position which—

(i) is not a commodity described in subparagraph (A), (B), or (C),

(ii) is a hedge with respect to such a commodity, and

(iii) is clearly identified in the taxpayer's records as being described in this subparagraph before the close of the day on which it was acquired or entered into (or such other time as the Secretary may by regulations prescribe).

(3) Election

An election under this subsection may be made without the consent of the Secretary. Such an election, once made, shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

(f) Election of mark to market for traders in securities or commodities

(1) Traders in securities

(A) In general

In the case of a person who is engaged in a trade or business as a trader in securities and who elects to have this paragraph apply to such trade or business—

(i) such person shall recognize gain or loss on any security held in connection with such trade or business at the close of any taxable year as if such security were sold for its fair market value on the last business day of such taxable year, and

(ii) any gain or loss shall be taken into account for such taxable year.

Proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account under the preceding sentence. The Secretary

may provide by regulations for the application of this subparagraph at times other than the times provided in this subparagraph.

(B) Exception

Subparagraph (A) shall not apply to any security—

(i) which is established to the satisfaction of the Secretary as having no connection to the activities of such person as a trader, and

(ii) which is clearly identified in such person's records as being described in clause (i) before the close of the day on which it was acquired, originated, or entered into (or such other time as the Secretary may by regulations prescribe).

If a security ceases to be described in clause (i) at any time after it was identified as such under clause (ii), subparagraph (A) shall apply to any changes in value of the security occurring after the cessation.

(C) Coordination with section 1259

Any security to which subparagraph (A) applies and which was acquired in the normal course of the taxpayer's activities as a trader in securities shall not be taken into account in applying section 1259 to any position to which subparagraph (A) does not apply.

(D) Other rules to apply

Rules similar to the rules of subsections (b)(4) and (d) shall apply to securities held by a person in any trade or business with respect to which an election under this paragraph is in effect. Subsection (d)(3) shall not apply under the preceding sentence for purposes of applying sections 1402 and 7704.

(2) Traders in commodities

In the case of a person who is engaged in a trade or business as a trader in commodities and who elects to have this paragraph apply to such trade or business, paragraph (1) shall apply to commodities held by such trader in connection with such trade or business in the same manner as paragraph (1) applies to securities held by a trader in securities.

(3) Election

The elections under paragraphs (1) and (2) may be made separately for each trade or business and without the consent of the Secretary. Such an election, once made, shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

(g) Regulatory authority

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including rules—

(1) to prevent the use of year-end transfers, related parties, or other arrangements to avoid the provisions of this section,

(2) to provide for the application of this section to any security which is a hedge which cannot be identified with a specific security, position, right to income, or liability, and

(3) to prevent the use by taxpayers of subsection (c)(4) to avoid the application of this section to a receivable that is inventory in the hands of the taxpayer (or a person who bears a relationship to the taxpayer described in section 267(b) or 707(b)).

(Added Pub. L. 103–66, title XIII, § 13223(a), Aug. 10, 1993, 107 Stat. 481; amended Pub. L. 105–34, title X, § 1001(b), Aug. 5, 1997, 111 Stat. 906; Pub. L. 105–206, title VI, § 6010(a)(3), title VII, § 7003(a), (b), July 22, 1998, 112 Stat. 813, 832; Pub. L. 106–170, title V, § 532(b)(1), Dec. 17, 1999, 113 Stat. 1930; Pub. L. 106–554, § 1(a)(7) [title III, § 319(4)], Dec. 21, 2000, 114 Stat. 2763, 2763A–646; Pub. L. 107–147, title IV, § 417(10), Mar. 9, 2002, 116 Stat. 56.)

AMENDMENTS

2002—Subsec. (g)(3). Pub. L. 107–147 substituted ''described in section'' for ''described in sections''.

2000—Subsec. (g)(3). Pub. L. 106–554 substituted ''267(b) or'' for ''267(b) of''.

1999—Subsec. (c)(3). Pub. L. 106–170 substituted ''manages'' for ''reduces''.

1998—Subsec. (c)(4). Pub. L. 105–206, § 7003(a), added par. (4).

Subsec. (f)(1)(D). Pub. L. 105–206, § 6010(a)(3), inserted at end ''Subsection (d)(3) shall not apply under the preceding sentence for purposes of applying sections 1402 and 7704.''

Subsec. (g)(3). Pub. L. 105–206, § 7003(b), added par. (3).

1997—Subsecs. (e) to (g). Pub. L. 105–34 added subsecs. (e) and (f) and redesignated former subsec. (e) as (g).

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 6010(a)(3) of Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

Pub. L. 105–206, title VII, § 7003(c), July 22, 1998, 112 Stat. 833, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [July 22, 1998].

''(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer required by the amendments made by this section to change its method of accounting for its first taxable year ending after the date of the enactment of this Act—

''(A) such change shall be treated as initiated by the taxpayer;

''(B) such change shall be treated as made with the consent of the Secretary of the Treasury; and

''(C) the net amount of the adjustments required to be taken into account by the taxpayer under section 481 of the Internal Revenue Code of 1986 shall be taken into account ratably over the 4-taxable-year period beginning with such first taxable year.''

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title X, § 1001(d), Aug. 5, 1997, 111 Stat. 907, as amended by Pub. L. 105–206, title VI, § 6010(a)(4), July 22, 1998, 112 Stat. 813, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting section 1259 of this title and amending this section] shall apply to any constructive sale after June 8, 1997.

''(2) EXCEPTION FOR SALES OF POSITIONS, ETC. HELD BEFORE JUNE 9, 1997.—If—

''(A) before June 9, 1997, the taxpayer entered into any transaction which is a constructive sale of any appreciated financial position, and

''(B) before the close of the 30-day period beginning on the date of the enactment of this Act [Aug. 5, 1997] or before such later date as may be specified by the Secretary of the Treasury, such transaction and position are clearly identified in the taxpayer's records as offsetting,

such transaction and position shall not be taken into account in determining whether any other constructive sale after June 8, 1997, has occurred. The preceding sentence shall cease to apply as of the date such transaction is closed or the taxpayer ceases to hold such position.

''(3) SPECIAL RULE.—In the case of a decedent dying after June 8, 1997, if—

''(A) there was a constructive sale on or before such date of any appreciated financial position,

''(B) the transaction resulting in such constructive sale of such position remains open (with respect to the decedent or any related person)—

''(i) for not less than 2 years after the date of such transaction (whether such period is before or after June 8, 1997), and

''(ii) at any time during the 3-year period ending on the date of the decedent's death, and

''(C) such transaction is not closed before the close of the 30th day after the date of the enactment of this Act,

then, for purposes of such Code [probably means the Internal Revenue Code of 1986], such position (and the transaction resulting in such constructive sale) shall be treated as property constituting rights to receive an item of income in respect of a decedent under section 691 of such Code. Section 1014(c) of such Code shall not apply to so much of such position's or property's value (as included in the decedent's estate for purposes of chapter 11 of such Code) as exceeds its fair market value as of the date such transaction is closed.

''(4) ELECTION OF MARK TO MARKET BY SECURITIES TRADERS AND TRADERS AND DEALERS IN COMMODITIES.—

''(A) IN GENERAL.—The amendments made by subsection (b) [amending this section] shall apply to taxable years ending after the date of the enactment of this Act.

''(B) 4-YEAR SPREAD OF ADJUSTMENTS.—In the case of a taxpayer who elects under subsection (e) or (f) of section 475 of the Internal Revenue Code of 1986 (as added by this section) to change its method of accounting for the taxable year which includes the date of the enactment of this Act—

''(i) any identification required under such subsection with respect to securities and commodities held on the date of the enactment of this Act shall be treated as timely made if made on or before the 30th day after such date of enactment, and

''(ii) the net amount of the adjustments required to be taken into account by the taxpayer under section 481 of such Code shall be taken into account ratably over the 4-taxable year period beginning with such first taxable year.''

EFFECTIVE DATE

Pub. L. 103–66, title XIII, §13223(c), Aug. 10, 1993, 107 Stat. 484, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section and amending section 988 of this title] shall apply to all taxable years ending on or after December 31, 1993.

''(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer required by this section to change its method of accounting for any taxable year—

''(A) such change shall be treated as initiated by the taxpayer,

''(B) such change shall be treated as made with the consent of the Secretary, and

''(C) except as provided in paragraph (3), the net amount of the adjustments required to be taken into account by the taxpayer under section 481 of the Internal Revenue Code of 1986 shall be taken into account ratably over the 5-taxable year period beginning with the first taxable year ending on or after December 31, 1993.

''(3) SPECIAL RULE FOR FLOOR SPECIALISTS AND MARKET MAKERS.—

''(A) IN GENERAL.—If—

''(i) a taxpayer (or any predecessor) used the last-in first-out (LIFO) method of accounting with respect to any qualified securities for the 5-taxable year period ending with its last taxable year ending before December 31, 1993, and

''(ii) any portion of the net amount described in paragraph (2)(C) is attributable to the use of such method of accounting,

then paragraph (2)(C) shall be applied by taking such portion into account ratably over the 15-taxable year period beginning with the first taxable year ending on or after December 31, 1993.

''(B) QUALIFIED SECURITY.—For purposes of this paragraph, the term 'qualified security' means any security acquired—

''(i) by a floor specialist (as defined in section 1236(d)(2) of the Internal Revenue Code of 1986) in connection with the specialist's duties as a specialist on an exchange, but only if the security is one in which the specialist is registered with the exchange, or

''(ii) by a taxpayer who is a market maker in connection with the taxpayer's duties as a market maker, but only if—

''(I) the security is included on the National Association of Security Dealers Automated Quotation System,

''(II) the taxpayer is registered as a market maker in such security with the National Association of Security Dealers, and

''(III) as of the last day of the taxable year preceding the taxpayer's first taxable year ending on or after December 31, 1993, the taxpayer (or any predecessor) has been actively and regularly engaged as a market maker in such security for the 2-year period ending on such date (or, if shorter, the period beginning 61 days after the security was listed in such quotation system and ending on such date).''

PART III—ADJUSTMENTS

AMENDMENTS

1964—Pub. L. 88–272, title II, §224(b), Feb. 26, 1964, 78 Stat. 79, added item 483.

§ 481. Adjustments required by changes in method of accounting

(a) General rule

In computing the taxpayer's taxable income for any taxable year (referred to in this section as the ''year of the change'')—

(1) if such computation is under a method of accounting different from the method under which the taxpayer's taxable income for the preceding taxable year was computed, then

(2) there shall be taken into account those adjustments which are determined to be necessary solely by reason of the change in order to prevent amounts from being duplicated or omitted, except there shall not be taken into account any adjustment in respect of any taxable year to which this section does not apply

unless the adjustment is attributable to a change in the method of accounting initiated by the taxpayer.

(b) Limitation on tax where adjustments are substantial

(1) Three year allocation

If—

(A) the method of accounting from which the change is made was used by the taxpayer in computing his taxable income for the 2 taxable years preceding the year of the change, and

(B) the increase in taxable income for the year of the change which results solely by reason of the adjustments required by subsection (a)(2) exceeds $3,000,

then the tax under this chapter attributable to such increase in taxable income shall not be greater than the aggregate increase in the taxes under this chapter (or under the corresponding provisions of prior revenue laws) which would result if one-third of such increase in taxable income were included in taxable income for the year of the change and one-third of such increase were included for each of the 2 preceding taxable years.

(2) Allocation under new method of accounting

If—

(A) the increase in taxable income for the year of the change which results solely by reason of the adjustments required by subsection (a)(2) exceeds $3,000, and

(B) the taxpayer establishes his taxable income (under the new method of accounting) for one or more taxable years consecutively preceding the taxable year of the change for which the taxpayer in computing taxable income used the method of accounting from which the change is made,

then the tax under this chapter attributable to such increase in taxable income shall not be greater than the net increase in the taxes under this chapter (or under the corresponding provisions of prior revenue laws) which would result if the adjustments required by subsection (a)(2) were allocated to the taxable year or years specified in subparagraph (B) to which they are properly allocable under the new method of accounting and the balance of the adjustments required by subsection (a)(2) was allocated to the taxable year of the change.

(3) Special rules for computations under paragraphs (1) and (2)

For purposes of this subsection—

(A) There shall be taken into account the increase or decrease in tax for any taxable year preceding the year of the change to which no adjustment is allocated under paragraph (1) or (2) but which is affected by a net operating loss (as defined in section 172) or by a capital loss carryback or carryover (as defined in section 1212), determined with reference to taxable years with respect to which adjustments under paragraph (1) or (2) are allocated.

(B) The increase or decrease in the tax for any taxable year for which an assessment of any deficiency, or a credit or refund of any overpayment, is prevented by any law or rule of law, shall be determined by reference to the tax previously determined (within the meaning of section 1314(a)) for such year.

(c) Adjustments under regulations

In the case of any change described in subsection (a), the taxpayer may, in such manner and subject to such conditions as the Secretary may by regulations prescribe, take the adjustments required by subsection (a)(2) into account in computing the tax imposed by this chapter for the taxable year or years permitted under such regulations.

(d) Adjustments attributable to conversion from S corporation to C corporation

(1) In general

In the case of an eligible terminated S corporation, any adjustment required by subsection (a)(2) which is attributable to such corporation's revocation described in paragraph (2)(A)(ii) shall be taken into account ratably during the 6-taxable year period beginning with the year of change.

(2) Eligible terminated S corporation

For purposes of this subsection, the term ''eligible terminated S corporation'' means any C corporation—

(A) which—

(i) was an S corporation on the day before the date of the enactment of the Tax Cuts and Jobs Act, and

(ii) during the 2-year period beginning on the date of such enactment makes a revocation of its election under section 1362(a), and

(B) the owners of the stock of which, determined on the date such revocation is made, are the same owners (and in identical proportions) as on the date of such enactment.

(Aug. 16, 1954, ch. 736, 68A Stat. 160; Pub. L. 85–866, title I, § 29(a), (b), Sept. 2, 1958, 72 Stat. 1626–1628; Pub. L. 91–172, title V, § 512(f)(4), Dec. 30, 1969, 83 Stat. 641; Pub. L. 94–455, title XIX, §§ 1901(a)(70), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1776, 1834; Pub. L. 96–471, § 2(b)(3), Oct. 19, 1980, 94 Stat. 2254; Pub. L. 113–295, div. A, title II, § 221(a)(61), Dec. 19, 2014, 128 Stat. 4048; Pub. L. 115–97, title I, § 13543(a), Dec. 22, 2017, 131 Stat. 2155.)

REFERENCES IN TEXT

The date of the enactment of the Tax Cuts and Jobs Act and the date of such enactment, referred to in subsec. (d)(2), probably mean the date of enactment of title I of Pub. L. 115–97, which was approved Dec. 22, 2017. Prior versions of the bill that was enacted into law as Pub. L. 115–97 included such Short Title, but it was not enacted as part of title I of Pub. L. 115–97.

AMENDMENTS

2017—Subsec. (d). Pub. L. 115–97 added subsec. (d).

2014—Subsec. (b)(3)(C). Pub. L. 113–295 struck out subpar. (C) which read as follows: ''In applying section 7807(b)(1), the provisions of chapter 1 (other than subchapter E, relating to self-employment income) and chapter 2 of the Internal Revenue Code of 1939 shall be treated as the corresponding provisions of the Internal Revenue Code of 1939.''

1980—Subsec. (d). Pub. L. 96–471 struck out subsec. (d) which provided that this section was not to apply to a change to which section 453 of this title, relating to change to installment method, applied.

1976—Subsecs. (b)(1), (2). Pub. L. 94–455, §1901(a)(70)(B), struck out '', other than the amount of such adjustments to which paragraph (4) or (5) applies,'' after ''required by subsection (a)(2)''.

Subsec. (b)(4), (5), (6). Pub. L. 94–455, §1901(a)(70)(A), struck out par. (4) which related to special rule for pre-1954 general adjustments, par. (5) which related to special rule for pre-1954 adjustments in case of certain decedents, and par. (6) which related to the application of the special rule for pre-1954 general adjustments.

Subsec. (c). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

1969—Subsec. (b)(3)(A). Pub. L. 91–172 substituted ''loss carryback or carryover'' for ''loss carryover''.

1958—Subsec. (a)(2). Pub. L. 85–866, §29(a)(1), inserted ''unless the adjustment is attributable to a change in the method of accounting initiated by the taxpayer'', after ''does not apply''.

Subsec. (b)(1). Pub. L. 85–866, §29(b)(1)–(3), inserted '', other than the amount of such adjustments to which paragraph (4) or (5) applies,'' after ''subsection (a)(2)'' and substituted ''the aggregate increase in the taxes'' for ''the aggregate of the taxes'' and ''which would result if one-third of such increase in taxable income'' for ''which would result if one-third of such increase''.

Subsec. (b)(2). Pub. L. 85–866, §29(b)(1), (4), inserted ''other than the amount of such adjustments to which paragraph (4) or (5) applies,'' after ''subsection (a)(2)'', wherever appearing and ''(or under the corresponding provisions of prior revenue laws)'' after ''the net increase in the taxes under this Chapter''.

Subsec. (b)(3)(A). Pub. L. 85–866, §29(b)(5), substituted ''paragraph (1) or (2)'' for ''paragraph (2)'', wherever appearing.

Subsec. (b)(4) to (6). Pub. L. 85–866, §29(a)(2), added pars. (4) to (6).

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113–295, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

For effective date of amendment by Pub. L. 96–471, see section 6(a)(1) of Pub. L. 96–471, set out as an Effective Date note under section 453 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(70) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to net capital losses sustained in taxable years beginning after Dec. 31, 1969, see section 512(g) of Pub. L. 91–172, set out as a note under section 1212 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–866, title I, §29(d), Sept. 2, 1958, 72 Stat. 1629, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 381 of this title] shall apply with respect to any change in a method of accounting where the year of the change (within the meaning of section 481 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) is a taxable year beginning after December 31, 1953, and ending after August 16, 1954.

''(2) EXCEPTION FOR CERTAIN AGREEMENTS.—The amendments made by subsections (a), (b)(I), and (c) [amending this section and section 381 of this title] shall not apply if before the date of the enactment of this Act [Sept. 2, 1958]—

''(A) the taxpayer applied for a change in the method of accounting in the manner provided by regulations prescribed by the Secretary of the Treasury or his delegate, and

''(B) the taxpayer and the Secretary of the Treasury or his delegate agreed to the terms and conditions for making the change.''

CHANGES IN TREATMENT OF POLICYHOLDER DIVIDENDS BY QUALIFIED GROUP SELF-INSURERS' FUNDS

Pub. L. 101–239, title VII, §7816(m), Dec. 19, 1989, 103 Stat. 2421, provided that: ''If, for the 1st taxable year beginning on or after January 1, 1987, a qualified group self-insurers' fund changes its treatment of policyholder dividends to take into account such dividends no earlier than the date that the State regulatory authority determines the amount of the policyholder dividend that may be paid, then such change shall be treated as a change in a method of accounting and no adjustment under section 481(a) of the Internal Revenue Code of 1986 shall be made with respect to such change in method of accounting.''

TRANSITIONAL PROVISIONS FOR INCOME TAX TREATMENT OF DEALER RESERVE INCOME

Pub. L. 86–459, May 13, 1960, 74 Stat. 124, authorized any person who computed taxable income under the accrual method of accounting for his most recent taxable year ending on or before June 22, 1959, and who treated dealer reserve income for such taxable year as accruable for a subsequent taxable year, to elect before Sept. 1, 1960, to have section 481 of this title apply to the treatment for income tax purposes of dealer reserve income.

ELECTION TO RETURN TO FORMER METHOD OF ACCOUNTING

Pub. L. 85–866, title I, §29(e), Sept. 2, 1958, 72 Stat. 1629, authorized an election by certain taxpayers, who, for any taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, and before Sept. 2, 1958, computed their taxable incomes using different accounting methods in succeeding taxable years, to return to their first method of accounting, where the election was made within six months after Sept. 2, 1958. Claims for refunds of overpayments of tax resulting from the election were to be filed within one year after the date of the election. Such an election was to be considered a consent to an assessment of a deficiency resulting from the election, where the assessment is made within one year after the date of the election.

§ 482. Allocation of income and deductions among taxpayers

In any case of two or more organizations, trades, or businesses (whether or not incorporated, whether or not organized in the United States, and whether or not affiliated) owned or controlled directly or indirectly by the same interests, the Secretary may distribute, apportion, or allocate gross income, deductions, credits, or allowances between or among such organizations, trades, or businesses, if he determines that such distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any of such organizations, trades, or businesses. In the case of any transfer (or license) of intangible property (within the meaning of section 936(h)(3)(B)), the income with respect to such transfer or license shall be commensurate with the income attributable to the intangible. For purposes of this section, the Secretary shall require the valuation of transfers of intangible property (including intangible property transferred with other property or services) on an ag-

gregate basis or the valuation of such a transfer on the basis of the realistic alternatives to such a transfer, if the Secretary determines that such basis is the most reliable means of valuation of such transfers.

(Aug. 16, 1954, ch. 736, 68A Stat. 162; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 99–514, title XII, § 1231(e)(1), Oct. 22, 1986, 100 Stat. 2562; Pub. L. 115–97, title I, § 14221(b)(2), Dec. 22, 2017, 131 Stat. 2219.)

AMENDMENTS

2017—Pub. L. 115–97 inserted at end ''For purposes of this section, the Secretary shall require the valuation of transfers of intangible property (including intangible property transferred with other property or services) on an aggregate basis or the valuation of such a transfer on the basis of the realistic alternatives to such a transfer, if the Secretary determines that such basis is the most reliable means of valuation of such transfers.''

1986—Pub. L. 99–514 inserted at end ''In the case of any transfer (or license) of intangible property (within the meaning of section 936(h)(3)(B)), the income with respect to such transfer or license shall be commensurate with the income attributable to the intangible.''

1976—Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–97 applicable to transfers in taxable years beginning after Dec. 31, 2017, see section 14221(c)(1) of Pub. L. 115–97, set out as a note under section 367 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, but only with respect to transfers after Nov. 16, 1985, or licenses granted after such date, or before such date with respect to property not in existence or owned by the taxpayer on such date, except that for purposes of section 936(h)(5)(C) of this title, such amendment applicable to taxable years beginning after Dec. 31, 1986, without regard to when the transfer or license was made, see section 1231(g)(2) of Pub. L. 99–514, set out as a note under section 936 of this title.

REGULATIONS

For requirement that, not later than 180 days after July 18, 1984, the Secretary of the Treasury modify the safe harbor interest rates applicable under the regulations prescribed under this section so that such rates are consistent with the rates applicable under section 483 of this title by reason of the amendments made by Pub. L. 98–369, see section 44(b)(2) of Pub. L. 98–369, set out as an Effective Date note under section 1271 of this title.

STUDY OF APPLICATION AND ADMINISTRATION OF THIS SECTION

Pub. L. 101–508, title XI, § 11316, Nov. 5, 1990, 104 Stat. 1388–458, directed Secretary of the Treasury or his delegate to conduct a study of the application and administration of section 482 of the Internal Revenue Code of 1986 and not later than Mar. 1, 1992, submit to Committee on Ways and Means of House of Representatives and Committee on Finance of Senate a report on the study, together with such recommendations as he deemed advisable.

§ 483. Interest on certain deferred payments

(a) Amount constituting interest

For purposes of this title, in the case of any payment—

(1) under any contract for the sale or exchange of any property, and

(2) to which this section applies,

there shall be treated as interest that portion of the total unstated interest under such contract which, as determined in a manner consistent with the method of computing interest under section 1272(a), is properly allocable to such payment.

(b) Total unstated interest

For purposes of this section, the term ''total unstated interest'' means, with respect to a contract for the sale or exchange of property, an amount equal to the excess of—

(1) the sum of the payments to which this section applies which are due under the contract, over

(2) the sum of the present values of such payments and the present values of any interest payments due under the contract.

For purposes of the preceding sentence, the present value of a payment shall be determined under the rules of section 1274(b)(2) using a discount rate equal to the applicable Federal rate determined under section 1274(d).

(c) Payments to which subsection (a) applies

(1) In general

Except as provided in subsection (d), this section shall apply to any payment on account of the sale or exchange of property which constitutes part or all of the sales price and which is due more than 6 months after the date of such sale or exchange under a contract—

(A) under which some or all of the payments are due more than 1 year after the date of such sale or exchange, and

(B) under which there is total unstated interest.

(2) Treatment of other debt instruments

For purposes of this section, a debt instrument of the purchaser which is given in consideration for the sale or exchange of property shall not be treated as a payment, and any payment due under such debt instrument shall be treated as due under the contract for the sale or exchange.

(3) Debt instrument defined

For purposes of this subsection, the term ''debt instrument'' has the meaning given such term by section 1275(a)(1).

(d) Exceptions and limitations

(1) Coordination with original issue discount rules

This section shall not apply to any debt instrument for which an issue price is determined under section 1273(b) (other than paragraph (4) thereof) or section 1274.

(2) Sales prices of $3,000 or less

This section shall not apply to any payment on account of the sale or exchange of property if it can be determined at the time of such sale or exchange that the sales price cannot exceed $3,000.

(3) Carrying charges

In the case of the purchaser, the tax treatment of amounts paid on account of the sale

or exchange of property shall be made without regard to this section if any such amounts are treated under section 163(b) as if they included interest.

(4) Certain sales of patents

In the case of any transfer described in section 1235(a) (relating to sale or exchange of patents), this section shall not apply to any amount contingent on the productivity, use, or disposition of the property transferred.

(e) Maximum rate of interest on certain transfers of land between related parties

(1) In general

In the case of any qualified sale, the discount rate used in determining the total unstated interest rate under subsection (b) shall not exceed 6 percent, compounded semiannually.

(2) Qualified sale

For purposes of this subsection, the term ''qualified sale'' means any sale or exchange of land by an individual to a member of such individual's family (within the meaning of section 267(c)(4)).

(3) $500,000 limitation

Paragraph (1) shall not apply to any qualified sale between individuals made during any calendar year to the extent that the sales price for such sale (when added to the aggregate sales price for prior qualified sales between such individuals during the calendar year) exceeds $500,000.

(4) Nonresident alien individuals

Paragraph (1) shall not apply to any sale or exchange if any party to such sale or exchange is a nonresident alien individual.

(f) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section including regulations providing for the application of this section in the case of—

(1) any contract for the sale or exchange of property under which the liability for, or the amount or due date of, a payment cannot be determined at the time of the sale or exchange, or

(2) any change in the liability for, or the amount or due date of, any payment (including interest) under a contract for the sale or exchange of property.

(g) Cross references

(1) For treatment of assumptions, see section l274(c)(4).

(2) For special rules for certain transactions where stated principal amount does not exceed $2,800,000, see section 1274A.

(3) For special rules in case of the borrower under certain loans for personal use, see section 1275(b).

(Added Pub. L. 88–272, title II, §224(a), Feb. 26, 1964, 78 Stat. 77; amended Pub. L. 94–455, title XIX, §§1901(b)(3)(B), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1792, 1834; Pub. L. 97–34, title I, §126(a), Aug. 13, 1981, 95 Stat. 202; Pub. L. 97–448, title I, §101(g), Jan. 12, 1983, 96 Stat. 2367; Pub. L. 98–369, div. A, title I, §41(b), July 18, 1984, 98 Stat. 553; Pub. L. 99–121, title I, §§101(a)(2), 102(c)(1)–(3), Oct. 11, 1985, 99 Stat. 505, 508; Pub. L. 99–514, title XVIII, §1803(a)(14)(B), Oct. 22, 1986, 100 Stat. 2797.)

AMENDMENTS

1986—Subsec. (d)(3). Pub. L. 99–514 substituted ''for which an issue price is determined under section 1273(b) (other than paragraph (4) thereof) or section 1274'' for ''to which section 1272 applies''.

1985—Subsec. (b). Pub. L. 99–121, §101(a)(2)(A), struck out ''120 percent of'' after ''discount rate equal to'' in closing provisions.

Subsec. (c)(1)(B). Pub. L. 99–121, §101(a)(2)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''under which, using a discount rate equal to 110 percent of the applicable Federal rate determined under section 1274(d), there is total unstated interest.''

Subsec. (e). Pub. L. 99–121, §102(c)(1), (2), redesignated subsec. (f) as (e), and as so redesignated substituted ''6 percent'' for ''7 percent'' in par. (1). Former subsec. (e), which related to the interest rates in the case of the sales of principal residences or farm lands, was struck out.

Subsec. (f). Pub. L. 99–121, §102(c)(1), redesignated subsec. (g) as (f). Former subsec. (f) redesignated (e).

Subsecs. (g), (h). Pub. L. 99–121, §102(c)(1), (3), redesignated subsec. (h) as (g) and amended it generally, designating existing undesignated cross reference as par. (3), and adding pars. (1) and (2). Former subsec. (g) redesignated (f).

1984—Subsec. (a). Pub. L. 98–369 amended subsec. (a) generally, substituting ''For purposes of this title, in the case of any payment (1) under any contract for the sale or exchange of any property, and (2) to which this section applies, there shall be treated as interest that portion of the total unstated interest under such contract which, as determined in a manner consistent with the method of computing interest under section 1272(a), is properly allocable to such payment'' for ''For purposes of this title, in the case of any contract for the sale or exchange of property there shall be treated as interest that part of a payment to which this section applies which bears the same ratio to the amount of such payment as the total unstated interest under such contract bears to the total of the payments to which this section applies which are due under such contract''.

Subsec. (b). Pub. L. 98–369 amended subsec. (b) generally, substituting provisions directing that the present value of a payment be determined under the rules of section 1274(b)(2) using a discount rate equal to 120 percent of the applicable Federal rate determined under section 1274(d) for provisions which had directed that the present value of a payment be determined, as of the date of the sale or exchange, by discounting such payment at the rate, and in the manner, provided in regulations prescribed by the Secretary and that such regulations provide for discounting on the basis of 6-month brackets and provide that the present value of any interest payment due not more than 6 months after the date of the sale or exchange was to have been an amount equal to 100 percent of such payment.

Subsec. (c). Pub. L. 98–369 substituted ''subsection (a) applies'' for ''section applies'' in heading.

Subsec. (c)(1). Pub. L. 98–369 substituted ''under which, using a discount rate equal to 110 percent of the applicable Federal rate determined under section 1274(d), there is total unstated interest'' for ''under which, using a rate provided by regulations prescribed by the Secretary for purposes of this subparagraph, there is total unstated interest'', in subpar. (B), and struck out provision formerly set out following subpar. (B) which had directed that any rate prescribed for determining whether there was total unstated interest for purposes of subpar. (B) be at least one percentage point lower than the rate prescribed for purposes of subsec. (b)(2).

Subsec. (c)(2). Pub. L. 98–369 substituted ''Treatment of other debt instruments'' for ''Treatment of other evidence of indebtedness'' in heading and, in text, substituted ''a debt instrument of the purchaser which is given in consideration for the sale or exchange of property shall not be treated as a payment, and any payment due under such debt instrument'' for ''an evidence of indebtedness of the purchaser given in consideration for the sale or exchange of property shall not be considered a payment, and any payment due under such evidence of indebtedness''.

Subsec. (c)(3). Pub. L. 98–369 added par. (3).

Subsec. (d). Pub. L. 98–369 amended subsec. (d) generally, substituting provisions relating to exceptions and limitations for provisions which related to payments indefinite as to time, liability, or amount.

Subsec. (e). Pub. L. 98–369 amended subsec. (e) generally, substituting provisions relating to interest rates in case of sale of principal residence or farm land for provision relating to changes in terms of contract.

Subsec. (f). Pub. L. 98–369 amended subsec. (f) generally, substituting provisions relating to maximum rate of interest on certain transfers of land between related parties for provisions which related to exceptions and limitations now covered in subsec. (d) of this section.

Subsec. (g). Pub. L. 98–369 amended subsec. (g) generally, substituting provisions which related to calling for the promulgation of regulations by the Secretary for provisions which related to the maximum rate of interest on certain transfers of land between related parties now covered in subsec. (f) of this section.

Subsec. (h). Pub. L. 98–369 added subsec. (h).

1983—Subsec. (g)(4). Pub. L. 97–448 substituted ''Paragraph (1)'' for ''This section''.

1981—Subsec. (g). Pub. L. 97–34 added subsec. (g).

1976—Subsecs. (b), (c)(1)(B), (e). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (f)(3). Pub. L. 94–455, § 1901(b)(3)(B), substituted ''all of the gain, if any, on such'' for ''no part of any gain on such'' and ''ordinary income'' for gain from the sale or exchange of property other than a capital asset''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–121 applicable to sales and exchanges after June 30, 1985, in taxable years ending after such date, see section 105(a)(1) of Pub. L. 99–121, set out as a note under section 1274 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years ending after July 18, 1984, and applicable to sales or exchanges after Dec. 31, 1984, but not applicable to any sale or exchange pursuant to a written contract which was binding on Mar. 1, 1984, and at all times thereafter before the sale or exchange, see section 44 of Pub. L. 98–369, set out as an Effective Date note under section 1271 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title I, § 126(b), Aug. 13, 1981, 95 Stat. 202, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to payments made after June 30, 1981, pursuant to sales or exchanges after such date.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(b)(3)(B) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE

Section applicable to payments made after Dec. 31, 1963, on account of sales or exchanges of property after June 30, 1963, other than a sale or exchange pursuant to written contract, including an irrevocable written option, entered into before July 1, 1963, see section 224(d) of Pub. L. 88–272, set out as an Effective Date of 1964 Amendment note under section 163 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TREATMENT OF TRANSFERS OF LAND BETWEEN RELATED PARTIES

Pub. L. 99–514, title XVIII, § 1803(a)(9), Oct. 22, 1986, 100 Stat. 2794, provided that: ''In the case of any sale or exchange before July 1, 1985, to which section 483(f) of the Internal Revenue Code of 1954 [now 1986] (as in effect on the day before the date of the enactment of Public Law 99–121 [Oct. 11, 1985]) applies, such section shall be treated as providing that the discount rate to be used for purposes of section 483(c)(1) of such Code shall be 6 percent, compounded semiannually.''

TRANSITIONAL RULE FOR PURPOSES OF IMPUTED INTEREST RULES

Provisions, respecting treatment of debt instruments received in exchange for property, relating to special rules for sales after Dec. 31, 1984, and before July 1, 1985, general rule for assumptions of loans, exception for assumptions of loans made on or before Oct. 15, 1984, and exception for assumptions of loans with respect to certain property, see section 44(b)(4)–(7) of Pub. L. 98–369, as amended, set out as an Effective Date note under section 1271 of this title.

Subchapter F—Exempt Organizations

AMENDMENTS

2014—Pub. L. 113–295, div. B, title I, § 102(e)(5), Dec. 19, 2014, 128 Stat. 4062, substituted ''Certain Savings Entities'' for ''Higher education savings entities'' in part VIII heading.

1997—Pub. L. 105–34, title II, § 211(e)(1)(B), Aug. 5, 1997, 111 Stat. 812, substituted ''Higher education savings entities'' for ''Qualified State tuition programs'' in part VIII heading.

[1] So in original. Probably should be ''Certain savings entities.''

1996—Pub. L. 104–188, title I, §1806(b)(2), Aug. 20, 1996, 110 Stat. 1898, added part VIII heading.

1976—Pub. L. 94–455, title XXI, §2101(d), Oct. 4, 1976, 90 Stat. 1899, added part VII heading.

1975—Pub. L. 93–625, §10(d), Jan. 3, 1975, 88 Stat. 2119, added part VI heading.

1969—Pub. L. 91–172, title I, §101(j)(58), Dec. 30, 1969, 83 Stat. 532, added part II heading, and redesignated former parts II, III and IV as parts III, IV and V, respectively.

PART I—GENERAL RULE

Sec.

AMENDMENTS

2015—Pub. L. 114–113, div. Q, title IV, §405(d), Dec. 18, 2015, 129 Stat. 3119, added item 506.

1987—Pub. L. 100–203, title X, §10711(b)(2)(B), Dec. 22, 1987, 101 Stat. 1330–464, substituted ''substantial lobbying or because of political activities'' for ''substantial lobbying'' in item 504.

1984—Pub. L. 98–369, div. A, title V, §513(b), July 18, 1984, 98 Stat. 865, added item 505.

1976—Pub. L. 94–455, title XIII, §1307(d)(3)(B), Oct. 4, 1976, 90 Stat. 1728, added item 504.

1969—Pub. L. 91–172, title I, §101(j)(61), Dec. 30, 1969, 83 Stat. 532, struck out item 504 ''Denial of exemption''.

§ 501. Exemption from tax on corporations, certain trusts, etc.

(a) Exemption from taxation

An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503.

(b) Tax on unrelated business income and certain other activities

An organization exempt from taxation under subsection (a) shall be subject to tax to the extent provided in parts II, III, and VI of this subchapter, but (notwithstanding parts II, III, and VI of this subchapter) shall be considered an organization exempt from income taxes for the purpose of any law which refers to organizations exempt from income taxes.

(c) List of exempt organizations

The following organizations are referred to in subsection (a):

(1) Any corporation organized under Act of Congress which is an instrumentality of the United States but only if such corporation—

(A) is exempt from Federal income taxes—

(i) under such Act as amended and supplemented before July 18, 1984, or

(ii) under this title without regard to any provision of law which is not contained in this title and which is not contained in a revenue Act, or

(B) is described in subsection (*l*).

(2) Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt under this section. Rules similar to the rules of subparagraph (G) of paragraph (25) shall apply for purposes of this paragraph.

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

(4)(A) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

(B) Subparagraph (A) shall not apply to an entity unless no part of the net earnings of such entity inures to the benefit of any private shareholder or individual.

(5) Labor, agricultural, or horticultural organizations.

(6) Business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(7) Clubs organized for pleasure, recreation, and other nonprofitable purposes, substantially all of the activities of which are for such purposes and no part of the net earnings of which inures to the benefit of any private shareholder.

(8) Fraternal beneficiary societies, orders, or associations—

(A) operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and

(B) providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents.

(9) Voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or designated beneficiaries, if no part of the net

earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual. For purposes of providing for the payment of sick and accident benefits to members of such an association and their dependents, the term ''dependent'' shall include any individual who is a child (as defined in section 152(f)(1)) of a member who as of the end of the calendar year has not attained age 27.

(10) Domestic fraternal societies, orders, or associations, operating under the lodge system—

(A) the net earnings of which are devoted exclusively to religious, charitable, scientific, literary, educational, and fraternal purposes, and

(B) which do not provide for the payment of life, sick, accident, or other benefits.

(11) Teachers' retirement fund associations of a purely local character, if—

(A) no part of their net earnings inures (other than through payment of retirement benefits) to the benefit of any private shareholder or individual, and

(B) the income consists solely of amounts received from public taxation, amounts received from assessments on the teaching salaries of members, and income in respect of investments.

(12)(A) Benevolent life insurance associations of a purely local character, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations; but only if 85 percent or more of the income consists of amounts collected from members for the sole purpose of meeting losses and expenses.

(B) In the case of a mutual or cooperative telephone company, subparagraph (A) shall be applied without taking into account any income received or accrued—

(i) from a nonmember telephone company for the performance of communication services which involve members of the mutual or cooperative telephone company,

(ii) from qualified pole rentals,

(iii) from the sale of display listings in a directory furnished to the members of the mutual or cooperative telephone company, or

(iv) from the prepayment of a loan under section 306A, 306B, or 311[1] of the Rural Electrification Act of 1936 (as in effect on January 1, 1987).

(C) In the case of a mutual or cooperative electric company, subparagraph (A) shall be applied without taking into account any income received or accrued—

(i) from qualified pole rentals, or

(ii) from any provision or sale of electric energy transmission services or ancillary services if such services are provided on a nondiscriminatory open access basis under an open access transmission tariff approved or accepted by FERC or under an independent transmission provider agreement approved or accepted by FERC (other than income received or accrued directly or indirectly from a member),

(iii) from the provision or sale of electric energy distribution services or ancillary services if such services are provided on a nondiscriminatory open access basis to distribute electric energy not owned by the mutual or electric cooperative company—

(I) to end-users who are served by distribution facilities not owned by such company or any of its members (other than income received or accrued directly or indirectly from a member), or

(II) generated by a generation facility not owned or leased by such company or any of its members and which is directly connected to distribution facilities owned by such company or any of its members (other than income received or accrued directly or indirectly from a member),

(iv) from any nuclear decommissioning transaction, or

(v) from any asset exchange or conversion transaction.

(D) For purposes of this paragraph, the term ''qualified pole rental'' means any rental of a pole (or other structure used to support wires) if such pole (or other structure)—

(i) is used by the telephone or electric company to support one or more wires which are used by such company in providing telephone or electric services to its members, and

(ii) is used pursuant to the rental to support one or more wires (in addition to the wires described in clause (i)) for use in connection with the transmission by wire of electricity or of telephone or other communications.

For purposes of the preceding sentence, the term ''rental'' includes any sale of the right to use the pole (or other structure).

(E) For purposes of subparagraph (C)(ii), the term ''FERC'' means the Federal Energy Regulatory Commission and references to such term shall be treated as including the Public Utility Commission of Texas with respect to any ERCOT utility (as defined in section 212(k)(2)(B) of the Federal Power Act (16 U.S.C. 824k(k)(2)(B))).

(F) For purposes of subparagraph (C)(iv), the term ''nuclear decommissioning transaction'' means—

(i) any transfer into a trust, fund, or instrument established to pay any nuclear decommissioning costs if the transfer is in connection with the transfer of the mutual or cooperative electric company's interest in a nuclear power plant or nuclear power plant unit,

(ii) any distribution from any trust, fund, or instrument established to pay any nuclear decommissioning costs, or

(iii) any earnings from any trust, fund, or instrument established to pay any nuclear decommissioning costs.

(G) For purposes of subparagraph (C)(v), the term ''asset exchange or conversion transaction'' means any voluntary exchange or in-

[1] See References in Text note below.

voluntary conversion of any property related to generating, transmitting, distributing, or selling electric energy by a mutual or cooperative electric company, the gain from which qualifies for deferred recognition under section 1031 or 1033, but only if the replacement property acquired by such company pursuant to such section constitutes property which is used, or to be used, for—

(i) generating, transmitting, distributing, or selling electric energy, or

(ii) producing, transmitting, distributing, or selling natural gas.

(H)(i) In the case of a mutual or cooperative electric company described in this paragraph or an organization described in section 1381(a)(2)(C), income received or accrued from a load loss transaction shall be treated as an amount collected from members for the sole purpose of meeting losses and expenses.

(ii) For purposes of clause (i), the term ''load loss transaction'' means any wholesale or retail sale of electric energy (other than to members) to the extent that the aggregate sales during the recovery period do not exceed the load loss mitigation sales limit for such period.

(iii) For purposes of clause (ii), the load loss mitigation sales limit for the recovery period is the sum of the annual load losses for each year of such period.

(iv) For purposes of clause (iii), a mutual or cooperative electric company's annual load loss for each year of the recovery period is the amount (if any) by which—

(I) the megawatt hours of electric energy sold during such year to members of such electric company are less than

(II) the megawatt hours of electric energy sold during the base year to such members.

(v) For purposes of clause (iv)(II), the term ''base year'' means—

(I) the calendar year preceding the start-up year, or

(II) at the election of the mutual or cooperative electric company, the second or third calendar years preceding the start-up year.

(vi) For purposes of this subparagraph, the recovery period is the 7-year period beginning with the start-up year.

(vii) For purposes of this subparagraph, the start-up year is the first year that the mutual or cooperative electric company offers nondiscriminatory open access or the calendar year which includes the date of the enactment of this subparagraph, if later, at the election of such company.

(viii) A company shall not fail to be treated as a mutual or cooperative electric company for purposes of this paragraph or as a corporation operating on a cooperative basis for purposes of section 1381(a)(2)(C) by reason of the treatment under clause (i).

(ix) For purposes of subparagraph (A), in the case of a mutual or cooperative electric company, income received, or accrued, indirectly from a member shall be treated as an amount collected from members for the sole purpose of meeting losses and expenses.

(13) Cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit; and any corporation chartered solely for the purpose of the disposal of bodies by burial or cremation which is not permitted by its charter to engage in any business not necessarily incident to that purpose and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(14)(A) Credit unions without capital stock organized and operated for mutual purposes and without profit.

(B) Corporations or associations without capital stock organized before September 1, 1957, and operated for mutual purposes and without profit for the purpose of providing reserve funds for, and insurance of shares or deposits in—

(i) domestic building and loan associations,

(ii) cooperative banks without capital stock organized and operated for mutual purposes and without profit,

(iii) mutual savings banks not having capital stock represented by shares, or

(iv) mutual savings banks described in section 591(b)[2]

(C) Corporations or associations organized before September 1, 1957, and operated for mutual purposes and without profit for the purpose of providing reserve funds for associations or banks described in clause (i), (ii), or (iii) of subparagraph (B); but only if 85 percent or more of the income is attributable to providing such reserve funds and to investments. This subparagraph shall not apply to any corporation or association entitled to exemption under subparagraph (B).

(15)(A) Insurance companies (as defined in section 816(a)) other than life (including interinsurers and reciprocal underwriters) if—

(i)(I) the gross receipts for the taxable year do not exceed $600,000, and

(II) more than 50 percent of such gross receipts consist of premiums, or

(ii) in the case of a mutual insurance company—

(I) the gross receipts of which for the taxable year do not exceed $150,000, and

(II) more than 35 percent of such gross receipts consist of premiums.

Clause (ii) shall not apply to a company if any employee of the company, or a member of the employee's family (as defined in section 2032A(e)(2)), is an employee of another company exempt from taxation by reason of this paragraph (or would be so exempt but for this sentence).

(B) For purposes of subparagraph (A), in determining whether any company or association is described in subparagraph (A), such company or association shall be treated as receiving during the taxable year amounts described in subparagraph (A) which are received during such year by all other companies or associations which are members of the same controlled group as the insurance company or

[2] So in original. Probably should be followed by a period.

association for which the determination is being made.

(C) For purposes of subparagraph (B), the term ''controlled group'' has the meaning given such term by section 831(b)(2)(B)(ii),[1] except that in applying section 831(b)(2)(B)(ii)[1] for purposes of this subparagraph, subparagraphs (B) and (C) of section 1563(b)(2) shall be disregarded.

(16) Corporations organized by an association subject to part IV of this subchapter or members thereof, for the purpose of financing the ordinary crop operations of such members or other producers, and operated in conjunction with such association. Exemption shall not be denied any such corporation because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the State of incorporation or 8 percent per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than nonvoting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the corporation, on dissolution or otherwise, beyond the fixed dividends) is owned by such association, or members thereof; nor shall exemption be denied any such corporation because there is accumulated and maintained by it a reserve required by State law or a reasonable reserve for any necessary purpose.

(17)(A) A trust or trusts forming part of a plan providing for the payment of supplemental unemployment compensation benefits, if—

(i) under the plan, it is impossible, at any time prior to the satisfaction of all liabilities, with respect to employees under the plan, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of supplemental unemployment compensation benefits,

(ii) such benefits are payable to employees under a classification which is set forth in the plan and which is found by the Secretary not to be discriminatory in favor of employees who are highly compensated employees (within the meaning of section 414(q)), and

(iii) such benefits do not discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q)). A plan shall not be considered discriminatory within the meaning of this clause merely because the benefits received under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of the employees covered by the plan.

(B) In determining whether a plan meets the requirements of subparagraph (A), any benefits provided under any other plan shall not be taken into consideration, except that a plan shall not be considered discriminatory—

(i) merely because the benefits under the plan which are first determined in a nondiscriminatory manner within the meaning of subparagraph (A) are then reduced by any sick, accident, or unemployment compensation benefits received under State or Federal law (or reduced by a portion of such benefits if determined in a nondiscriminatory manner), or

(ii) merely because the plan provides only for employees who are not eligible to receive sick, accident, or unemployment compensation benefits under State or Federal law the same benefits (or a portion of such benefits if determined in a nondiscriminatory manner) which such employees would receive under such laws if such employees were eligible for such benefits, or

(iii) merely because the plan provides only for employees who are not eligible under another plan (which meets the requirements of subparagraph (A)) of supplemental unemployment compensation benefits provided wholly by the employer the same benefits (or a portion of such benefits if determined in a nondiscriminatory manner) which such employees would receive under such other plan if such employees were eligible under such other plan, but only if the employees eligible under both plans would make a classification which would be nondiscriminatory within the meaning of subparagraph (A).

(C) A plan shall be considered to meet the requirements of subparagraph (A) during the whole of any year of the plan if on one day in each quarter it satisfies such requirements.

(D) The term ''supplemental unemployment compensation benefits'' means only—

(i) benefits which are paid to an employee because of his involuntary separation from the employment of the employer (whether or not such separation is temporary) resulting directly from a reduction in force, the discontinuance of a plant or operation, or other similar conditions, and

(ii) sick and accident benefits subordinate to the benefits described in clause (i).

(E) Exemption shall not be denied under subsection (a) to any organization entitled to such exemption as an association described in paragraph (9) of this subsection merely because such organization provides for the payment of supplemental unemployment benefits (as defined in subparagraph (D)(i)).

(18) A trust or trusts created before June 25, 1959, forming part of a plan providing for the payment of benefits under a pension plan funded only by contributions of employees, if—

(A) under the plan, it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees under the plan, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of benefits under the plan,

(B) such benefits are payable to employees under a classification which is set forth in the plan and which is found by the Secretary not to be discriminatory in favor of employees who are highly compensated employees (within the meaning of section 414(q)),

(C) such benefits do not discriminate in favor of employees who are highly compensated employees (within the meaning of

section 414(q)). A plan shall not be considered discriminatory within the meaning of this subparagraph merely because the benefits received under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of the employees covered by the plan, and

(D) in the case of a plan under which an employee may designate certain contributions as deductible—

(i) such contributions do not exceed the amount with respect to which a deduction is allowable under section 219(b)(3),

(ii) requirements similar to the requirements of section 401(k)(3)(A)(ii) are met with respect to such elective contributions,

(iii) such contributions are treated as elective deferrals for purposes of section 402(g), and

(iv) the requirements of section 401(a)(30) are met.

For purposes of subparagraph (D)(ii), rules similar to the rules of section 401(k)(8) shall apply. For purposes of section 4979, any excess contribution under clause (ii) shall be treated as an excess contribution under a cash or deferred arrangement.

(19) A post or organization of past or present members of the Armed Forces of the United States, or an auxiliary unit or society of, or a trust or foundation for, any such post or organization—

(A) organized in the United States or any of its possessions,

(B) at least 75 percent of the members of which are past or present members of the Armed Forces of the United States and substantially all of the other members of which are individuals who are cadets or are spouses, widows,,[3] widowers, ancestors, or lineal descendants of past or present members of the Armed Forces of the United States or of cadets, and

(C) no part of the net earnings of which inures to the benefit of any private shareholder or individual.

[(20) Repealed. Pub. L. 113–295, div. A, title II, § 221(a)(19)(B)(iii), Dec. 19, 2014, 128 Stat. 4040.]

(21)(A) A trust or trusts established in writing, created or organized in the United States, and contributed to by any person (except an insurance company) if—

(i) the purpose of such trust or trusts is exclusively—

(I) to satisfy, in whole or in part, the liability of such person for, or with respect to, claims for compensation for disability or death due to pneumoconiosis under Black Lung Acts,

(II) to pay premiums for insurance exclusively covering such liability,

(III) to pay administrative and other incidental expenses of such trust in connection with the operation of the trust and the processing of claims against such person under Black Lung Acts, and

(IV) to pay accident or health benefits for retired miners and their spouses and dependents (including administrative and other incidental expenses of such trust in connection therewith) or premiums for insurance exclusively covering such benefits; and

(ii) no part of the assets of the trust may be used for, or diverted to, any purpose other than—

(I) the purposes described in clause (i),

(II) investment (but only to the extent that the trustee determines that a portion of the assets is not currently needed for the purposes described in clause (i)) in qualified investments, or

(III) payment into the Black Lung Disability Trust Fund established under section 9501, or into the general fund of the United States Treasury (other than in satisfaction of any tax or other civil or criminal liability of the person who established or contributed to the trust).

(B) No deduction shall be allowed under this chapter for any payment described in subparagraph (A)(i)(IV) from such trust.

(C) Payments described in subparagraph (A)(i)(IV) may be made from such trust during a taxable year only to the extent that the aggregate amount of such payments during such taxable year does not exceed the excess (if any), as of the close of the preceding taxable year, of—

(i) the fair market value of the assets of the trust, over

(ii) 110 percent of the present value of the liability described in subparagraph (A)(i)(I) of such person.

The determinations under the preceding sentence shall be made by an independent actuary using actuarial methods and assumptions (not inconsistent with the regulations prescribed under section 192(c)(1)(A)) each of which is reasonable and which are reasonable in the aggregate.

(D) For purposes of this paragraph:

(i) The term ''Black Lung Acts'' means part C of title IV of the Federal Mine Safety and Health Act of 1977, and any State law providing compensation for disability or death due to that pneumoconiosis.

(ii) The term ''qualified investments'' means—

(I) public debt securities of the United States,

(II) obligations of a State or local government which are not in default as to principal or interest, and

(III) time or demand deposits in a bank (as defined in section 581) or an insured credit union (within the meaning of section 101(7) of the Federal Credit Union Act, 12 U.S.C. 1752(7)) located in the United States.

(iii) The term ''miner'' has the same meaning as such term has when used in section 402(d) of the Black Lung Benefits Act (30 U.S.C. 902(d)).

(iv) The term ''incidental expenses'' includes legal, accounting, actuarial, and trustee expenses.

[3] So in original.

(22) A trust created or organized in the United States and established in writing by the plan sponsors of multiemployer plans if—

(A) the purpose of such trust is exclusively—

(i) to pay any amount described in section 4223(c) or (h) of the Employee Retirement Income Security Act of 1974, and

(ii) to pay reasonable and necessary administrative expenses in connection with the establishment and operation of the trust and the processing of claims against the trust,

(B) no part of the assets of the trust may be used for, or diverted to, any purpose other than—

(i) the purposes described in subparagraph (A), or

(ii) the investment in securities, obligations, or time or demand deposits described in clause (ii) of paragraph (21)(D),

(C) such trust meets the requirements of paragraphs (2), (3), and (4) of section 4223(b), 4223(h), or, if applicable, section 4223(c) of the Employee Retirement Income Security Act of 1974, and

(D) the trust instrument provides that, on dissolution of the trust, assets of the trust may not be paid other than to plans which have participated in the plan or, in the case of a trust established under section 4223(h) of such Act, to plans with respect to which employers have participated in the fund.

(23) Any association organized before 1880 more than 75 percent of the members of which are present or past members of the Armed Forces and a principal purpose of which is to provide insurance and other benefits to veterans or their dependents.

(24) A trust described in section 4049 of the Employee Retirement Income Security Act of 1974 (as in effect on the date of the enactment of the Single-Employer Pension Plan Amendments Act of 1986).

(25)(A) Any corporation or trust which—

(i) has no more than 35 shareholders or beneficiaries,

(ii) has only 1 class of stock or beneficial interest, and

(iii) is organized for the exclusive purposes of—

(I) acquiring real property and holding title to, and collecting income from, such property, and

(II) remitting the entire amount of income from such property (less expenses) to 1 or more organizations described in subparagraph (C) which are shareholders of such corporation or beneficiaries of such trust.

For purposes of clause (iii), the term ''real property'' shall not include any interest as a tenant in common (or similar interest) and shall not include any indirect interest.

(B) A corporation or trust shall be described in subparagraph (A) without regard to whether the corporation or trust is organized by 1 or more organizations described in subparagraph (C).

(C) An organization is described in this subparagraph if such organization is—

(i) a qualified pension, profit sharing, or stock bonus plan that meets the requirements of section 401(a),

(ii) a governmental plan (within the meaning of section 414(d)),

(iii) the United States, any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing, or

(iv) any organization described in paragraph (3).

(D) A corporation or trust shall in no event be treated as described in subparagraph (A) unless such corporation or trust permits its shareholders or beneficiaries—

(i) to dismiss the corporation's or trust's investment adviser, following reasonable notice, upon a vote of the shareholders or beneficiaries holding a majority of interest in the corporation or trust, and

(ii) to terminate their interest in the corporation or trust by either, or both, of the following alternatives, as determined by the corporation or trust:

(I) by selling or exchanging their stock in the corporation or interest in the trust (subject to any Federal or State securities law) to any organization described in subparagraph (C) so long as the sale or exchange does not increase the number of shareholders or beneficiaries in such corporation or trust above 35, or

(II) by having their stock or interest redeemed by the corporation or trust after the shareholder or beneficiary has provided 90 days notice to such corporation or trust.

(E)(i) For purposes of this title—

(I) a corporation which is a qualified subsidiary shall not be treated as a separate corporation, and

(II) all assets, liabilities, and items of income, deduction, and credit of a qualified subsidiary shall be treated as assets, liabilities, and such items (as the case may be) of the corporation or trust described in subparagraph (A).

(ii) For purposes of this subparagraph, the term ''qualified subsidiary'' means any corporation if, at all times during the period such corporation was in existence, 100 percent of the stock of such corporation is held by the corporation or trust described in subparagraph (A).

(iii) For purposes of this subtitle, if any corporation which was a qualified subsidiary ceases to meet the requirements of clause (ii), such corporation shall be treated as a new corporation acquiring all of its assets (and assuming all of its liabilities) immediately before such cessation from the corporation or trust described in subparagraph (A) in exchange for its stock.

(F) For purposes of subparagraph (A), the term ''real property'' includes any personal property which is leased under, or in connection with, a lease of real property, but only if the rent attributable to such personal property (determined under the rules of section

856(d)(1)) for the taxable year does not exceed 15 percent of the total rent for the taxable year attributable to both the real and personal property leased under, or in connection with, such lease.

(G)(i) An organization shall not be treated as failing to be described in this paragraph merely by reason of the receipt of any otherwise disqualifying income which is incidentally derived from the holding of real property.

(ii) Clause (i) shall not apply if the amount of gross income described in such clause exceeds 10 percent of the organization's gross income for the taxable year unless the organization establishes to the satisfaction of the Secretary that the receipt of gross income described in clause (i) in excess of such limitation was inadvertent and reasonable steps are being taken to correct the circumstances giving rise to such income.

(26) Any membership organization if—

(A) such organization is established by a State exclusively to provide coverage for medical care (as defined in section 213(d)) on a not-for-profit basis to individuals described in subparagraph (B) through—

(i) insurance issued by the organization, or

(ii) a health maintenance organization under an arrangement with the organization,

(B) the only individuals receiving such coverage through the organization are individuals—

(i) who are residents of such State, and

(ii) who, by reason of the existence or history of a medical condition—

(I) are unable to acquire medical care coverage for such condition through insurance or from a health maintenance organization, or

(II) are able to acquire such coverage only at a rate which is substantially in excess of the rate for such coverage through the membership organization,

(C) the composition of the membership in such organization is specified by such State, and

(D) no part of the net earnings of the organization inures to the benefit of any private shareholder or individual.

A spouse and any qualifying child (as defined in section 24(c)) of an individual described in subparagraph (B) (without regard to this sentence) shall be treated as described in subparagraph (B).

(27)(A) Any membership organization if—

(i) such organization is established before June 1, 1996, by a State exclusively to reimburse its members for losses arising under workmen's compensation acts,

(ii) such State requires that the membership of such organization consist of—

(I) all persons who issue insurance covering workmen's compensation losses in such State, and

(II) all persons and governmental entities who self-insure against such losses, and

(iii) such organization operates as a nonprofit organization by—

(I) returning surplus income to its members or workmen's compensation policyholders on a periodic basis, and

(II) reducing initial premiums in anticipation of investment income.

(B) Any organization (including a mutual insurance company) if—

(i) such organization is created by State law and is organized and operated under State law exclusively to—

(I) provide workmen's compensation insurance which is required by State law or with respect to which State law provides significant disincentives if such insurance is not purchased by an employer, and

(II) provide related coverage which is incidental to workmen's compensation insurance,

(ii) such organization must provide workmen's compensation insurance to any employer in the State (for employees in the State or temporarily assigned out-of-State) which seeks such insurance and meets other reasonable requirements relating thereto,

(iii)(I) the State makes a financial commitment with respect to such organization either by extending the full faith and credit of the State to the initial debt of such organization or by providing the initial operating capital of such organization, and (II) in the case of periods after the date of enactment of this subparagraph, the assets of such organization revert to the State upon dissolution or State law does not permit the dissolution of such organization, and

(iv) the majority of the board of directors or oversight body of such organization are appointed by the chief executive officer or other executive branch official of the State, by the State legislature, or by both.

(28) The National Railroad Retirement Investment Trust established under section 15(j) of the Railroad Retirement Act of 1974.

(29) CO–OP HEALTH INSURANCE ISSUERS.—

(A) IN GENERAL.—A qualified nonprofit health insurance issuer (within the meaning of section 1322 of the Patient Protection and Affordable Care Act) which has received a loan or grant under the CO–OP program under such section, but only with respect to periods for which the issuer is in compliance with the requirements of such section and any agreement with respect to the loan or grant.

(B) CONDITIONS FOR EXEMPTION.—Subparagraph (A) shall apply to an organization only if—

(i) the organization has given notice to the Secretary, in such manner as the Secretary may by regulations prescribe, that it is applying for recognition of its status under this paragraph,

(ii) except as provided in section 1322(c)(4) of the Patient Protection and Affordable Care Act, no part of the net earnings of which inures to the benefit of any private shareholder or individual,

(iii) no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and

(iv) the organization does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

(d) Religious and apostolic organizations

The following organizations are referred to in subsection (a): Religious or apostolic associations or corporations, if such associations or corporations have a common treasury or community treasury, even if such associations or corporations engage in business for the common benefit of the members, but only if the members thereof include (at the time of filing their returns) in their gross income their entire pro rata shares, whether distributed or not, of the taxable income of the association or corporation for such year. Any amount so included in the gross income of a member shall be treated as a dividend received.

(e) Cooperative hospital service organizations

For purposes of this title, an organization shall be treated as an organization organized and operated exclusively for charitable purposes, if—

(1) such organization is organized and operated solely—

(A) to perform, on a centralized basis, one or more of the following services which, if performed on its own behalf by a hospital which is an organization described in subsection (c)(3) and exempt from taxation under subsection (a), would constitute activities in exercising or performing the purpose or function constituting the basis for its exemption: data processing, purchasing (including the purchasing of insurance on a group basis), warehousing, billing and collection (including the purchase of patron accounts receivable on a recourse basis), food, clinical, industrial engineering, laboratory, printing, communications, record center, and personnel (including selection, testing, training, and education of personnel) services; and

(B) to perform such services solely for two or more hospitals each of which is—

(i) an organization described in subsection (c)(3) which is exempt from taxation under subsection (a),

(ii) a constituent part of an organization described in subsection (c)(3) which is exempt from taxation under subsection (a) and which, if organized and operated as a separate entity, would constitute an organization described in subsection (c)(3), or

(iii) owned and operated by the United States, a State, the District of Columbia, or a possession of the United States, or a political subdivision or an agency or instrumentality of any of the foregoing;

(2) such organization is organized and operated on a cooperative basis and allocates or pays, within 8½ months after the close of its taxable year, all net earnings to patrons on the basis of services performed for them; and

(3) if such organization has capital stock, all of such stock outstanding is owned by its patrons.

For purposes of this title, any organization which, by reason of the preceding sentence, is an organization described in subsection (c)(3) and exempt from taxation under subsection (a), shall be treated as a hospital and as an organization referred to in section 170(b)(1)(A)(iii).

(f) Cooperative service organizations of operating educational organizations

For purposes of this title, if an organization is—

(1) organized and operated solely to hold, commingle, and collectively invest and reinvest (including arranging for and supervising the performance by independent contractors of investment services related thereto) in stocks and securities, the moneys contributed thereto by each of the members of such organization, and to collect income therefrom and turn over the entire amount thereof, less expenses, to such members,

(2) organized and controlled by one or more such members, and

(3) comprised solely of members that are organizations described in clause (ii) or (iv) of section 170(b)(1)(A)—

(A) which are exempt from taxation under subsection (a), or

(B) the income of which is excluded from taxation under section 115(a),

then such organization shall be treated as an organization organized and operated exclusively for charitable purposes.

(g) Definition of agricultural

For purposes of subsection (c)(5), the term ''agricultural'' includes the art or science of cultivating land, harvesting crops or aquatic resources, or raising livestock.

(h) Expenditures by public charities to influence legislation

(1) General rule

In the case of an organization to which this subsection applies, exemption from taxation under subsection (a) shall be denied because a substantial part of the activities of such organization consists of carrying on propaganda, or otherwise attempting, to influence legislation, but only if such organization normally—

(A) makes lobbying expenditures in excess of the lobbying ceiling amount for such organization for each taxable year, or

(B) makes grass roots expenditures in excess of the grass roots ceiling amount for such organization for each taxable year.

(2) Definitions

For purposes of this subsection—

(A) Lobbying expenditures

The term ''lobbying expenditures'' means expenditures for the purpose of influencing legislation (as defined in section 4911(d)).

(B) Lobbying ceiling amount

The lobbying ceiling amount for any organization for any taxable year is 150 percent of the lobbying nontaxable amount for such organization for such taxable year, determined under section 4911.

(C) Grass roots expenditures

The term ''grass roots expenditures'' means expenditures for the purpose of influ-

encing legislation (as defined in section 4911(d) without regard to paragraph (1)(B) thereof).

(D) Grass roots ceiling amount

The grass roots ceiling amount for any organization for any taxable year is 150 percent of the grass roots nontaxable amount for such organization for such taxable year, determined under section 4911.

(3) Organizations to which this subsection applies

This subsection shall apply to any organization which has elected (in such manner and at such time as the Secretary may prescribe) to have the provisions of this subsection apply to such organization and which, for the taxable year which includes the date the election is made, is described in subsection (c)(3) and—

(A) is described in paragraph (4), and

(B) is not a disqualified organization under paragraph (5).

(4) Organizations permitted to elect to have this subsection apply

An organization is described in this paragraph if it is described in—

(A) section 170(b)(1)(A)(ii) (relating to educational institutions),

(B) section 170(b)(1)(A)(iii) (relating to hospitals and medical research organizations),

(C) section 170(b)(1)(A)(iv) (relating to organizations supporting government schools),

(D) section 170(b)(1)(A)(vi) (relating to organizations publicly supported by charitable contributions),

(E) section 170(b)(1)(A)(ix) (relating to agricultural research organizations),

(F) section 509(a)(2) (relating to organizations publicly supported by admissions, sales, etc.), or

(G) section 509(a)(3) (relating to organizations supporting certain types of public charities) except that for purposes of this subparagraph, section 509(a)(3) shall be applied without regard to the last sentence of section 509(a).

(5) Disqualified organizations

For purposes of paragraph (3) an organization is a disqualified organization if it is—

(A) described in section 170(b)(1)(A)(i) (relating to churches),

(B) an integrated auxiliary of a church or of a convention or association of churches, or

(C) a member of an affiliated group of organizations (within the meaning of section 4911(f)(2)) if one or more members of such group is described in subparagraph (A) or (B).

(6) Years for which election is effective

An election by an organization under this subsection shall be effective for all taxable years of such organization which—

(A) end after the date the election is made, and

(B) begin before the date the election is revoked by such organization (under regulations prescribed by the Secretary).

(7) No effect on certain organizations

With respect to any organization for a taxable year for which—

(A) such organization is a disqualified organization (within the meaning of paragraph (5)), or

(B) an election under this subsection is not in effect for such organization,

nothing in this subsection or in section 4911 shall be construed to affect the interpretation of the phrase, ''no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation,'' under subsection (c)(3).

(8) Affiliated organizations

For rules regarding affiliated organizations, see section 4911(f).

(i) Prohibition of discrimination by certain social clubs

Notwithstanding subsection (a), an organization which is described in subsection (c)(7) shall not be exempt from taxation under subsection (a) for any taxable year if, at any time during such taxable year, the charter, bylaws, or other governing instrument, of such organization or any written policy statement of such organization contains a provision which provides for discrimination against any person on the basis of race, color, or religion. The preceding sentence to the extent it relates to discrimination on the basis of religion shall not apply to—

(1) an auxiliary of a fraternal beneficiary society if such society—

(A) is described in subsection (c)(8) and exempt from tax under subsection (a), and

(B) limits its membership to the members of a particular religion, or

(2) a club which in good faith limits its membership to the members of a particular religion in order to further the teachings or principles of that religion, and not to exclude individuals of a particular race or color.

(j) Special rules for certain amateur sports organizations

(1) In general

In the case of a qualified amateur sports organization—

(A) the requirement of subsection (c)(3) that no part of its activities involve the provision of athletic facilities or equipment shall not apply, and

(B) such organization shall not fail to meet the requirements of subsection (c)(3) merely because its membership is local or regional in nature.

(2) Qualified amateur sports organization defined

For purposes of this subsection, the term ''qualified amateur sports organization'' means any organization organized and operated exclusively to foster national or international amateur sports competition if such organization is also organized and operated primarily to conduct national or international competition in sports or to support and develop amateur athletes for national or international competition in sports.

(k) Treatment of certain organizations providing child care

For purposes of subsection (c)(3) of this section and sections 170(c)(2), 2055(a)(2), and

2522(a)(2), the term ''educational purposes'' includes the providing of care of children away from their homes if—

(1) substantially all of the care provided by the organization is for purposes of enabling individuals to be gainfully employed, and

(2) the services provided by the organization are available to the general public.

(*l*) Government corporations exempt under subsection (c)(1)

For purposes of subsection (c)(1), the following organizations are described in this subsection:

(1) The Central Liquidity Facility established under title III of the Federal Credit Union Act (12 U.S.C. 1795 et seq.).

(2) The Resolution Trust Corporation established under section 21A [1] of the Federal Home Loan Bank Act.

(3) The Resolution Funding Corporation established under section 21B of the Federal Home Loan Bank Act.

(4) The Patient-Centered Outcomes Research Institute established under section 1181(b) of the Social Security Act.

(m) Certain organizations providing commercial-type insurance not exempt from tax

(1) Denial of tax exemption where providing commercial-type insurance is substantial part of activities

An organization described in paragraph (3) or (4) of subsection (c) shall be exempt from tax under subsection (a) only if no substantial part of its activities consists of providing commercial-type insurance.

(2) Other organizations taxed as insurance companies on insurance business

In the case of an organization described in paragraph (3) or (4) of subsection (c) which is exempt from tax under subsection (a) after the application of paragraph (1) of this subsection—

(A) the activity of providing commercial-type insurance shall be treated as an unrelated trade or business (as defined in section 513), and

(B) in lieu of the tax imposed by section 511 with respect to such activity, such organization shall be treated as an insurance company for purposes of applying subchapter L with respect to such activity.

(3) Commercial-type insurance

For purposes of this subsection, the term ''commercial-type insurance'' shall not include—

(A) insurance provided at substantially below cost to a class of charitable recipients,

(B) incidental health insurance provided by a health maintenance organization of a kind customarily provided by such organizations,

(C) property or casualty insurance provided (directly or through an organization described in section 414(e)(3)(B)(ii)) by a church or convention or association of churches for such church or convention or association of churches,

(D) providing retirement or welfare benefits (or both) by a church or a convention or association of churches (directly or through an organization described in section 414(e)(3)(A) or 414(e)(3)(B)(ii)) for the employees (including employees described in section 414(e)(3)(B)) of such church or convention or association of churches or the beneficiaries of such employees, and

(E) charitable gift annuities.

(4) Insurance includes annuities

For purposes of this subsection, the issuance of annuity contracts shall be treated as providing insurance.

(5) Charitable gift annuity

For purposes of paragraph (3)(E), the term ''charitable gift annuity'' means an annuity if—

(A) a portion of the amount paid in connection with the issuance of the annuity is allowable as a deduction under section 170 or 2055, and

(B) the annuity is described in section 514(c)(5) (determined as if any amount paid in cash in connection with such issuance were property).

(n) Charitable risk pools

(1) In general

For purposes of this title—

(A) a qualified charitable risk pool shall be treated as an organization organized and operated exclusively for charitable purposes, and

(B) subsection (m) shall not apply to a qualified charitable risk pool.

(2) Qualified charitable risk pool

For purposes of this subsection, the term ''qualified charitable risk pool'' means any organization—

(A) which is organized and operated solely to pool insurable risks of its members (other than risks related to medical malpractice) and to provide information to its members with respect to loss control and risk management,

(B) which is comprised solely of members that are organizations described in subsection (c)(3) and exempt from tax under subsection (a), and

(C) which meets the organizational requirements of paragraph (3).

(3) Organizational requirements

An organization (hereinafter in this subsection referred to as the ''risk pool'') meets the organizational requirements of this paragraph if—

(A) such risk pool is organized as a nonprofit organization under State law provisions authorizing risk pooling arrangements for charitable organizations,

(B) such risk pool is exempt from any income tax imposed by the State (or will be so exempt after such pool qualifies as an organization exempt from tax under this title),

(C) such risk pool has obtained at least $1,000,000 in startup capital from nonmember charitable organizations,

(D) such risk pool is controlled by a board of directors elected by its members, and

(E) the organizational documents of such risk pool require that—

(i) each member of such pool shall at all times be an organization described in subsection (c)(3) and exempt from tax under subsection (a),

(ii) any member which receives a final determination that it no longer qualifies as an organization described in subsection (c)(3) shall immediately notify the pool of such determination and the effective date of such determination, and

(iii) each policy of insurance issued by the risk pool shall provide that such policy will not cover the insured with respect to events occurring after the date such final determination was issued to the insured.

An organization shall not cease to qualify as a qualified charitable risk pool solely by reason of the failure of any of its members to continue to be an organization described in subsection (c)(3) if, within a reasonable period of time after such pool is notified as required under subparagraph (E)(ii), such pool takes such action as may be reasonably necessary to remove such member from such pool.

(4) Other definitions

For purposes of this subsection—

(A) Startup capital

The term ''startup capital'' means any capital contributed to, and any program-related investments (within the meaning of section 4944(c)) made in, the risk pool before such pool commences operations.

(B) Nonmember charitable organization

The term ''nonmember charitable organization'' means any organization which is described in subsection (c)(3) and exempt from tax under subsection (a) and which is not a member of the risk pool and does not benefit (directly or indirectly) from the insurance coverage provided by the pool to its members.

(*o*) Treatment of hospitals participating in provider-sponsored organizations

An organization shall not fail to be treated as organized and operated exclusively for a charitable purpose for purposes of subsection (c)(3) solely because a hospital which is owned and operated by such organization participates in a provider-sponsored organization (as defined in section 1855(d) of the Social Security Act), whether or not the provider-sponsored organization is exempt from tax. For purposes of subsection (c)(3), any person with a material financial interest in such a provider-sponsored organization shall be treated as a private shareholder or individual with respect to the hospital.

(p) Suspension of tax-exempt status of terrorist organizations

(1) In general

The exemption from tax under subsection (a) with respect to any organization described in paragraph (2), and the eligibility of any organization described in paragraph (2) to apply for recognition of exemption under subsection (a), shall be suspended during the period described in paragraph (3).

(2) Terrorist organizations

An organization is described in this paragraph if such organization is designated or otherwise individually identified—

(A) under section 212(a)(3)(B)(vi)(II) or 219 of the Immigration and Nationality Act as a terrorist organization or foreign terrorist organization,

(B) in or pursuant to an Executive order which is related to terrorism and issued under the authority of the International Emergency Economic Powers Act or section 5 of the United Nations Participation Act of 1945 for the purpose of imposing on such organization an economic or other sanction, or

(C) in or pursuant to an Executive order issued under the authority of any Federal law if—

(i) the organization is designated or otherwise individually identified in or pursuant to such Executive order as supporting or engaging in terrorist activity (as defined in section 212(a)(3)(B) of the Immigration and Nationality Act) or supporting terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989); and

(ii) such Executive order refers to this subsection.

(3) Period of suspension

With respect to any organization described in paragraph (2), the period of suspension—

(A) begins on the later of—

(i) the date of the first publication of a designation or identification described in paragraph (2) with respect to such organization, or

(ii) the date of the enactment of this subsection, and

(B) ends on the first date that all designations and identifications described in paragraph (2) with respect to such organization are rescinded pursuant to the law or Executive order under which such designation or identification was made.

(4) Denial of deduction

No deduction shall be allowed under any provision of this title, including sections 170, 545(b)(2), 556(b)(2),[1] 642(c), 2055, 2106(a)(2), and 2522, with respect to any contribution to an organization described in paragraph (2) during the period described in paragraph (3).

(5) Denial of administrative or judicial challenge of suspension or denial of deduction

Notwithstanding section 7428 or any other provision of law, no organization or other person may challenge a suspension under paragraph (1), a designation or identification described in paragraph (2), the period of suspension described in paragraph (3), or a denial of a deduction under paragraph (4) in any administrative or judicial proceeding relating to the Federal tax liability of such organization or other person.

(6) Erroneous designation

(A) In general

If—

(i) the tax exemption of any organization described in paragraph (2) is suspended under paragraph (1),

(ii) each designation and identification described in paragraph (2) which has been made with respect to such organization is determined to be erroneous pursuant to the law or Executive order under which such designation or identification was made, and

(iii) the erroneous designations and identifications result in an overpayment of income tax for any taxable year by such organization,

credit or refund (with interest) with respect to such overpayment shall be made.

(B) Waiver of limitations

If the credit or refund of any overpayment of tax described in subparagraph (A)(iii) is prevented at any time by the operation of any law or rule of law (including res judicata), such credit or refund may nevertheless be allowed or made if the claim therefor is filed before the close of the 1-year period beginning on the date of the last determination described in subparagraph (A)(ii).

(7) Notice of suspensions

If the tax exemption of any organization is suspended under this subsection, the Internal Revenue Service shall update the listings of tax-exempt organizations and shall publish appropriate notice to taxpayers of such suspension and of the fact that contributions to such organization are not deductible during the period of such suspension.

(q) Special rules for credit counseling organizations

(1) In general

An organization with respect to which the provision of credit counseling services is a substantial purpose shall not be exempt from tax under subsection (a) unless such organization is described in paragraph (3) or (4) of subsection (c) and such organization is organized and operated in accordance with the following requirements:

(A) The organization—

(i) provides credit counseling services tailored to the specific needs and circumstances of consumers,

(ii) makes no loans to debtors (other than loans with no fees or interest) and does not negotiate the making of loans on behalf of debtors,

(iii) provides services for the purpose of improving a consumer's credit record, credit history, or credit rating only to the extent that such services are incidental to providing credit counseling services, and

(iv) does not charge any separately stated fee for services for the purpose of improving any consumer's credit record, credit history, or credit rating.

(B) The organization does not refuse to provide credit counseling services to a consumer due to the inability of the consumer to pay, the ineligibility of the consumer for debt management plan enrollment, or the unwillingness of the consumer to enroll in a debt management plan.

(C) The organization establishes and implements a fee policy which—

(i) requires that any fees charged to a consumer for services are reasonable,

(ii) allows for the waiver of fees if the consumer is unable to pay, and

(iii) except to the extent allowed by State law, prohibits charging any fee based in whole or in part on a percentage of the consumer's debt, the consumer's payments to be made pursuant to a debt management plan, or the projected or actual savings to the consumer resulting from enrolling in a debt management plan.

(D) At all times the organization has a board of directors or other governing body—

(i) which is controlled by persons who represent the broad interests of the public, such as public officials acting in their capacities as such, persons having special knowledge or expertise in credit or financial education, and community leaders,

(ii) not more than 20 percent of the voting power of which is vested in persons who are employed by the organization or who will benefit financially, directly or indirectly, from the organization's activities (other than through the receipt of reasonable directors' fees or the repayment of consumer debt to creditors other than the credit counseling organization or its affiliates), and

(iii) not more than 49 percent of the voting power of which is vested in persons who are employed by the organization or who will benefit financially, directly or indirectly, from the organization's activities (other than through the receipt of reasonable directors' fees).

(E) The organization does not own more than 35 percent of—

(i) the total combined voting power of any corporation (other than a corporation which is an organization described in subsection (c)(3) and exempt from tax under subsection (a)) which is in the trade or business of lending money, repairing credit, or providing debt management plan services, payment processing, or similar services,

(ii) the profits interest of any partnership (other than a partnership which is an organization described in subsection (c)(3) and exempt from tax under subsection (a)) which is in the trade or business of lending money, repairing credit, or providing debt management plan services, payment processing, or similar services, and

(iii) the beneficial interest of any trust or estate (other than a trust which is an organization described in subsection (c)(3) and exempt from tax under subsection (a)) which is in the trade or business of lending money, repairing credit, or providing debt management plan services, payment processing, or similar services.

(F) The organization receives no amount for providing referrals to others for debt

management plan services, and pays no amount to others for obtaining referrals of consumers.

(2) Additional requirements for organizations described in subsection (c)(3)

(A) In general

In addition to the requirements under paragraph (1), an organization with respect to which the provision of credit counseling services is a substantial purpose and which is described in paragraph (3) of subsection (c) shall not be exempt from tax under subsection (a) unless such organization is organized and operated in accordance with the following requirements:

(i) The organization does not solicit contributions from consumers during the initial counseling process or while the consumer is receiving services from the organization.

(ii) The aggregate revenues of the organization which are from payments of creditors of consumers of the organization and which are attributable to debt management plan services do not exceed the applicable percentage of the total revenues of the organization.

(B) Applicable percentage

(i) In general

For purposes of subparagraph (A)(ii), the applicable percentage is 50 percent.

(ii) Transition rule

Notwithstanding clause (i), in the case of an organization with respect to which the provision of credit counseling services is a substantial purpose and which is described in paragraph (3) of subsection (c) and exempt from tax under subsection (a) on the date of the enactment of this subsection, the applicable percentage is—

(I) 80 percent for the first taxable year of such organization beginning after the date which is 1 year after the date of the enactment of this subsection, and

(II) 70 percent for the second such taxable year beginning after such date, and

(III) 60 percent for the third such taxable year beginning after such date.

(3) Additional requirement for organizations described in subsection (c)(4)

In addition to the requirements under paragraph (1), an organization with respect to which the provision of credit counseling services is a substantial purpose and which is described in paragraph (4) of subsection (c) shall not be exempt from tax under subsection (a) unless such organization notifies the Secretary, in such manner as the Secretary may by regulations prescribe, that it is applying for recognition as a credit counseling organization.

(4) Credit counseling services; debt management plan services

For purposes of this subsection—

(A) Credit counseling services

The term ''credit counseling services'' means—

(i) the providing of educational information to the general public on budgeting, personal finance, financial literacy, saving and spending practices, and the sound use of consumer credit,

(ii) the assisting of individuals and families with financial problems by providing them with counseling, or

(iii) a combination of the activities described in clauses (i) and (ii).

(B) Debt management plan services

The term ''debt management plan services'' means services related to the repayment, consolidation, or restructuring of a consumer's debt, and includes the negotiation with creditors of lower interest rates, the waiver or reduction of fees, and the marketing and processing of debt management plans.

(r) Additional requirements for certain hospitals

(1) In general

A hospital organization to which this subsection applies shall not be treated as described in subsection (c)(3) unless the organization—

(A) meets the community health needs assessment requirements described in paragraph (3),

(B) meets the financial assistance policy requirements described in paragraph (4),

(C) meets the requirements on charges described in paragraph (5), and

(D) meets the billing and collection requirement described in paragraph (6).

(2) Hospital organizations to which subsection applies

(A) In general

This subsection shall apply to—

(i) an organization which operates a facility which is required by a State to be licensed, registered, or similarly recognized as a hospital, and

(ii) any other organization which the Secretary determines has the provision of hospital care as its principal function or purpose constituting the basis for its exemption under subsection (c)(3) (determined without regard to this subsection).

(B) Organizations with more than 1 hospital facility

If a hospital organization operates more than 1 hospital facility—

(i) the organization shall meet the requirements of this subsection separately with respect to each such facility, and

(ii) the organization shall not be treated as described in subsection (c)(3) with respect to any such facility for which such requirements are not separately met.

(3) Community health needs assessments

(A) In general

An organization meets the requirements of this paragraph with respect to any taxable year only if the organization—

(i) has conducted a community health needs assessment which meets the requirements of subparagraph (B) in such taxable

year or in either of the 2 taxable years immediately preceding such taxable year, and

(ii) has adopted an implementation strategy to meet the community health needs identified through such assessment.

(B) Community health needs assessment

A community health needs assessment meets the requirements of this paragraph if such community health needs assessment—

(i) takes into account input from persons who represent the broad interests of the community served by the hospital facility, including those with special knowledge of or expertise in public health, and

(ii) is made widely available to the public.

(4) Financial assistance policy

An organization meets the requirements of this paragraph if the organization establishes the following policies:

(A) Financial assistance policy

A written financial assistance policy which includes—

(i) eligibility criteria for financial assistance, and whether such assistance includes free or discounted care,

(ii) the basis for calculating amounts charged to patients,

(iii) the method for applying for financial assistance,

(iv) in the case of an organization which does not have a separate billing and collections policy, the actions the organization may take in the event of non-payment, including collections action and reporting to credit agencies, and

(v) measures to widely publicize the policy within the community to be served by the organization.

(B) Policy relating to emergency medical care

A written policy requiring the organization to provide, without discrimination, care for emergency medical conditions (within the meaning of section 1867 of the Social Security Act (42 U.S.C. 1395dd)) to individuals regardless of their eligibility under the financial assistance policy described in subparagraph (A).

(5) Limitation on charges

An organization meets the requirements of this paragraph if the organization—

(A) limits amounts charged for emergency or other medically necessary care provided to individuals eligible for assistance under the financial assistance policy described in paragraph (4)(A) to not more than the amounts generally billed to individuals who have insurance covering such care, and

(B) prohibits the use of gross charges.

(6) Billing and collection requirements

An organization meets the requirement of this paragraph only if the organization does not engage in extraordinary collection actions before the organization has made reasonable efforts to determine whether the individual is eligible for assistance under the financial assistance policy described in paragraph (4)(A).

(7) Regulatory authority

The Secretary shall issue such regulations and guidance as may be necessary to carry out the provisions of this subsection, including guidance relating to what constitutes reasonable efforts to determine the eligibility of a patient under a financial assistance policy for purposes of paragraph (6).

(Aug. 16, 1954, ch. 736, 68A Stat. 163; Mar. 13, 1956, ch. 83, § 5(2), 70 Stat. 49; Pub. L. 86–428, § 1, Apr. 22, 1960, 74 Stat. 54; Pub. L. 86–667, § 1, July 14, 1960, 74 Stat. 534; Pub. L. 87–834, § 8(d), Oct. 16, 1962, 76 Stat. 997; Pub. L. 89–352, § 1, Feb. 2, 1966, 80 Stat. 4; Pub. L. 89–800, § 6(a), Nov. 8, 1966, 80 Stat. 1515; Pub. L. 90–364, title I, § 109(a), June 28, 1968, 82 Stat. 269; Pub. L. 91–172, title I, §§ 101(j)(3)–(6), 121(b)(5)(A), (6)(A), Dec. 30, 1969, 83 Stat. 526, 527, 541; Pub. L. 91–618, § 1, Dec. 31, 1970, 84 Stat. 1855; Pub. L. 92–418, § 1(a), Aug. 29, 1972, 86 Stat. 656; Pub. L. 93–310, § 3(a), June 8, 1974, 88 Stat. 235; Pub. L. 93–625, § 10(c), Jan. 3, 1975, 88 Stat. 2119; Pub. L. 94–455, title XIII, §§ 1307(a)(1), (d)(1)(A), 1312(a), 1313(a), title XIX, § 1906(b)(13)(A), title XXI, §§ 2113(a), 2134(b), Oct. 4, 1976, 90 Stat. 1720, 1727, 1730, 1834, 1907, 1927; Pub. L. 94–568, §§ 1(a), 2(a), Oct. 20, 1976, 90 Stat. 2697; Pub. L. 95–227, § 4(a), Feb. 10, 1978, 92 Stat. 15; Pub. L. 95–345, § 1(a), Aug. 15, 1978, 92 Stat. 481; Pub. L. 95–600, title VII, § 703(b)(2), (g)(2)(A), (B), Nov. 6, 1978, 92 Stat. 2939, 2940; Pub. L. 96–222, title I, § 108(b)(2)(B), Apr. 1, 1980, 94 Stat. 226; Pub. L. 96–364, title II, § 209(a), Sept. 26, 1980, 94 Stat. 1290; Pub. L. 96–601, § 3(a), Dec. 24, 1980, 94 Stat. 3496; Pub. L. 96–605, title I, § 106(a), Dec. 28, 1980, 94 Stat. 3523; Pub. L. 97–119, title I, § 103(c)(1), Dec. 29, 1981, 95 Stat. 1638; Pub. L. 97–248, title II, § 286(a), title III, § 354(a), (b), Sept. 3, 1982, 96 Stat. 569, 640, 641; Pub. L. 97–448, title III, § 306(b)(5), Jan. 12, 1983, 96 Stat. 2406; Pub. L. 98–369, div. A, title X, §§ 1032(a), 1079, div. B, title VIII, § 2813(b), July 18, 1984, 98 Stat. 1033, 1056, 1206; Pub. L. 99–272, title XI, § 11012(b), Apr. 7, 1986, 100 Stat. 260; Pub. L. 99–514, title X, §§ 1012(a), 1024(b), title XI, §§ 1109(a), 1114(b)(14), title XVI, § 1603(a), title XVIII, §§ 1879(k)(1), 1899A(15), Oct. 22, 1986, 100 Stat. 2390, 2406, 2435, 2451, 2768, 2909, 2959; Pub. L. 100–203, title X, § 10711(a)(2), Dec. 22, 1987, 101 Stat. 1330–464; Pub. L. 100–647, title I, §§ 1010(b)(4), 1011(c)(7)(D), 1016(a)(1)(A), (2)–(4), 1018(u)(14), (15), (34), title II, § 2003(a)(1), (2), title VI, § 6202(a), Nov. 10, 1988, 102 Stat. 3451, 3458, 3573, 3574, 3590, 3592, 3597, 3598, 3730; Pub. L. 101–73, title XIV, § 1402(a), Aug. 9, 1989, 103 Stat. 550; Pub. L. 102–486, title XIX, § 1940(a), Oct. 24, 1992, 106 Stat. 3034; Pub. L. 103–66, title XIII, § 13146(a), (b), Aug. 10, 1993, 107 Stat. 443; Pub. L. 104–168, title XIII, § 1311(b)(1), July 30, 1996, 110 Stat. 1477; Pub. L. 104–188, title I, §§ 1114(a), 1704(j)(5), Aug. 20, 1996, 110 Stat. 1759, 1882; Pub. L. 104–191, title III, §§ 341(a), 342(a), Aug. 21, 1996, 110 Stat. 2070; Pub. L. 105–33, title IV, § 4041(a), Aug. 5, 1997, 111 Stat. 360; Pub. L. 105–34, title I, § 101(c), title IX, §§ 963(a), (b), 974(a), Aug. 5, 1997, 111 Stat. 799, 892, 898; Pub. L. 105–206, title VI, § 6023(6), (7), July 22, 1998, 112 Stat. 825; Pub. L. 107–16, title VI, § 611(d)(3)(C), June 7, 2001, 115 Stat. 98; Pub. L. 107–90, title II, § 202, Dec. 21, 2001, 115 Stat. 890; Pub. L. 108–121,

title I, §§105(a), 108(a), Nov. 11, 2003, 117 Stat. 1338, 1339; Pub. L. 108–218, title II, §206(a), (b), Apr. 10, 2004, 118 Stat. 610, 611; Pub. L. 108–357, title III, §319(a), (b), Oct. 22, 2004, 118 Stat. 1470, 1471; Pub. L. 109–58, title XIII, §1304(a), (b), Aug. 8, 2005, 119 Stat. 997; Pub. L. 109–135, title IV, §412(bb), (cc), Dec. 21, 2005, 119 Stat. 2639; Pub. L. 109–280, title VIII, §862(a), title XII, §1220(a), Aug. 17, 2006, 120 Stat. 1021, 1086; Pub. L. 111–148, title I, §1322(h)(1), title VI, §6301(f), title IX, §9007(a), title X, §10903(a), Mar. 23, 2010, 124 Stat. 191, 747, 855, 1016; Pub. L. 111–152, title I, §1004(d)(4), Mar. 30, 2010, 124 Stat. 1035; Pub. L. 113–295, div. A, title II, §221(a)(19)(B)(iii), (62), Dec. 19, 2014, 128 Stat. 4040, 4048; Pub. L. 114–113, div. Q, title III, §331(b), Dec. 18, 2015, 129 Stat. 3104.)

REFERENCES IN TEXT

Sections 306A and 306B of the Rural Electrification Act of 1936, referred to in subsec. (c)(12)(B)(iv), are classified to sections 936a and 936b, respectively, of Title 7, Agriculture. Section 311 of the Act was classified to section 940a of Title 7 prior to repeal by Pub. L. 104–127, title VII, §780, Apr. 4, 1996, 110 Stat. 1151.

The date of the enactment of this subparagraph, referred to in subsec. (c)(12)(H)(vii), is the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

Section 831(b)(2)(B)(ii), referred to in subsec. (c)(15)(C), was redesignated section 831(b)(2)(C)(ii) by Pub. L. 114–113, div. Q, title III, §333(a)(1)(B), Dec. 18, 2015, 129 Stat. 3106.

The Federal Mine Safety and Health Act of 1977, referred to in subsec. (c)(21)(D)(i), is Pub. L. 91–173, Dec. 30, 1969, 83 Stat. 742, as amended by Pub. L. 95–164, Nov. 9, 1977, 91 Stat. 1290. Part C of title IV of the Act is classified generally to part C (§931 et seq.) of subchapter IV of chapter 22 of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 30 and Tables.

Section 4223 of the Employee Retirement Income Security Act of 1974, referred to in subsec. (c)(22)(A)(i), (C), (D), is classified to section 1403 of Title 29, Labor.

Section 4049 of the Employee Retirement Income Security Act of 1974, referred to in subsec. (c)(24), was classified to section 1349 of Title 29, prior to its repeal by Pub. L. 100–203, title IX, §9312(a), Dec. 22, 1987, 101 Stat. 1330–361.

The date of the enactment of the Single-Employer Pension Plan Amendments Act of 1986, referred to in subsec. (c)(24), is the date of enactment of title XI of Pub. L. 99–272, which was approved Apr. 7, 1986.

The date of enactment of this subparagraph, referred to in subsec. (c)(27)(B)(iii)(I), is the date of enactment of Pub. L. 105–34, which was approved Aug. 5, 1997.

Section 15(j) of the Railroad Retirement Act of 1974, referred to in subsec. (c)(28), is classified to section 231n(j) of Title 45, Railroads.

Section 1322 of the Patient Protection and Affordable Care Act, referred to in subsec. (c)(29)(A), (B)(ii), is classified to section 18042 of Title 42, The Public Health and Welfare.

The provisions of subsec. (a) of section 115, referred to in subsec. (f)(3)(B), now comprise section 115 in its entirety, following the deletion therefrom of the subsec. (a) designation by section 1901(a)(19) of Pub. L. 94–455.

The Federal Credit Union Act, referred to in subsec. (*l*)(1), is act June 26, 1934, ch. 750, 48 Stat. 1216, as amended. Title III of the Federal Credit Union Act is classified generally to subchapter III (§1795 et seq.) of chapter 14 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1751 of Title 12 and Tables.

Sections 21A and 21B of the Federal Home Loan Bank Act, referred to in subsec. (*l*)(2), (3), are classified to former section 1441a and section 1441b, respectively, of Title 12, Banks and Banking. Section 21A of the Act was repealed by Pub. L. 111–203, title III, §364(b), July 21, 2010, 124 Stat. 1555.

Sections 1181(b) and 1855(d) of the Social Security Act, referred to in subsecs. (*l*)(4) and (*o*), are classified to sections 1320e(b) and 1395w–25(d), respectively, of Title 42, The Public Health and Welfare.

Sections 212(a)(3)(B) and 219 of the Immigration and Nationality Act, referred to in subsec. (p)(2)(A), (C)(i), are classified to sections 1182(a)(3)(B) and 1189, respectively, of Title 8, Aliens and Nationality.

The International Emergency Economic Powers Act, referred to in subsec. (p)(2)(B), is title II of Pub. L. 95–223, Dec. 28, 1977, 91 Stat. 1626, as amended, which is classified generally to chapter 35 (§1701 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 50 and Tables.

Section 5 of the United Nations Participation Act of 1945, referred to in subsec. (p)(2)(B), is classified to section 287c of Title 22, Foreign Relations and Intercourse.

Section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, referred to in subsec. (p)(2)(C)(i), is classified to section 2656f(d)(2) of Title 22, Foreign Relations and Intercourse.

The date of the enactment of this subsection, referred to in subsec. (p)(3)(A)(ii), is the date of enactment of Pub. L. 108–121, which was approved Nov. 11, 2003.

Section 556(b)(2), referred to in subsec. (p)(4), was repealed by Pub. L. 108–357, title IV, §413(a)(1), Oct. 22, 2004, 118 Stat. 1506.

The date of the enactment of this subsection, referred to in subsec. (q)(2)(B)(ii), is the date of enactment of Pub. L. 109–280, which was approved Aug. 17, 2006.

AMENDMENTS

2015—Subsec. (h)(4)(E) to (G). Pub. L. 114–113 added subpar. (E) and redesignated former subpars. (E) and (F) as (F) and (G), respectively.

2014—Subsec. (c)(20). Pub. L. 113–295, §221(a)(19)(B)(iii), struck out par. (20) which read as follows: ''an organization or trust created or organized in the United States, the exclusive function of which is to form part of a qualified group legal services plan or plans, within the meaning of section 120. An organization or trust which receives contributions because of section 120(c)(5)(C) shall not be prevented from qualifying as an organization described in this paragraph merely because it provides legal services or indemnification against the cost of legal services unassociated with a qualified group legal services plan.''

Subsec. (s). Pub. L. 113–295, §221(a)(62), struck out subsec. (s). Text read as follows: ''For nonexemption of Communist-controlled organizations, see section 11(b) of the Internal Security Act of 1950 (64 Stat. 997; 50 U.S.C. 790(b)).''

2010—Subsec. (c)(9). Pub. L. 111–152 inserted at end ''For purposes of providing for the payment of sick and accident benefits to members of such an association and their dependents, the term 'dependent' shall include any individual who is a child (as defined in section 152(f)(1)) of a member who as of the end of the calendar year has not attained age 27.''

Subsec. (c)(29). Pub. L. 111–148, §1322(h)(1), added par. (29).

Subsec. (*l*)(4). Pub. L. 111–148, §6301(f), added par. (4).

Subsec. (r). Pub. L. 111–148, §9007(a), added subsec. (r). Former subsec. (r) redesignated (s).

Subsec. (r)(5)(A). Pub. L. 111–148, §10903(a), substituted ''the amounts generally billed'' for ''the lowest amounts charged''.

Subsec. (s). Pub. L. 111–148, §9007(a), redesignated subsec. (r) as (s).

2006—Subsec. (c)(21)(C). Pub. L. 109–280, §862(a), amended introductory provisions and cls. (i) and (ii) generally. Prior to amendment, introductory provisions and cls. (i) and (ii) read as follows: ''Payments described in subparagraph (A)(i)(IV) may be made from such trust during a taxable year only to the extent that

the aggregate amount of such payments during such taxable year does not exceed the lesser of—

''(i) the excess (if any) (as of the close of the preceding taxable year) of—

''(I) the fair market value of the assets of the trust, over

''(II) 110 percent of the present value of the liability described in subparagraph (A)(i)(I) of such person, or

''(ii) the excess (if any) of—

''(I) the sum of a similar excess determined as of the close of the last taxable year ending before the date of the enactment of this subparagraph plus earnings thereon as of the close of the taxable year preceding the taxable year involved, over

''(II) the aggregate payments described in subparagraph (A)(i)(IV) made from the trust during all taxable years beginning after the date of the enactment of this subparagraph.''

Subsecs. (q), (r). Pub. L. 109–280, §1220(a), which directed the amendment of section 501 by adding subsec. (q) and redesignating former subsec. (q) as (r), without specifying the act to be amended, was executed by making the amendments to this section, which is section 501 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

2005—Subsec. (c)(12)(C). Pub. L. 109–58, §1304(a), struck out concluding provisions which read as follows: ''Clauses (ii) through (v) shall not apply to taxable years beginning after December 31, 2006.''

Subsec. (c)(12)(F). Pub. L. 109–135, §412(bb)(1), substituted ''subparagraph (C)(iv)'' for ''subparagraph (C)(iii)''.

Subsec. (c)(12)(G). Pub. L. 109–135, §412(bb)(2), substituted ''subparagraph (C)(v)'' for ''subparagraph (C)(iv)''.

Subsec. (c)(12)(H)(x). Pub. L. 109–58, §1304(b), struck out cl. (x) which read as follows: ''This subparagraph shall not apply to taxable years beginning after December 31, 2006.''

Subsec. (c)(22)(B)(ii). Pub. L. 109–135, §412(cc), substituted ''clause (ii) of paragraph (21)(D)'' for ''clause (ii) of paragraph (21)(B)''.

2004—Subsec. (c)(12)(C). Pub. L. 108–357, §319(a)(1), added cls. (ii) to (v) and concluding provisions and struck out former cl. (ii) which read as follows: ''from the prepayment of a loan under section 306A, 306B, or 311 of the Rural Electrification Act of 1936 (as in effect on January 1, 1987).''

Subsec. (c)(12)(E) to (G). Pub. L. 108–357, §319(a)(2), added subpars. (E) to (G).

Subsec. (c)(12)(H). Pub. L. 108–357, §319(b), added subpar. (H).

Subsec. (c)(15)(A). Pub. L. 108–218, §206(a), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''Insurance companies or associations other than life (including interinsurers and reciprocal underwriters) if the net written premiums (or, if greater, direct written premiums) for the taxable year do not exceed $350,000.''

Subsec. (c)(15)(C). Pub. L. 108–218, §206(b), inserted before period at end '', except that in applying section 831(b)(2)(B)(ii) for purposes of this subparagraph, subparagraphs (B) and (C) of section 1563(b)(2) shall be disregarded''.

2003—Subsec. (c)(19)(B). Pub. L. 108–121, §105(a), substituted '', widowers, ancestors, or lineal descendants'' for ''or widowers''.

Subsecs. (p), (q). Pub. L. 108–121, §108(a), added subsec. (p) and redesignated former subsec. (p) as (q).

2001—Subsec. (c)(18)(D)(iii). Pub. L. 107–16, §611(d)(3)(C), struck out ''(other than paragraph (4) thereof)'' after ''section 402(g)''.

Subsec. (c)(28). Pub. L. 107–90 added par. (28).

1998—Subsec. (n)(3). Pub. L. 105–206, §6023(6), substituted ''subparagraph (E)(ii)'' for ''subparagraph (C)(ii)'' in concluding provisions.

Subsec. (*o*). Pub. L. 105–206, §6023(7), substituted ''section 1855(d)'' for ''section 1853(e)''.

1997—Subsec. (c)(26). Pub. L. 105–34, §101(c), inserted concluding provisions ''A spouse and any qualifying child (as defined in section 24(c)) of an individual described in subparagraph (B) (without regard to this sentence) shall be treated as described in subparagraph (B).''

Subsec. (c)(27). Pub. L. 105–34, §963(a), (b), designated existing provisions as subpar. (A), redesignated former subpar. (A) as cl. (i), redesignated subpar. (B) as cl. (ii) and former cls. (i) and (ii) of subpar. (B) as subcls. (I) and (II), respectively, of cl. (ii), redesignated subpar. (C) as cl. (iii) and former cls. (i) and (ii) of subpar. (C) as subcls. (I) and (II), respectively, of cl. (iii), and added subpar. (B).

Subsec. (e)(1)(A). Pub. L. 105–34, §974(a), inserted ''(including the purchase of patron accounts receivable on a recourse basis)'' after ''billing and collection''.

Subsecs. (*o*), (p). Pub. L. 105–33 added subsec. (*o*) and redesignated former subsec. (*o*) as (p).

1996—Subsec. (c)(4). Pub. L. 104–168 designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (c)(21)(D)(ii)(III). Pub. L. 104–188, §1704(j)(5), substituted ''section 101(7)'' for ''section 101(6)'' and ''1752(7)'' for ''1752(6)''.

Subsec. (c)(26). Pub. L. 104–191, §341(a), added par. (26).

Subsec. (c)(27). Pub. L. 104–191, §342(a), added par. (27).

Subsecs. (n), (*o*). Pub. L. 104–188, §1114(a), added subsec. (n) and redesignated former subsec. (n) as (*o*).

1993—Subsec. (c)(2). Pub. L. 103–66, §13146(b), inserted at end ''Rules similar to the rules of subparagraph (G) of paragraph (25) shall apply for purposes of this paragraph.''

Subsec. (c)(25)(G). Pub. L. 103–66, §13146(a), added subpar. (G).

1992—Subsec. (c)(21). Pub. L. 102–486 amended par. (21) generally, substituting present provisions consisting of subpars. (A) to (D) for former provisions consisting of subpars. (A) and (B).

1989—Subsec. (*l*). Pub. L. 101–73 amended subsec. (*l*) generally. Prior to amendment, subsec. (*l*) read as follows: ''The organization described in this subsection is the Central Liquidity Facility established under title III of the Federal Credit Union Act (12 U.S.C. 1795 et seq.).''

1988—Subsec. (c)(1). Pub. L. 100–647, §1018(u)(15), substituted ''Any'' for ''any''.

Subsec. (c)(12)(B)(iv). Pub. L. 100–647, §2003(a)(1), added cl. (iv).

Subsec. (c)(12)(C). Pub. L. 100–647, §2003(a)(2), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''In the case of a mutual or cooperative electric company, subparagraph (A) shall be applied without taking into account any income received or accrued from qualified pole rentals.''

Subsec. (c)(17)(A)(ii), (iii), (18)(B), (C). Pub. L. 100–647, §1018(u)(34), made technical amendments to Pub. L. 99–154, §1114(b)(14). See 1986 Amendment note below.

Subsec. (c)(18)(D)(iv). Pub. L. 100–647, §1011(c)(7)(D), added cl. (iv).

Subsec. (c)(23). Pub. L. 100–647, §1018(u)(14), substituted ''Any'' for ''any''.

Subsec. (c)(25)(A). Pub. L. 100–647, §1016(a)(1)(A), inserted at end ''For purposes of clause (iii), the term 'real property' shall not include any interest as a tenant in common (or similar interest) and shall not include any indirect interest.''

Subsec. (c)(25)(C)(v). Pub. L. 100–647, §1016(a)(3)(B), struck out cl. (v) which read as follows: ''any organization described in this paragraph.''

Subsec. (c)(25)(D). Pub. L. 100–647, §1016(a)(2), substituted ''A corporation or trust shall in no event be treated as described in subparagraph (A) unless such corporation or trust permits its shareholders or beneficiaries'' for ''A corporation or trust described in this paragraph must permit its shareholders or beneficiaries'' in introductory text.

Subsec. (c)(25)(E), (F). Pub. L. 100–647, §1016(a)(3)(A), (4), added subpars. (E) and (F).

Subsec. (e)(1)(A). Pub. L. 100–647, §6202(a), inserted ''(including the purchasing of insurance on a group basis)'' after ''purchasing''.

Subsec. (m)(3)(E). Pub. L. 100–647, §1010(b)(4)(A), added subpar. (E).

Subsec. (m)(5). Pub. L. 100–647, §1010(b)(4)(B), added par. (5).

1987—Subsec. (c)(3). Pub. L. 100–203 inserted ''(or in opposition to)'' after ''in behalf of''.

1986—Subsec. (c)(1)(A)(i). Pub. L. 99–514, §1899A(15), substituted ''July 18, 1984'' for ''the date of the enactment of the Tax Reform Act of 1984''.

Subsec. (c)(14)(B)(iv). Pub. L. 99–514, §1879(k)(1), added cl. (iv).

Subsec. (c)(15). Pub. L. 99–514, §1024(b), amended par. (15) generally. Prior to amendment, par. (15) read as follows: ''Mutual insurance companies or associations other than life or marine (including inter-insurers and reciprocal underwriters) if the gross amount received during the taxable year from the items described in section 822(b) (other than paragraph (1)(D) thereof) and premiums (including deposits and assessments) does not exceed $150,000.''

Subsec. (c)(17)(A)(ii), (iii), (18)(B), (C). Pub. L. 99–514, §1114(b)(14), as amended by Pub. L. 100–647, §1018(u)(34), substituted ''highly compensated employees (within the meaning of section 414(q))'' for ''officers, shareholders, persons whose principal duties consist of supervising the work of other employees, or highly compensated employees''.

Subsec. (c)(18)(D). Pub. L. 99–514, §1109(a), added subpar. (D).

Subsec. (c)(24). Pub. L. 99–272 added par. (24).

Subsec. (c)(25). Pub. L. 99–514, §1603(a), added par. (25).

Subsecs. (m), (n). Pub. L. 99–514, §1012(a), added subsec. (m) and redesignated former subsec. (m) as (n).

1984—Subsec. (c)(1). Pub. L. 98–369, §2813(b)(2), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (c)(1)(A). Pub. L. 98–369, §1079, substituted provisions referring to corporations exempt from Federal income taxes under any Act of Congress as amended and supplemented before July 18, 1984, or under this title without regard to any provision of law not contained in this title and not contained in a revenue Act for provisions referring to corporations exempt from Federal income taxes under any Act of Congress as amended and supplemented.

Subsec. (k). Pub. L. 98–369, §1032(a), added subsec. (k). Former subsec. (k) redesignated (*l*).

Subsec. (*l*). Pub. L. 98–369, §2813(b)(1), added subsec. (*l*). Former subsec. (*l*) redesignated (m).

Pub. L. 98–369, §1032(a), redesignated former subsec. (k) as (*l*).

Subsec. (m). Pub. L. 98–369, §2813(b)(1), redesignated former subsec. (*l*) as (m).

1983—Subsec. (c)(23). Pub. L. 97–448 substituted ''75 percent'' for ''25 percent''.

1982—Subsec. (c)(19). Pub. L. 97–248, §354(a)(1), substituted ''past or present members of the Armed Forces of the United States'' for ''war veterans'' after ''A post or organization of''.

Subsec. (c)(19)(B). Pub. L. 97–248, §354(a)(2), substituted ''past or present members of the Armed Forces of the United States'' for ''war veterans'' wherever appearing, struck out ''veterans (but not war veterans), or are'' after ''individuals who are'', and substituted ''or of cadets'' for ''or such individuals'' before '', and''.

Subsec. (c)(23). Pub. L. 97–248, §354(b), added par. (23).

Subsecs. (j), (k). Pub. L. 97–248, §286(a), added subsec. (j) and redesignated former subsec. (j) as (k).

1981—Subsec. (c)(21)(B)(iii). Pub. L. 97–119 substituted ''established under section 9501'' for ''established under section 3 of the Black Lung Benefits Revenue Act of 1977''.

1980—Subsec. (c)(12). Pub. L. 96–605 designated existing provision as subpar. (A), struck out provision that, in the case of any mutual or cooperative telephone company, the 85 per cent or more income requirement be applied without taking into account any income received or accrued from a nonmember telephone company for the performance of communication services which involve members of such mutual or cooperative telephone company, and added subpars. (B) to (D).

Subsec. (c)(21). Pub. L. 96–222 substituted ''Federal Mine Safety and Health Act of 1977'' for ''Federal Coal Mine Health and Safety Act of 1969''.

Subsec. (c)(22). Pub. L. 96–364 added par. (22).

Subsec. (i). Pub. L. 96–601 inserted provision that the restriction on religious discrimination not apply to an auxiliary of a fraternal beneficiary society if the society is described in subsec. (c)(8) of this section, is exempt from income tax under subsec. (a) of this section, and limits its membership to the members of a particular religion or to a club which in good faith limits its membership to the members of a particular religion in order to further the teachings or principles of that religion, and not to exclude individuals of a particular race or color.

1978—Subsec. (c)(12). Pub. L. 95–345 inserted provision relating to applicability of statutory provisions to mutual or cooperative telephone company of income received or accrued from a nonmember telephone company.

Subsec. (c)(20). Pub. L. 95–600, §703(b)(2), substituted ''this paragraph'' for ''section 501(c)(20)''.

Subsec. (c)(21). Pub. L. 95–227 added par. (21).

Subsecs. (g), (i). Pub. L. 95–600, §703(g)(2)(B), redesignated subsec. (g), which was added by section 2(a) of Pub. L. 94–568, as subsec. (i). Former subsec. (i), relating to cross reference, redesignated (j).

Subsecs. (i), (j). Pub. L. 95–600, §703(g)(2)(A), amended Pub. L. 95–600, §2(a). See 1976 Amendment note below.

1976—Subsec. (c)(3). Pub. L. 94–455, §§1313(a), 1307(d)(1)(A), inserted ''or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment)'' after ''educational purposes'' and inserted ''(except as otherwise provided in subsection (h))'' after ''influence legislation''.

Subsec. (c)(7). Pub. L. 94–568, §1(a), struck out requirement that clubs be ''operated exclusively'' for specified purposes but required that substantially all of club activities be for specified purposes.

Subsec. (c)(17), (18). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c)(20). Pub. L. 94–455, §2134(b), added par. (20).

Subsec. (e)(1)(A). Pub. L. 94–455, §1312(a), inserted ''clinical'' after ''food''.

Subsec. (g). Pub. L. 94–568, §2(a), added subsec. (g) relating to prohibition of discrimination by certain social clubs.

Pub. L. 94–455, §2113(a), added subsec. (g) defining agricultural. Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 94–455, §§1307(a)(1), 2113(a), added subsec. (h). Former subsec. (g), relating to cross reference, redesignated (h) and further redesignated (i).

Subsec. (i). Pub. L. 94–568, §2(a), as amended by Pub. L. 95–600, §703(g)(2)(A), added subsec. (i). Former subsec. (i) redesignated (j).

Pub. L. 94–455, §1307(a)(1), redesignated subsec. (h), relating to cross reference, as (i).

Subsec. (j). Pub. L. 94–568, §2(a), as amended by Pub. L. 95–600, §703(g)(2)(A), redesignated subsec. (i), relating to cross reference, as (j).

1975—Subsec. (b). Pub. L. 93–625 inserted references to part VI of this subchapter.

1974—Subsecs. (f), (g). Pub. L. 93–310 added subsec. (f) and redesignated former subsec. (f) as (g).

1972—Subsec. (c)(19). Pub. L. 92–418 added par. (19).

1970—Subsec. (c)(13). Pub. L., 91–618 substituted ''corporation chartered solely for the purpose of disposal of bodies by burial or cremation which is not permitted'' for ''corporation chartered solely for burial purposes as a cemetery corporation and is not permitted''.

1969—Subsec. (a). Pub. L. 91–172, §101(j)(3), struck out reference to section 504.

Subsec. (b). Pub. L. 91–172, §101(j)(4), inserted reference to certain other activities in heading and to part III in text, and struck out reference to tax on unrelated income.

Subsec. (c). Pub. L. 91–172, §§101(j)(5), 121(b)(6)(A), substituted ''part IV'' for ''part III'' after ''Corporations organized by an association subject to'' and added par. 18.

Subsec. (c)(9). Pub. L. 91–172, §121(b)(5)(A), inserted reference to designated beneficiaries and struck out

reference to 85 percent or more income of voluntary employees' beneficiary associations.

Subsec. (c)(10). Pub. L. 91–172, § 121(b)(5)(A), substituted provisions concerning domestic fraternal societies, orders, or associations, operating under the lodge system, for provisions covering voluntary employees' beneficiary associations which would pay benefits to designated beneficiaries of members.

Subsec. (e). Pub. L. 91–172, § 101(j)(6), substituted ''section 170(b)(1)(A)(iii)'' for ''section 503(b)(5)'' in last sentence.

1968—Subsecs. (e), (f). Pub. L. 90–364 added subsec. (e) and redesignated former subsec. (e) as (f).

1966—Subsec. (c)(6). Pub. L. 89–800 inserted reference to professional football leagues (whether or not administering a pension fund for football players).

Subsec. (c)(14). Pub. L. 89–352 designated as subpar. (A) provisions covering credit unions which were formerly set out preceding subpar. (A), designated as subpar. (B) and clauses (i), (ii), and (iii) thereunder provisions covering corporation or associations without capital stock organized before Sept. 1, 1957, which formerly were set out as provisions preceding subpar. (A) and as subpars. (A), (B), and (C) respectively, and added subpar. (C).

1962—Subsec. (c)(15). Pub. L. 87–834 substituted ''$150,000'' for ''$75,000''.

1960—Subsec. (c)(14). Pub. L. 86–428 substituted ''September 1, 1957'' for ''September 1, 1951''.

Subsec. (c)(17). Pub. L. 86–667 added par. (17).

1956—Subsec. (c)(15). Act Mar. 13, 1956, substituted ''the items described in section 822(b) (other than paragraph (1)(D) thereof)'' for ''interest, dividends, rents,''.

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–113 applicable to contributions made on and after Dec. 18, 2015, see section 331(c) of Pub. L. 114–113, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113–295, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–148, title IX, § 9007(f), Mar. 23, 2010, 124 Stat. 858, provided that:

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section [enacting section 4959 of this title and amending this section and section 6033 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Mar. 23, 2010].

''(2) COMMUNITY HEALTH NEEDS ASSESSMENT.—The requirements of section 501(r)(3) of the Internal Revenue Code of 1986, as added by subsection (a), shall apply to taxable years beginning after the date which is 2 years after the date of the enactment of this Act.

''(3) EXCISE TAX.—The amendments made by subsection (b) [enacting section 4959 of this title] shall apply to failures occurring after the date of the enactment of this Act.''

Pub. L. 111–148, title X, § 10903(b), Mar. 23, 2010, 124 Stat. 1016, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Mar. 23, 2010].''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title VIII, § 862(b), Aug. 17, 2006, 120 Stat. 1021, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2006.''

Pub. L. 109–280, title XII, § 1220(c), Aug. 17, 2006, 120 Stat. 1089, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 513 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 17, 2006].

''(2) TRANSITION RULE FOR EXISTING ORGANIZATIONS.—In the case of any organization described in paragraph (3) or (4) of section 501(c) of the Internal Revenue Code of 1986 and with respect to which the provision of credit counseling services is a substantial purpose on the date of the enactment of this Act, the amendments made by this section shall apply to taxable years beginning after the date which is 1 year after the date of the enactment of this Act.''

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–58, title XIII, § 1304(c), Aug. 8, 2005, 119 Stat. 997, provided that: ''The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Aug. 8, 2005].''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title III, § 319(e), Oct. 22, 2004, 118 Stat. 1473, provided that: ''The amendments made by this section [amending this section and sections 512 and 1381 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 22, 2004].''

Pub. L. 108–218, title II, § 206(e), Apr. 10, 2004, 118 Stat. 611, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 831 of this title] shall apply to taxable years beginning after December 31, 2003.

''(2) TRANSITION RULE FOR COMPANIES IN RECEIVERSHIP OR LIQUIDATION.—In the case of a company or association which—

''(A) for the taxable year which includes April 1, 2004, meets the requirements of section 501(c)(15)(A) of the Internal Revenue Code of 1986, as in effect for the last taxable year beginning before January 1, 2004, and

''(B) on April 1, 2004, is in a receivership, liquidation, or similar proceeding under the supervision of a State court,

the amendments made by this section shall apply to taxable years beginning after the earlier of the date such proceeding ends or December 31, 2007.''

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–121, title I, § 105(b), Nov. 11, 2003, 117 Stat. 1338, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Nov. 11, 2003].''

Pub. L. 108–121, title I, § 108(b), Nov. 11, 2003, 117 Stat. 1341, provided that: ''The amendments made by this section [amending this section] shall apply to designations made before, on, or after the date of the enactment of this Act [Nov. 11, 2003].''

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to years beginning after Dec. 31, 2001, see section 611(i)(1) of Pub. L. 107–16, set out as a note under section 415 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 101(c) of Pub. L. 105–34 applicable to taxable years beginning after Dec. 31, 1997, see section 101(e) of Pub. L. 105–34, set out as an Effective Date note under section 24 of this title.

Pub. L. 105–34, title IX, § 963(c), Aug. 5, 1997, 111 Stat. 892, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997.''

Pub. L. 105–34, title IX, § 974(b), Aug. 5, 1997, 111 Stat. 898, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1996.''

Pub. L. 105–33, title IV, § 4041(b), Aug. 5, 1997, 111 Stat. 360, provided that: ''The amendment made by sub-

section (a) [amending this section] shall take effect on the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–191, title III, §341(b), Aug. 21, 1996, 110 Stat. 2070, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1996.''

Pub. L. 104–191, title III, §342(b), Aug. 21, 1996, 110 Stat. 2071, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Aug. 21, 1996].''

Pub. L. 104–188, title I, §1114(b), Aug. 20, 1996, 110 Stat. 1760, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 20, 1996].''

Pub. L. 104–168, title XIII, §1311(d)(3), July 30, 1996, 110 Stat. 1478, provided that:

''(A) IN GENERAL.—The amendment made by subsection (b) [amending this section] shall apply to inurement occurring on or after September 14, 1995.

''(B) BINDING CONTRACTS.—The amendment made by subsection (b) shall not apply to any inurement occurring before January 1, 1997, pursuant to a written contract which was binding on September 13, 1995, and at all times thereafter before such inurement occurred.''

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13146(c), Aug. 10, 1993, 107 Stat. 443, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning on or after January 1, 1994.''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–486 applicable to taxable years beginning after Dec. 31, 1991, see section 1940(d) of Pub. L. 102–486, set out as a note under section 192 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–73, title XIV, §1402(b), Aug. 9, 1989, 103 Stat. 551, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Aug. 9, 1989].''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011(c)(7)(D) of Pub. L. 100–647 applicable to plan years beginning after Dec. 31, 1987, with exception in case of a plan described in section 1105(c)(2) of Pub. L. 99–514, see section 1011(c)(7)(E) of Pub. L. 100–647, set out as a note under section 401 of this title.

Pub. L. 100–647, title I, §1016(a)(1)(B), Nov. 10, 1988, 102 Stat. 3573, provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply with respect to property acquired by the organization after June 10, 1987, except that such amendment shall not apply to any property acquired after June 10, 1987, pursuant to a binding written contract in effect on June 10, 1987, and at all times thereafter before such acquisition.''

Amendment by sections 1010(b)(4), 1016(a)(2)–(4), and 1018(u)(14), (15), (34) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title II, §2003(a)(3), Nov. 10, 1988, 102 Stat. 3598, provided that: ''The amendments made by this subsection [amending this section] shall apply to taxable years ending after the date of the enactment of the Omnibus Budget Reconciliation Act of 1986 [Oct. 21, 1986].''

Pub. L. 100–647, title VI, §6202(b), Nov. 10, 1988, 102 Stat. 3730, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to purchases before, on, or after the date of the enactment of this Act [Nov. 10, 1988].''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable with respect to activities after Dec. 22, 1987, see section 10711(c) of Pub. L. 100–203, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1012(a) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1012(c) of Pub. L. 99–514, set out as an Effective Date note under section 833 of this title.

Amendment by section 1024(b) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1024(e) of Pub. L. 99–514, set out as a note under section 831 of this title.

Amendment by section 1109(a) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1109(c) of Pub. L. 99–514, set out as a note under section 219 of this title.

Amendment by section 1114(b)(14) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, see section 1114(c)(1) of Pub. L. 99–514, set out as a note under section 414 of this title.

Pub. L. 99–514, title XVI, §1603(c), Oct. 22, 1986, 100 Stat. 2769, provided that: ''The amendments made by this section [amending this section and section 514 of this title] shall apply to taxable years beginning after December 31, 1986.''

Pub. L. 99–514, title XVIII, §1879(k)(2), Oct. 22, 1986, 100 Stat. 2909, provided that: ''The amendments made by this subsection [amending this section] shall apply to taxable years ending after August 13, 1981.''

Amendment by Pub. L. 99–272 effective Jan. 1, 1986, with certain exceptions, see section 11019 of Pub. L. 99–272, set out as a note under section 1341 of Title 29, Labor.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 1032 of Pub. L. 98–369 applicable to taxable years beginning after July 18, 1984, see section 1032(c) of Pub. L. 98–369, set out as a note under section 170 of this title.

Amendment by section 2813(b) of Pub. L. 98–369 effective Oct. 1, 1979, see section 2813(c) of Pub. L. 98–369, set out as an Effective Date note under section 1795k of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective as if included in the provisions of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 311(d) of Pub. L. 97–448, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title II, §286(c), Sept. 3, 1982, 96 Stat. 570, provided that: ''The amendments made by this section [amending this section and sections 170, 2055, and 2522 of this title] shall take effect on October 5, 1976.''

Pub. L. 97–248, title III, §354(c), Sept. 3, 1982, 96 Stat. 641, provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Sept. 3, 1982].''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–119 effective Jan. 1, 1982, see section 103(d)(1) of Pub. L. 97–119, set out as an Effective Date note under section 9501 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–605, title I, §106(c)(1), Dec. 28, 1980, 94 Stat. 3524, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to all taxable years to which the Internal Revenue Code of 1986 [formerly I.R.C. 1954] applies.''

Pub. L. 96–601, §3(b), Dec. 24, 1980, 94 Stat. 3496, provided that: ''The amendment made by subsection (a)

[amending this section] shall apply to taxable years beginning after October 20, 1976.''

Amendment by Pub. L. 96–364 applicable to taxable years ending after Sept. 26, 1980, see section 210(c) of Pub. L. 96–364, set out as an Effective Date note under section 194A of this title.

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as an Effective Date of 1980 Amendment note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 703(b)(2), (g)(2)(B) of Pub. L. 95–600 effective on Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as a note under section 46 of this title.

Pub. L. 95–600, title VII, § 703(g)(2)(C), Nov. 6, 1978, 92 Stat. 2940, provided that: ''The amendments made by this paragraph [amending this section] shall take effect on October 20, 1976, as if included in Public Law 94–568.''

Pub. L. 95–345, § 1(b), Aug. 15, 1978, 92 Stat. 481, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1974.''

Amendment by Pub. L. 95–227 applicable with respect to contributions, acts, and expenditures made after Dec. 31, 1977, in and for taxable years beginning after such date, see section 4(f) of Pub. L. 95–227, set out as a note under section 192 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–568, § 1(d), Oct. 20, 1976, 90 Stat. 2697, provided that: ''The amendments made by this section [amending this section and sections 277 and 512 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 20, 1976].''

Pub. L. 94–568, § 2(b), Oct. 20, 1976, 90 Stat. 2697, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 20, 1976].''

Pub. L. 94–455, title XIII, § 1307(e), Oct. 4, 1976, 90 Stat. 1728, provided that: ''The amendments made by this section [amending this section and sections 170, 275, 2055, 2106, 2522, 6104, 6161, 6201, 6211, 6212, 6213, 6214, 6344, 6501, 6512, 6601, and 7422 of this title and enacting sections 504 and 4911 of this title] shall apply—

''(1) except as otherwise specified in paragraph (2), in the case of amendments to subtitle A, to taxable years beginning after December 31, 1976;

''(2) in the case of the amendments made by subsection (a)(2) [enacting section 504 of this title], to activities occurring after the date of the enactment of this Act [Oct. 4, 1976];

''(3) in the case of amendments to chapter 11, to the estates of decedents dying after December 31, 1976;

''(4) in the case of amendments to chapter 12, to gifts in calendar years beginning after December 31, 1976;

''(5) in the case of amendments to subtitle D, to taxable years beginning after December 31, 1976; and

''(6) in the case of amendments to subtitle F, on and after the date of the enactment of this Act [Oct. 4, 1976].''

Pub. L. 94–455, title XIII, § 1312(b), Oct. 4, 1976, 90 Stat. 1730, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years ending after December 31, 1976.''

Pub. L. 94–455, title XIII, § 1313(d), Oct. 4, 1976, 90 Stat. 1730, provided that: ''The amendments made by this section [amending this section and sections 170, 2055, and 2522 of this title] shall apply on the day following the date of the enactment of this Act [Oct. 4, 1976].''

Pub. L. 94–455, title XXI, § 2113(b), Oct. 4, 1976, 90 Stat. 1907, provided that: ''The amendment made by this section [amending this section] applies to taxable years ending after December 31, 1975.''

Pub. L. 94–455, title XXI, § 2134(e), Oct. 4, 1976, 90 Stat. 1928, as amended by Pub. L. 95–600, title VII, § 703(b)(1), Nov. 6, 1978, 92 Stat. 2939; Pub. L. 97–34, title VIII, § 802(b), Aug. 13, 1981, 95 Stat. 349; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting section 120 of this title and amending this section] shall apply to taxable years beginning after December 31, 1976.

''(2) NOTICE REQUIREMENT.—For purposes of [former] section 120(d)(7) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] the time prescribed by the Secretary of the Treasury by regulations for giving the notice required by section 120(c)(4) of such Code shall not expire before the 90th day after the day on which regulations prescribed under such section 120(c)(4) first become final.

''(3) EXISTING PLANS.—

''(A) For purposes of [former] section 120 of the Internal Revenue Code of 1986, a written group legal services plan which was in existence on June 4, 1976, shall be considered as satisfying the requirements of subsections (b) and (c) of such section 120 for the period ending with the compliance date (determined under subparagraph (B)).

''(B) COMPLIANCE DATE.—For purposes of this paragraph, the term 'compliance date' means—

''(i) the date occurring 180 days after the date of the enactment of this Act [Oct. 4, 1976], or

''(ii) if later, in the case of a plan which is maintained pursuant to one or more agreements which the Secretary of Labor finds to be collective bargaining agreements, the earlier of December 31, 1981, or the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act [Oct. 4, 1976]).''

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–625 applicable to taxable years beginning after Dec. 31, 1974, see section 10(e) of Pub. L. 93–625, set out as an Effective Date note under section 527 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93–310, § 3(b), June 8, 1974, 88 Stat. 235, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years ending after December 31, 1973.''

EFFECTIVE DATE OF 1972 AMENDMENT

Pub. L. 92–418, § 1(c), Aug. 29, 1972, 86 Stat. 656, provided that: ''The amendments made by this section [amending this section and section 512 of this title] shall apply to taxable years beginning after December 31, 1969.''

EFFECTIVE DATE OF 1970 AMENDMENT

Pub L. 91–618, § 2, Dec. 31, 1970, 84 Stat. 1855, provided that: ''The amendment made by the first section of this Act [amending this section] shall apply to taxable years ending after the date of enactment of this Act [Dec. 31, 1970].''

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 101(j)(3) of Pub. L. 91–172 effective Jan. 1, 1970, except that amendment of subsec. (a) of this section applicable to taxable years beginning after Dec. 31, 1969, see section 101(k)(1), (2)(B) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

Amendment by section 121(b)(5)(A), (6)(A) of Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 121(g) of Pub. L. 91–172, set out as a note under section 511 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Pub. L. 90–364, title I, § 109(b), June 28, 1968, 82 Stat. 270, provided that: ''The amendments made by sub-

section (a) [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [June 28, 1968].''

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89–800, §6(c), Nov. 8, 1966, 80 Stat. 1516, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Nov. 8, 1966].''

Pub. 89–352, §3, Feb. 2, 1966, 80 Stat. 4, provided in part that: ''The amendment made by the first section of this Act [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Feb. 2, 1966].''

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87–834, §8(h), Oct. 16, 1962, 76 Stat. 999, provided that: ''The amendments made by this section [enacting sections 823 to 826 of this title, amending this section and sections 821, 822, 832, 841, 1016, and 1201 of this title, and redesignating former section 823 as section 822(f) of this title] (other than by subsection (f) [amending section 831 of this title]) shall apply with respect to taxable years beginning after December 31, 1962.''

EFFECTIVE DATE OF 1960 AMENDMENT

Pub. L. 86–667, §6, July 14, 1960, 74 Stat. 536, provided that:

''(a) Except as provided in subsection (b), the amendments made by this Act [amending this section and sections 503, 511, 513, and 514 of this title] shall apply to taxable years beginning after December 31, 1959.

''(b) In the case of loans, the amendments made by section 2 of this Act [amending section 503 of this title] shall apply only to loans made, renewed, or continued after December 31, 1959.''

Pub. L. 86–428, §2, Apr. 22, 1960, 74 Stat. 54, provided that: ''The amendment made by this Act [amending this section] shall apply only with respect to taxable years beginning after December 31, 1959.''

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Mar. 13, 1956, applicable only to taxable years beginning after Dec. 31, 1954, see section 6 of act Mar. 13, 1956, set out as a note under section 316 of this title.

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

MANDATORY REVIEW OF TAX EXEMPTION FOR HOSPITALS

Pub. L. 111–148, title IX, §9007(c), Mar. 23, 2010, 124 Stat. 857, provided that: ''The Secretary of the Treasury or the Secretary's delegate shall review at least once every 3 years the community benefit activities of each hospital organization to which section 501(r) of the Internal Revenue Code of 1986 (as added by this section) applies.''

REPORTS

Pub. L. 111–148, title IX, §9007(e), Mar. 23, 2010, 124 Stat. 858, provided that:

''(1) REPORT ON LEVELS OF CHARITY CARE.—The Secretary of the Treasury, in consultation with the Secretary of Health and Human Services, shall submit to the Committees on Ways and Means, Education and Labor [now Education and the Workforce], and Energy and Commerce of the House of Representatives and to the Committees on Finance and Health, Education, Labor, and Pensions of the Senate an annual report on the following:

''(A) Information with respect to private tax-exempt, taxable, and government-owned hospitals regarding—

''(i) levels of charity care provided,

''(ii) bad debt expenses,

''(iii) unreimbursed costs for services provided with respect to means-tested government programs, and

''(iv) unreimbursed costs for services provided with respect to non-means tested government programs.

''(B) Information with respect to private tax-exempt hospitals regarding costs incurred for community benefit activities.

''(2) REPORT ON TRENDS.—

''(A) STUDY.—The Secretary of the Treasury, in consultation with the Secretary of Health and Human Services, shall conduct a study on trends in the information required to be reported under paragraph (1).

''(B) REPORT.—Not later than 5 years after the date of the enactment of this Act [Mar. 23, 2010], the Secretary of the Treasury, in consultation with the Secretary of Health and Human Services, shall submit a report on the study conducted under subparagraph (A) to the Committees on Ways and Means, Education and Labor [now Education and the Workforce], and Energy and Commerce of the House of Representatives and to the Committees on Finance and Health, Education, Labor, and Pensions of the Senate.''

PAYMENTS BY CHARITABLE ORGANIZATIONS TREATED AS EXEMPT PAYMENTS

Pub. L. 107–134, title I, §104, Jan. 23, 2002, 115 Stat. 2431, provided that:

''(a) IN GENERAL.—For purposes of the Internal Revenue Code of 1986—

''(1) payments made by an organization described in section 501(c)(3) of such Code by reason of the death, injury, wounding, or illness of an individual incurred as the result of the terrorist attacks against the United States on September 11, 2001, or an attack involving anthrax occurring on or after September 11, 2001, and before January 1, 2002, shall be treated as related to the purpose or function constituting the basis for such organization's exemption under section 501 of such Code if such payments are made in good faith using a reasonable and objective formula which is consistently applied; and

''(2) in the case of a private foundation (as defined in section 509 of such Code), any payment described in paragraph (1) shall not be treated as made to a disqualified person for purposes of section 4941 of such Code.

''(b) EFFECTIVE DATE.—This section shall apply to payments made on or after September 11, 2001.''

SPECIAL RULE FOR CERTAIN COOPERATIVES

Pub. L. 104–168, title XIII, §1311(b)(2), July 30, 1996, 110 Stat. 1478, provided that: ''In the case of an organization operating on a cooperative basis which, before the date of the enactment of this Act [July 30, 1996], was determined by the Secretary of the Treasury or his delegate, to be described in section 501(c)(4) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code, the allocation or return of net margins or capital to the members of such organization in accordance with its incorporating statute and bylaws shall not be treated for purposes of such Code as the inurement of the net earnings of such organization to the benefit of any private shareholder or individual. The preceding sentence shall apply only if such statute and bylaws are substantially as such statute and bylaws were in existence on the date of the enactment of this Act.''

APPLICATION OF PUB. L. 100–647 TO SECTION 501(c)(3) BONDS

Pub. L. 100–647, title I, §1013(i), Nov. 10, 1988, 102 Stat. 3559, provided that: ''In accordance with section 1302 of

the Reform Act [Pub. L. 99–514, set out as a note below], each amendment and other provision of this Act [see Tables for classification] which applies to private activity bonds shall, unless otherwise expressly provided, apply to qualified 501(c)(3) bonds.''

CANCELLATION OF CERTAIN DEBTS ORIGINATED BY OR GUARANTEED BY UNITED STATES NOT TAKEN INTO ACCOUNT IN DETERMINING TAX EXEMPT STATUS OF CERTAIN ORGANIZATIONS

Pub. L. 100–647, title VI, § 6203, Nov. 10, 1988, 102 Stat. 3730, provided that: ''Subparagraph (A) of section 501(c)(12) of the 1986 Code shall be applied without taking into account any income attributable to the cancellation of any loan originally made or guaranteed by the United States (or any agency or instrumentality thereof) if such cancellation occurs after 1986 and before 1990.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TREATMENT OF SECTION 501(c)(3) BONDS

Pub. L. 99–514, title XIII, § 1302, Oct. 22, 1986, 100 Stat. 2658, provided that: ''Nothing in the treatment of section 501(c)(3) bonds as private activity bonds under the amendments made by this title [enacting sections 141 to 150 and 7703 of this title, amending sections 2, 22, 25, 32, 86, 103, 105, 152, 153, 163, 172, 194, 269A, 414, 879, 1016, 1398, 3402, 4701, 4940, 4942, 4988, 6362, 6652, and 7871 of this title, repealing sections 103A, 1391 to 1397, and 6039B of this title, enacting provisions set out as notes under sections 141 and 148 of this title, and amending provisions set out as a note under section 103A of this title] shall be construed as indicating how section 501(c)(3) bonds will be treated in future legislation, and any change in future legislation applicable to private activity bonds shall apply to section 501(c)(3) bonds only if expressly provided in such legislation.''

TAX-EXEMPT STATUS FOR ORGANIZATION INTRODUCING INTO PUBLIC USE TECHNOLOGY DEVELOPED BY QUALIFIED ORGANIZATIONS

Pub. L. 99–514, title XVI, § 1605, Oct. 22, 1986, 100 Stat. 2769, provided that:

''(a) IN GENERAL.—For purposes of the Internal Revenue Code of 1986, an organization shall be treated as an organization organized and operated exclusively for charitable purposes if such organization—

''(1) is organized and operated exclusively—

''(A) to provide for (directly or by arranging for and supervising the performance by independent contractors)—

''(i) reviewing technology disclosures from qualified organizations,

''(ii) obtaining protection for such technology through patents, copyrights, or other means, and

''(iii) licensing, sale, or other exploitation of such technology,

''(B) to distribute the income therefrom, to such qualified organizations after paying expenses and other amounts as agreed with the originating qualified organizations, and

''(C) to make research grants to such qualified organizations,

''(2) regularly provides the services and research grants described in paragraph (1) exclusively to 1 or more qualified organizations, except that research grants may be made to such qualified organizations through an organization which is controlled by 1 or more organizations each of which—

''(A) is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 or the income of which is excluded from taxation under section 115 of such Code, and

''(B) may be a recipient of the services or research grants described in paragraph (1),

''(3) derives at least 80 percent of its gross revenues from providing services to qualified organizations located in the same State as the State in which such organization has its principal office, and

''(4) was incorporated on July 20, 1981.

''(b) QUALIFIED ORGANIZATIONS.—For purposes of this section, the term 'qualified organization' has the same meaning given to such term by subparagraphs (A) and (B) of section 41(e)(6) (as redesignated by section 231(d)(2)) of the Internal Revenue Code of 1986.

''(c) TREATMENT OF INVESTMENT IN A TECHNOLOGY TRANSFER SERVICE ORGANIZATION.—

''(1) IN GENERAL.—A qualified investment made by a private foundation in an organization described in subparagraph (C) shall be treated as an investment described in section 4944(c) of the Internal Revenue Code of 1986 and shall not result in imposition of taxes under section 4941, 4943, 4944, 4945, or 507(c) of such Code.

''(2) DEFINITIONS.—For purposes of this subsection—

''(A) QUALIFIED INVESTMENT.—The term 'qualified investment' means a transfer by a private foundation of—

''(i) all of the patents, copyrights, know-how, and other technology or rights thereto of the private foundation, and

''(ii) investment assets, net receivables, and cash not exceeding $35,000,000,

to such organization in exchange for debt.

''(B) PRIVATE FOUNDATION.—The term 'private foundation' means—

''(i) a nonprofit corporation which was incorporated before 1913 which is described in sections 501(c)(3) and 509(a) of such Code, and which is exempt from taxation under section 501(a) of such Code, and

''(ii) the principal purposes of which are to support research by and to provide technology transfer services to organizations described in section 170(b)(1)(A) of such Code—

''(I) which are exempt from taxation under section 501(a) of such Code, or

''(II) the income of which is excluded from taxation under section 115 of such Code.

''(C) TECHNOLOGY TRANSFER ORGANIZATION.—The term 'technology transfer organization' means a corporation established after the date of the enactment of this Act [Oct. 22, 1986]—

''(i) which is organized and operated to advance the public welfare through the provision of technology transfer services to research organizations,

''(ii) no part of the net earnings of which inures to the benefit of, or is distributable to, any private shareholder, individual, or entity, other than a private foundation or research organization,

''(iii) which does not participate in, or intervene in (including the publishing or distributing of statements) any political campaign on behalf of any candidate for public office,

''(iv) no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and

''(v) upon liquidation or dissolution of which all of its net assets can be distributed only to research organizations.

''(d) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this Act [Oct. 22, 1986].''

APPLICABILITY OF 1976 AMENDMENT TO CERTAIN ORGANIZATIONS

Pub. L. 94–455, title XIII, § 1313(c), Oct. 4, 1976, 90 Stat. 1730, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''An organization which

(without regard to the amendments made by this section [amending this section and sections 170, 2055, and 2522 of this title]) is an organization described in section 170(c)(2)(B), 501(c)(3), 2055(a)(2), or 2522(a)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall not be treated as an organization not so described as a result of the amendments made by this section.''

TAX EXEMPTION FOR CERTAIN PUERTO RICAN PENSION, ETC., PLANS

Pub. L. 93–406, title II, § 1022(i), Sept. 2, 1974, 88 Stat. 942, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) GENERAL RULE.—Effective for taxable years beginning after December 31, 1973, for purposes of section 501(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to exemption from tax), any trust forming part of a pension, profit-sharing, or stock bonus plan all of the participants of which are residents of the Commonwealth of Puerto Rico shall be treated as an organization described in section 401(a) of such Code if such trust—

''(A) forms part of a pension, profit-sharing, or stock bonus plan, and

''(B) is exempt from income tax under the laws of the Commonwealth of Puerto Rico.

''(2) ELECTION TO HAVE PROVISIONS OF, AND AMENDMENTS MADE BY, TITLE II OF THIS ACT APPLY.—

''(A) If the administrator of a pension, profit-sharing, or stock bonus plan which is created or organized in Puerto Rico elects, at such time and in such manner as the Secretary of the Treasury may require, to have the provisions of this paragraph apply, for plan years beginning after the date of election any trust forming a part of such plan shall be treated as a trust created or organized in the United States for purposes of section 401(a) of the Internal Revenue Code of 1986.

''(B) An election under subparagraph (A), once made, is irrevocable.

''(C) This paragraph applies to plan years beginning after the date of enactment of this Act [Sept. 2, 1974]

''(D) The source of any distributions made under a plan which makes an election under this paragraph to participants and beneficiaries residing outside of the United States shall be determined, for purposes of subchapter N of chapter 1 of the Internal Revenue Code of 1986 by the Secretary of the Treasury in accordance with regulations prescribed by him. For purposes of this subparagraph the United States means the United States as defined in section 7701(a)(9) of the Internal Revenue Code of 1986.''

EXCHANGES FOR SALE OF POULTRY

Pub. L. 89–44, title VIII, § 811, June 21, 1965, 79 Stat. 169, provided that certain corporations, associations, or organizations organized and operated exclusively for the purpose of providing an exchange for the sale of poultry growers of a particular locality shall be treated for purposes of this title as an exempt organization and that such exemption shall apply to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, which begin before Jan. 1, 1966.

§ 502. Feeder organizations

(a) General rule

An organization operated for the primary purpose of carrying on a trade or business for profit shall not be exempt from taxation under section 501 on the ground that all of its profits are payable to one or more organizations exempt from taxation under section 501.

(b) Special rule

For purposes of this section, the term ''trade or business'' shall not include—

(1) the deriving of rents which would be excluded under section 512(b)(3), if section 512 applied to the organization,

(2) any trade or business in which substantially all the work in carrying on such trade or business is performed for the organization without compensation, or

(3) any trade or business which is the selling of merchandise, substantially all of which has been received by the organization as gifts or contributions.

(Aug. 16, 1954, ch. 736, 68A Stat. 166; Pub. L. 91–172, title I, § 121(b)(7), Dec. 30, 1969, 83 Stat. 542.)

AMENDMENTS

1969—Pub. L. 91–172 redesignated first sentence of existing provisions as subsec. (a), and substantial portion of second sentence as subsec. (b)(1), and, in subsec. (b)(1) as so redesignated, inserted reference to section 512 of this title, and added pars. (2) and (3).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 121(g) of Pub. L. 91–172, set out as a note under section 511 of this title.

§ 503. Requirements for exemption

(a) Denial of exemption to organizations engaged in prohibited transactions

(1) General rule

An organization described in paragraph (17) or (18) of section 501(c), or described in section 401(a) and referred to in section 4975(g) (2) or (3), shall not be exempt from taxation under section 501(a) if it has engaged in a prohibited transaction.

(2) Taxable years affected

An organization described in paragraph (1) shall be denied exemption from taxation under section 501(a) by reason of paragraph (1) only for taxable years after the taxable year during which it is notified by the Secretary that it has engaged in a prohibited transaction, unless such organization entered into such prohibited transaction with the purpose of diverting corpus or income of the organization from its exempt purposes, and such transaction involved a substantial part of the corpus or income of such organization.

(b) Prohibited transactions

For purposes of this section, the term ''prohibited transaction'' means any transaction in which an organization subject to the provisions of this section—

(1) lends any part of its income or corpus, without the receipt of adequate security and a reasonable rate of interest, to;

(2) pays any compensation, in excess of a reasonable allowance for salaries or other compensation for personal services actually rendered, to;

(3) makes any part of its services available on a preferential basis to;

(4) makes any substantial purchase of securities or any other property, for more than adequate consideration in money or money's worth, from;

(5) sells any substantial part of its securities or other property, for less than an adequate consideration in money or money's worth, to; or

(6) engages in any other transaction which results in a substantial diversion of its income or corpus to;

the creator of such organization (if a trust); a person who has made a substantial contribution to such organization; a member of the family (as defined in section 267(c)(4)) of an individual who is the creator of such trust or who has made a substantial contribution to such organization; or a corporation controlled by such creator or person through the ownership, directly or indirectly, of 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 of the corporation.

(c) Future status of organizations denied exemption

Any organization described in subsection (a)(1) which is denied exemption under section 501(a) by reason of subsection (a) of this section, with respect to any taxable year following the taxable year in which notice of denial of exemption was received, may, under regulations prescribed by the Secretary, file claim for exemption, and if the Secretary, pursuant to such regulations, is satisfied that such organization will not knowingly again engage in a prohibited transaction, such organization shall be exempt with respect to taxable years after the year in which such claim is filed.

[(d) Repealed. Pub. L. 101–508, title XI, § 11801(a)(22), Nov. 5, 1990, 104 Stat. 1388–521]

(e) Special rules

For purposes of subsection (b)(1), a bond, debenture, note, or certificate or other evidence of indebtedness (hereinafter in this subsection referred to as ''obligation'') shall not be treated as a loan made without the receipt of adequate security if—

(1) such obligation is acquired—

(A) on the market, either (i) at the price of the obligation prevailing on a national securities exchange which is registered with the Securities and Exchange Commission, or (ii) if the obligation is not traded on such a national securities exchange, at a price not less favorable to the trust than the offering price for the obligation as established by current bid and asked prices quoted by persons independent of the issuer;

(B) from an underwriter, at a price (i) not in excess of the public offering price for the obligation as set forth in a prospectus or offering circular filed with the Securities and Exchange Commission, and (ii) at which a substantial portion of the same issue is acquired by persons independent of the issuer; or

(C) directly from the issuer, at a price not less favorable to the trust than the price paid currently for a substantial portion of the same issue by persons independent of the issuer;

(2) immediately following acquisition of such obligation—

(A) not more than 25 percent of the aggregate amount of obligations issued in such issue and outstanding at the time of acquisition is held by the trust, and

(B) at least 50 percent of the aggregate amount referred to in subparagraph (A) is held by persons independent of the issuer; and

(3) immediately following acquisition of the obligation, not more than 25 percent of the assets of the trust is invested in obligations of persons described in subsection (b).

(f) Loans with respect to which employers are prohibited from pledging certain assets

Subsection (b)(1) shall not apply to a loan made by a trust described in section 401(a) to the employer (or to a renewal of such a loan or, if the loan is repayable upon demand, to a continuation of such a loan) if the loan bears a reasonable rate of interest, and if (in the case of a making or renewal)—

(1) the employer is prohibited (at the time of such making or renewal) by any law of the United States or regulation thereunder from directly or indirectly pledging, as security for such a loan, a particular class or classes of his assets the value of which (at such time) represents more than one-half of the value of all his assets;

(2) the making or renewal, as the case may be, is approved in writing as an investment which is consistent with the exempt purposes of the trust by a trustee who is independent of the employer, and no other such trustee had previously refused to give such written approval; and

(3) immediately following the making or renewal, as the case may be, the aggregate amount loaned by the trust to the employer, without the receipt of adequate security, does not exceed 25 percent of the value of all the assets of the trust.

For purposes of paragraph (2), the term ''trustee'' means, with respect to any trust for which there is more than one trustee who is independent of the employer, a majority of such independent trustees. For purposes of paragraph (3), the determination as to whether any amount loaned by the trust to the employer is loaned without the receipt of adequate security shall be made without regard to subsection (e).

(Aug. 16, 1954, ch. 736, 68A Stat. 166; Pub. L. 85–866, title I, § 30(a), (b), Sept. 2, 1958, 72 Stat. 1629, 1630; Pub. L. 86–667, § 2, July 14, 1960, 74 Stat. 535; Pub. L. 87–792, § 6, Oct. 10, 1962, 76 Stat. 827; Pub. L. 91–172, title I, §§ 101(j)(7)–(14), 121(b)(6)(B), Dec. 30, 1969, 83 Stat. 527, 542; Pub. L. 93–406, title II, § 2003(b), Sept. 2, 1974, 88 Stat. 978; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 101–508, title XI, § 11801(a)(22), Nov. 5, 1990, 104 Stat. 1388–521; Pub. L. 113–295, div. A, title II, § 221(a)(63), Dec. 19, 2014, 128 Stat. 4048.)

AMENDMENTS

2014—Subsec. (a)(1). Pub. L. 113–295, § 221(a)(63)(A), amended par. (1) generally. Prior to amendment, text read as follows:

''(A) An organization described in section 501(c)(17) shall not be exempt from taxation under section 501(a) if it has engaged in a prohibited transaction after December 31, 1959.

''(B) An organization described in section 401(a) which is referred to in section 4975(g) (2) or (3) shall not be exempt from taxation under section 501(a) if it has engaged in a prohibited transaction after March 1, 1954.

''(C) An organization described in section 501(c)(18) shall not be exempt from taxation under section 501(a) if it has engaged in a prohibited transaction after December 31, 1969.''

Subsec. (a)(2). Pub. L. 113–295, §221(a)(63)(B), which directed amendment of par. (2) by substituting ''described in paragraph (1)'' for ''described in section 501(c)(17) or (18) or paragraph (a)(1)(B)'', was executed by making the substitution for ''described in section 501(c)(17) or (18) or paragraph (1)(B)'' to reflect the probable intent of Congress.

Subsec. (c). Pub. L. 113–295, §221(a)(63)(C), substituted ''described in subsection (a)(1)'' for ''described in section 501(c)(17) or (18) or subsection (a)(1)(B)''.

1990—Subsec. (d). Pub. L. 101–508 struck out subsec. (d) ''Special rule for loans'' which read as follows: ''For purposes of the application of subsection (b)(1), in the case of a loan by a trust described in section 401(a), the following rules shall apply with respect to a loan made before March 1, 1954, which would constitute a prohibited transaction if made on or after March 1, 1954:

''(1) If any part of the loan is repayable prior to December 31, 1955, the renewal of such part of the loan for a period not extending beyond December 31, 1955, on the same terms, shall not be considered a prohibited transaction.

''(2) If the loan is repayable on demand, the continuation of the loan without the receipt of adequate security and a reasonable rate of interest beyond December 31, 1955, shall be considered a prohibited transaction.''

1976—Subsecs. (a)(2), (c). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

1974—Subsec. (a)(1)(A). Pub. L. 93–406, §2003(b)(1), substituted ''section 501(c)(17)'' for ''section 501(c)(17) or (18)''.

Subsec. (a)(1)(B). Pub. L. 93–406, §2003(b)(2), inserted ''which is referred to in section 4975(g)(2) or (3)''.

Subsec. (a)(2). Pub. L. 93–406, §2003(b)(3), substituted ''or paragraph (1)(B)'' for ''or section 401''.

Subsec. (c). Pub. L. 93–406, §2003(b)(4), substituted ''or subsection (a)(1)(B)'' for ''or section 401''.

Subsec. (g). Pub. L. 93–406, §2003(b)(5), struck out subsec. (g) which covered trusts benefiting certain owner-employees.

1969—Subsec. (a)(1)(A). Pub. L. 91–172, §§101(j)(7), 121(b)(6)(B)(ii), redesignated subpar. (B) as (A) and inserted reference to section 501(c)(18). Former subpar. (A), referring to organizations described in section 501(c)(3) and to prohibited transactions engaged in after July 1, 1950, was struck out.

Subsec. (a)(1)(B). Pub. L. 91–172, §101(j)(7), redesignated subpar. (C) as (B). Former subpar. (B), referring to organizations described in section 501(c)(17) was amended by addition of a reference to section 501(c)(18), and redesignated as subpar. (A).

Subsec. (a)(1)(C). Pub. L. 91–172, §§101(j)(7), 121(b)(6)(B)(i), added subpar. (C). Former subpar. (C), dealing with organizations described in section 401(a) and with prohibited transactions engaged in after Mar. 1, 1954, was redesignated as subpar. (B).

Subsec. (a)(2). Pub. L. 91–172, §§101(j)(8), 121(b)(6)(B)(ii), struck out reference to organizations described in section 501(c)(3), and inserted references to organizations described in section 501(c)(18).

Subsec. (b). Pub. L. 91–172, §101(j)(14), redesignated subsec. (c) as (b). Former subsec. (b), setting out the organizations to which section applied, was struck out.

Subsec. (c). Pub. L. 91–172, §§101(j)(9), (14), 121(b)(6)(B)(ii), redesignated subsec. (d) as (c), struck out reference to organizations described in section 501(c)(3), and inserted reference to organizations described in section 501(c)(17). Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 91–172, §101(j)(10), (14), redesignated subsec. (g) as (d) and substituted ''subsection (b)(1)'' for ''subsection (c)(1).'' Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 91–172, §101(j)(11), (14), redesignated subsec. (h) as (e), modified heading to read: ''Special rules'', substituted ''subsection (b)(1)'' for ''subsection (c)(1)'' in text preceding par. (1) and in par. (3), and in text preceding par. (1) struck out ''acquired by a trust described in section 401(a) or section 501(c)(17)''. Former subsec. (e), covering the disallowance of certain charitable deductions, was struck out.

Subsec. (f). Pub. L. 91–172, §101(j)(12), (14), redesignated subsec. (i) as (f) and substituted ''Subsection (b)(1)'' for ''Subsection (c)(1)'' and ''subsection (e)'' for ''subsection (h)''. Former subsec. (f), defining ''gift or bequest'', was struck out.

Subsec. (g). Pub. L. 91–172, §101(j)(13), (14), redesignated subsec. (j) as (g) and substituted ''subsection (b)'' for ''subsection (c)'' in par. (1). Former subsec. (g) redesignated (d).

Subsecs. (h) to (j). Pub. L. 91–172, §101(j)(14), redesignated subsecs. (h), (i), and (j) as (e), (f), and (g), respectively. Former subsecs. (e) and (f) were struck out and former subsec. (g) was redesignated (d).

1962—Subsec. (j). Pub. L. 87–792 added subsec. (j).

1960—Subsec. (a)(1). Pub. L. 86–667, §2(a)(1), denied exemption to an organization described in section 501(c)(17) if it has engaged in a prohibited transaction after Dec. 31, 1959.

Subsecs. (a)(2), (b), (d). Pub. L. 86–667, §2(a)(2), (b), (c), included organizations described in section 501(c)(17).

Subsec. (h). Pub. L. 86–667, §2(d), included trusts described in section 501(c)(17).

1958—Subsec. (h). Pub. L. 85–866, §30(a), added subsec. (h).

Subsec. (i). Pub. L. 85–866, §30(b), added subsec. (i).

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113–295, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–406 effective Jan. 1, 1975, but with provision for an election to be exercised by an organization so as to constitute a savings clause with reference to the amendment, see section 2003(c) of Pub. L. 93–406, set out as an Effective Date; Savings Provisions note under section 4975 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 101(j)(7)–(14) of Pub. L. 91–172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

Amendment by section 121(b)(6)(B) of Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 121(g) of Pub. L. 91–172, set out as a note under section 511 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–667 applicable to taxable years beginning after Dec. 31, 1959, and in the case of loans, the amendments to this section made by Pub. L. 86–667 are applicable only to loans made, renewed, or continued after Dec. 31, 1959, see section 6 of Pub. L. 86–667, set out as a note under section 501 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–866, title I, §30(c), Sept. 2, 1958, 72 Stat. 1631, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this

section] shall apply with respect to taxable years ending after March 15, 1956. The amendment made by subsection (b) [amending this section] shall apply with respect to taxable years ending after the date of the enactment of this Act [Sept. 2, 1958], but only with respect to periods after such date.

''(2) EXCEPTIONS.—Nothing in subsection (a) [amending this section] shall be construed to make any transaction a prohibited transaction which, under announcements of the Internal Revenue Service made with respect to section 503(c)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] before the date of the enactment of this Act [Sept. 2, 1958], would not constitute a prohibited transaction. In the case of any bond, debenture, note, or certificate or other evidence of indebtedness acquired before the date of the enactment of this Act [Sept. 2, 1958], by a trust described in section 401(a) of such Code which is held on such date, paragraphs (2) and (3) of section 503(h) of such Code shall be treated as satisfied if such requirements would have been satisfied if such obligation had been acquired on such date of enactment [Sept. 2, 1958].''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§ 504. Status after organization ceases to qualify for exemption under section 501(c)(3) because of substantial lobbying or because of political activities

(a) General rule

An organization which—

(1) was exempt (or was determined by the Secretary to be exempt) from taxation under section 501(a) by reason of being an organization described in section 501(c)(3), and

(2) is not an organization described in section 501(c)(3)—

(A) by reason of carrying on propaganda, or otherwise attempting, to influence legislation, or

(B) by reason of participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for public office,

shall not at any time thereafter be treated as an organization described in section 501(c)(4).

(b) Regulations to prevent avoidance

The Secretary shall prescribe such regulations as may be necessary or appropriate to prevent the avoidance of subsection (a), including regulations relating to a direct or indirect transfer of all or part of the assets of an organization to an organization controlled (directly or indirectly) by the same person or persons who control the transferor organization.

(c) Churches, etc.

Subsection (a) shall not apply to any organization which is a disqualified organization within the meaning of section 501(h)(5) (relating to churches, etc.) for the taxable year immediately preceding the first taxable year for which such organization is described in paragraph (2) of subsection (a).

(Added Pub. L. 94–455, title XIII, §1307(a)(2), Oct. 4, 1976, 90 Stat. 1721; amended Pub. L. 100–203, title X, §10711(b)(1), (2)(A), Dec. 22, 1987, 101 Stat. 1330–464.)

PRIOR PROVISIONS

A prior section 504, acts Aug. 16, 1954, ch. 736, 68A Stat. 168; Oct. 22, 1968, Pub. L. 90–630, §6(a), 82 Stat. 1330, related to denial of exemption, prior to repeal by Pub. L. 91–172, title I, §101(j)(15), Dec. 30, 1969, 83 Stat. 527. For effective date of repeal, see section 101(k)(2)(B) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

AMENDMENTS

1987—Pub. L. 100–203, §10711(b)(2)(A), substituted ''substantial lobbying or because of political activities'' for ''substantial lobbying'' in section catchline.

Subsec. (a)(2). Pub. L. 100–203, §10711(b)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''is not an organization described in section 501(c)(3) by reason of carrying on propaganda, or otherwise attempting, to influence legislation,''.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable with respect to activities after Dec. 22, 1987, see section 10711(c) of Pub. L. 100–203, set out as a note under section 170 of this title.

CONSTRUCTION OF AMENDMENT

Pub. L. 94–455, title XIII, §1307(a)(3), Oct. 4, 1976, 90 Stat. 1722, provided that: ''It is the intent of Congress that enactment of this section [amending section 501 and enacting section 504 of this title] is not to be regarded in any way as an approval or disapproval of the decision of the Court of Appeals for the Tenth Circuit in Christian Echoes National Ministry, Inc. versus United States, 470 F.2d 849 (1972), or of the reasoning in any of the opinions leading to that decision.''

§ 505. Additional requirements for organizations described in paragraph (9), (17), or (20) of section 501(c)

(a) Certain requirements must be met in the case of organizations described in paragraph (9) or (20) of section 501(c)

(1) Voluntary employees' beneficiary associations, etc.

An organization described in paragraph (9) or (20)[1] of subsection (c) of section 501 which is part of a plan shall not be exempt from tax under section 501(a) unless such plan meets the requirements of subsection (b) of this section.

(2) Exception for collective bargaining agreements

Paragraph (1) shall not apply to any organization which is part of a plan maintained pursuant to an agreement between employee representatives and 1 or more employers if the Secretary finds that such agreement is a collective bargaining agreement and that such plan was the subject of good faith bargaining between such employee representatives and such employer or employers.

(b) Nondiscrimination requirements

(1) In general

Except as otherwise provided in this subsection, a plan meets the requirements of this subsection only if—

(A) each class of benefits under the plan is provided under a classification of employees

[1] See References in Text note below

which is set forth in the plan and which is found by the Secretary not to be discriminatory in favor of employees who are highly compensated individuals, and

(B) in the case of each class of benefits, such benefits do not discriminate in favor of employees who are highly compensated individuals.

A life insurance, disability, severance pay, or supplemental unemployment compensation benefit shall not be considered to fail to meet the requirements of subparagraph (B) merely because the benefits available bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of employees covered by the plan.

(2) Exclusion of certain employees

For purposes of paragraph (1), there may be excluded from consideration—

(A) employees who have not completed 3 years of service,

(B) employees who have not attained age 21,

(C) seasonal employees or less than half-time employees,

(D) employees not included in the plan who are included in a unit of employees covered by an agreement between employee representatives and 1 or more employers which the Secretary finds to be a collective bargaining agreement if the class of benefits involved was the subject of good faith bargaining between such employee representatives and such employer or employers, and

(E) employees who are nonresident aliens and who receive no earned income (within the meaning of section 911(d)(2)) from the employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3)).

(3) Application of subsection where other nondiscrimination rules provided

In the case of any benefit for which a provision of this chapter other than this subsection provides nondiscrimination rules, paragraph (1) shall not apply but the requirements of this subsection shall be met only if the nondiscrimination rules so provided are satisfied with respect to such benefit.

(4) Aggregation rules

At the election of the employer, 2 or more plans of such employer may be treated as 1 plan for purposes of this subsection.

(5) Highly compensated individual

For purposes of this subsection, the determination as to whether an individual is a highly compensated individual shall be made under rules similar to the rules for determining whether an individual is a highly compensated employee (within the meaning of section 414(q)).

(6) Compensation

For purposes of this subsection, the term ''compensation'' has the meaning given such term by section 414(s).

(7) Compensation limit

A plan shall not be treated as meeting the requirements of this subsection unless under the plan the annual compensation of each employee taken into account for any year does not exceed $200,000. The Secretary shall adjust the $200,000 amount at the same time, and by the same amount, as any adjustment under section 401(a)(17)(B). This paragraph shall not apply in determining whether the requirements of section 79(d) are met.

(c) Requirement that organization notify Secretary that it is applying for tax-exempt status

(1) In general

An organization shall not be treated as an organization described in paragraph (9), (17), or (20)[1] of section 501(c)—

(A) unless it has given notice to the Secretary, in such manner as the Secretary may by regulations prescribe, that it is applying for recognition of such status, or

(B) for any period before the giving of such notice, if such notice is given after the time prescribed by the Secretary by regulations for giving notice under this subsection.

(2) Special rule for existing organizations

In the case of any organization in existence on July 18, 1984, the time for giving notice under paragraph (1) shall not expire before the date 1 year after such date of the enactment.

(Added Pub. L. 98–369, div. A, title V, § 513(a), July 18, 1984, 98 Stat. 863; amended Pub. L. 99–514, title XI, §§ 1114(b)(16), 1151(e)(2)(B), (g)(6), (j)(3), title XVIII, §§ 1851(c), 1899A(16), Oct. 22, 1986, 100 Stat. 2452, 2506–2508, 2863, 2959; Pub. L. 100–647, title I, § 1011B(a)(27)(C), (31)(B), (32), Nov. 10, 1988, 102 Stat. 3487, 3488; Pub. L. 101–140, title II, §§ 203(a)(1), (2), 204(c), Nov. 8, 1989, 103 Stat. 830, 833; Pub. L. 103–66, title XIII, § 13212(c), Aug. 10, 1993, 107 Stat. 472; Pub. L. 107–16, title VI, § 611(c)(1), June 7, 2001, 115 Stat. 97.)

REFERENCES IN TEXT

Section 501(c)(20), referred to in subsecs. (a)(1) and (c)(1), was repealed by Pub. L. 113–295, div. A, title II, § 221(a)(19)(B)(iii), Dec. 19, 2014, 128 Stat. 4040.

AMENDMENTS

2001—Subsec. (b)(7). Pub. L. 107–16 substituted ''$200,000'' for ''$150,000'' in two places.

1993—Subsec. (b)(7). Pub. L. 103–66 substituted ''Compensation limit'' for ''$200,000 compensation limit'' in heading and ''exceed $150,000. The Secretary shall adjust the $150,000 amount at the same time, and by the same amount, as any adjustment under section 401(a)(17)(B).'' for ''exceed $200,000. The Secretary shall adjust the $200,000 amount at the same time and in the same manner as under section 415(d).'' in text.

1989—Subsec. (a)(1). Pub. L. 101–140, § 203(a)(2), amended par. (1) to read as if amendments by Pub. L. 100–647, § 1011B(a)(27)(C), had not been enacted, see 1988 Amendment note below.

Subsec. (b)(2). Pub. L. 101–140, § 203(a)(2), amended par. (2) to read as if amendments by Pub. L. 100–647, § 1011B(a)(31)(B), had not been enacted, see 1988 Amendment note below.

Pub. L. 101–140, § 203(a)(1), amended par. (2) to read as if amendments by Pub. L. 99–514, § 1151(g)(6), had not been enacted, see 1986 Amendment note below.

Subsec. (b)(7). Pub. L. 101–140, § 204(c), inserted at end ''This paragraph shall not apply in determining whether the requirements of section 79(d) are met.''

1988—Subsec. (a)(1). Pub. L. 100–647, § 1011B(a)(27)(C), inserted at end ''This paragraph shall not apply to any

organization by reason of a failure to meet the requirements of subsection (b) with respect to a benefit to which section 89 applies.''

Subsec. (b)(2). Pub. L. 100–647, §1011B(a)(31)(B), substituted ''there shall be'' for ''there may be'' and ''who are'' for ''who may be''.

Subsec. (b)(7). Pub. L. 100–647, §1011B(a)(32), added par. (7).

1986—Subsec. (a)(1). Pub. L. 99–514, §1851(c)(1), struck out ''of an employer'' before ''shall''.

Subsec. (a)(2). Pub. L. 99–514, §1851(c)(4), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Paragraph (1) shall not apply to any organization which is part of a plan maintained pursuant to 1 or more collective bargaining agreements between 1 or more employee organizations and 1 or more employers.''

Subsec. (b)(1). Pub. L. 99–514, §1851(c)(2), (3), substituted ''as otherwise provided in this subsection'' for ''as provided in paragraph (2)'' in introductory provision, and in subpar. (B) substituted ''highly compensated individuals'' for ''highly compensated employees''.

Subsec. (b)(2). Pub. L. 99–514, §1151(g)(6), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''For purposes of paragraph (1), there may be excluded from consideration—

''(A) employees who have not completed 3 years of service,

''(B) employees who have not attained age 21,

''(C) seasonal employees or less than half-time employees,

''(D) employees not included in the plan who are included in a unit of employees covered by an agreement between employee representatives and 1 or more employers which the Secretary finds to be a collective bargaining agreement if the class of benefits involved was the subject of good faith bargaining between such employee representatives and such employer or employers, and

''(E) employees who are nonresident aliens and who receive no earned income (within the meaning of section 911(d)(2)) from the employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3)).''

Subsec. (b)(4). Pub. L. 99–514, §1151(e)(2)(B), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''For purposes of this subsection—

''(A) AGGREGATION OF PLANS.—At the election of the employer, 2 or more plans of such employer may be treated as 1 plan.

''(B) TREATMENT OF RELATED EMPLOYERS.—Rules similar to the rules of subsections (b), (c), (m), and (n) of section 414 shall apply. For purposes of the preceding sentence, section 414(n) shall be applied without regard to paragraph (5).''

Subsec. (b)(5). Pub. L. 99–514, §1114(b)(16), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''For purposes of this subsection, the term 'highly compensated individual' has the meaning given such term by section 105(h)(5). For purposes of the preceding sentence, section 105(h)(5) shall be applied by substituting '10 percent' for '25 percent'.''

Subsec. (b)(6). Pub. L. 99–514, §1151(j)(3), added par. (6).

Subsec. (c)(2). Pub. L. 99–514, §1899A(16), substituted ''July 18, 1984'' for ''the date of the enactment of the Tax Reform Act of 1984''.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to years beginning after Dec. 31, 2001, see section 611(i)(1) of Pub. L. 107–16, set out as a note under section 415 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable, except as otherwise provided, to benefits accruing in plan years beginning after Dec. 31, 1993, see section 13212(d) of Pub. L. 103–66, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 203(a)(1), (2) of Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of Pub. L. 101–140, set out as a note under section 79 of this title.

Pub. L. 101–140, title II, §204(d)(4), Nov. 8, 1989, 103 Stat. 833, provided that: ''The amendment made by subsection (c) [amending this section] shall take effect as if included in the amendment made by section 1011B(a)(32) of the Technical and Miscellaneous Revenue Act of 1988 [Pub. L. 100–647].''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1114(b)(16) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1987, see section 1114(c)(2) of Pub. L. 99–514, set out as a note under section 414 of this title.

Amendment by section 1151(e)(2)(B), (g)(6), (j)(3) of Pub. L. 99–514 applicable, with certain qualifications and exceptions, to years beginning after Dec. 31, 1988, see section 1151(k) of Pub. L. 99–514, as amended, set out as a note under section 79 of this title.

Amendment by section 1851(c) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Pub. L. 98–369, div. A, title V, §513(c), July 18, 1984, 98 Stat. 865, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section] shall apply to years beginning after December 31, 1984.

''(2) TREATMENT OF CERTAIN BENEFITS IN PAY STATUS AS OF JANUARY 1, 1985.—For purposes of determining whether a plan meets the requirements of section 505(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)), there may (at the election of the employer) be excluded from consideration all disability or severance payments payable to individuals who are in pay status as of January 1, 1985. The preceding sentence shall not apply to any payment to the extent such payment is increased by any plan amendment adopted after June 22, 1984.''

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99–514 FOR FISCAL YEAR 1990

No monies appropriated by Pub. L. 101–136 to be used to implement or enforce section 1151 of Pub. L. 99–514 or the amendments made by such section, see section 528 of Pub. L. 101–136, set out as a note under section 89 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L.

99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 506. Organizations required to notify Secretary of intent to operate under 501(c)(4)

(a) In general

An organization described in section 501(c)(4) shall, not later than 60 days after the organization is established, notify the Secretary (in such manner as the Secretary shall by regulation prescribe) that it is operating as such.

(b) Contents of notice

The notice required under subsection (a) shall include the following information:

(1) The name, address, and taxpayer identification number of the organization.

(2) The date on which, and the State under the laws of which, the organization was organized.

(3) A statement of the purpose of the organization.

(c) Acknowledgment of receipt

Not later than 60 days after receipt of such a notice, the Secretary shall send to the organization an acknowledgment of such receipt.

(d) Extension for reasonable cause

The Secretary may, for reasonable cause, extend the 60-day period described in subsection (a).

(e) User fee

The Secretary shall impose a reasonable user fee for submission of the notice under subsection (a).

(f) Request for determination

Upon request by an organization to be treated as an organization described in section 501(c)(4), the Secretary may issue a determination with respect to such treatment. Such request shall be treated for purposes of section 6104 as an application for exemption from taxation under section 501(a).

(Added Pub. L. 114–113, div. Q, title IV, §405(a), Dec. 18, 2015, 129 Stat. 3118.)

EFFECTIVE DATE

Pub. L. 114–113, div. Q, title IV, §405(f), Dec. 18, 2015, 129 Stat. 3120, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section and amending sections 6033 and 6652 of this title] shall apply to organizations which are described in section 501(c)(4) of the Internal Revenue Code of 1986 and organized after the date of the enactment of this Act [Dec. 18, 2015].

''(2) CERTAIN EXISTING ORGANIZATIONS.—In the case of any other organization described in section 501(c)(4) of such Code, the amendments made by this section shall apply to such organization only if, on or before the date of the enactment of this Act—

''(A) such organization has not applied for a written determination of recognition as an organization described in section 501(c)(4) of such Code, and

''(B) such organization has not filed at least one annual return or notice required under subsection (a)(1) or (i) (as the case may be) of section 6033 of such Code.

In the case of any organization to which the amendments made by this section apply by reason of the preceding sentence, such organization shall submit the notice required by section 506(a) of such Code, as added by this Act, not later than 180 days after the date of the enactment of this Act.''

LIMITATION ON EXPENDITURE OF USER FEES

Pub. L. 114–113, div. Q, title IV, §405(e), Dec. 18, 2015, 129 Stat. 3119, provided that: ''Notwithstanding any other provision of law, any fees collected pursuant to section 506(e) of the Internal Revenue Code of 1986, as added by subsection (a), shall not be expended by the Secretary of the Treasury or the Secretary's delegate unless provided by an appropriations Act.''

PART II—PRIVATE FOUNDATIONS

Sec.
507. Termination of private foundation status.
508. Special rules with respect to section 501(c)(3) organizations.
509. Private foundation defined.

AMENDMENTS

1969—Pub. L. 91–172, title I, §101(a), Dec. 30, 1969, 83 Stat. 492, added part heading and analysis for part II.

§ 507. Termination of private foundation status

(a) General rule

Except as provided in subsection (b), the status of any organization as a private foundation shall be terminated only if—

(1) such organization notifies the Secretary (at such time and in such manner as the Secretary may by regulations prescribe) of its intent to accomplish such termination, or

(2)(A) with respect to such organization, there have been either willful repeated acts (or failures to act), or a willful and flagrant act (or failure to act), giving rise to liability for tax under chapter 42, and

(B) the Secretary notifies such organization that, by reason of subparagraph (A), such organization is liable for the tax imposed by subsection (c),

and either such organization pays the tax imposed by subsection (c) (or any portion not abated under subsection (g)) or the entire amount of such tax is abated under subsection (g).

(b) Special rules

(1) Transfer to, or operation as, public charity

The status as a private foundation of any organization, with respect to which there have not been either willful repeated acts (or failures to act) or a willful and flagrant act (or failure to act) giving rise to liability for tax under chapter 42, shall be terminated if—

(A) such organization distributes all of its net assets to one or more organizations described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)) each of which has been in existence and so described for a continuous period of at least 60 calendar months immediately preceding such distribution, or

(B)(i) such organization meets the requirements of paragraph (1), (2), or (3) of section 509(a) by the end of the 12-month period beginning with its first taxable year which begins after December 31, 1969, or for a continuous period of 60 calendar months beginning with the first day of any taxable year which begins after December 31, 1969,

(ii) such organization notifies the Secretary (in such manner as the Secretary may by regulations prescribe) before the commencement of such 12-month or 60-month period (or before the 90th day after the day on which regulations first prescribed under this subsection become final) that it is terminating its private foundation status, and

(iii) such organization establishes to the satisfaction of the Secretary (in such manner as the Secretary may by regulations prescribe) immediately after the expiration of such 12-month or 60-month period that such organization has complied with clause (i).

If an organization gives notice under subparagraph (B)(ii) of the commencement of a 60-month period and such organization fails to meet the requirements of paragraph (1), (2), or (3) of section 509(a) for the entire 60-month period, this part and chapter 42 shall not apply to such organization for any taxable year within such 60-month period for which it does meet such requirements.

(2) Transferee foundations

For purposes of this part, in the case of a transfer of assets of any private foundation to another private foundation pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization, or reorganization, the transferee foundation shall not be treated as a newly created organization.

(c) Imposition of tax

There is hereby imposed on each organization which is referred to in subsection (a) a tax equal to the lower of—

(1) the amount which the private foundation substantiates by adequate records or other corroborating evidence as the aggregate tax benefit resulting from the section 501(c)(3) status of such foundation, or

(2) the value of the net assets of such foundation.

(d) Aggregate tax benefit

(1) In general

For purposes of subsection (c), the aggregate tax benefit resulting from the section 501(c)(3) status of any private foundation is the sum of—

(A) the aggregate increases in tax under chapters 1, 11, and 12 (or the corresponding provisions of prior law) which would have been imposed with respect to all substantial contributors to the foundation if deductions for all contributions made by such contributors to the foundation after February 28, 1913, had been disallowed, and

(B) the aggregate increases in tax under chapter 1 (or the corresponding provisions of prior law) which would have been imposed with respect to the income of the private foundation for taxable years beginning after December 31, 1912, if (i) it had not been exempt from tax under section 501(a) (or the corresponding provisions of prior law), and (ii) in the case of a trust, deductions under section 642(c) (or the corresponding provisions of prior law) had been limited to 20 percent of the taxable income of the trust (computed without the benefit of section 642(c) but with the benefit of section 170(b)(1)(A)), and

(C) interest on the increases in tax determined under subparagraphs (A) and (B) from the first date on which each such increase would have been due and payable to the date on which the organization ceases to be a private foundation.

(2) Substantial contributor

(A) Definition

For purposes of paragraph (1), the term ''substantial contributor'' means any person who contributed or bequeathed an aggregate amount of more than $5,000 to the private foundation, if such amount is more than 2 percent of the total contributions and bequests received by the foundation before the close of the taxable year of the foundation in which the contribution or bequest is received by the foundation from such person. In the case of a trust, the term ''substantial contributor'' also means the creator of the trust.

(B) Special rules

For purposes of subparagraph (A)—

(i) each contribution or bequest shall be valued at fair market value on the date it was received,

(ii) in the case of a foundation which is in existence on October 9, 1969, all contributions and bequests received on or before such date shall be treated (except for purposes of clause (i)) as if received on such date,

(iii) an individual shall be treated as making all contributions and bequests made by his spouse, and

(iv) any person who is a substantial contributor on any date shall remain a substantial contributor for all subsequent periods.

(C) Person ceases to be substantial contributor in certain cases

(i) In general

A person shall cease to be treated as a substantial contributor with respect to any private foundation as of the close of any taxable year of such foundation if—

(I) during the 10-year period ending at the close of such taxable year such person (and all related persons) have not made any contribution to such private foundation,

(II) at no time during such 10-year period was such person (or any related person) a foundation manager of such private foundation, and

(III) the aggregate contributions made by such person (and related persons) are determined by the Secretary to be insignificant when compared to the aggregate amount of contributions to such foundation by one other person.

For purposes of subclause (III), appreciation on contributions while held by the foundation shall be taken into account.

(ii) Related person

For purposes of clause (i), the term ''related person'' means, with respect to any person, any other person who would be a disqualified person (within the meaning of section 4946) by reason of his relationship to such person. In the case of a contributor which is a corporation, the term also includes any officer or director of such corporation.

(3) Regulations

For purposes of this section, the determination as to whether and to what extent there would have been any increase in tax shall be made in accordance with regulations prescribed by the Secretary.

(e) Value of assets

For purposes of subsection (c), the value of the net assets shall be determined at whichever time such value is higher: (1) the first day on which action is taken by the organization which culminates in its ceasing to be a private foundation, or (2) the date on which it ceases to be a private foundation.

(f) Liability in case of transfers of assets from private foundation

For purposes of determining liability for the tax imposed by subsection (c) in the case of assets transferred by the private foundation, such tax shall be deemed to have been imposed on the first day on which action is taken by the organization which culminates in its ceasing to be a private foundation.

(g) Abatement of taxes

The Secretary may abate the unpaid portion of the assessment of any tax imposed by subsection (c), or any liability in respect thereof, if—

(1) the private foundation distributes all of its net assets to one or more organizations described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)) each of which has been in existence and so described for a continuous period of at least 60 calendar months, or

(2) following the notification prescribed in section 6104(c) to the appropriate State officer, such State officer within one year notifies the Secretary, in such manner as the Secretary may by regulations prescribe, that corrective action has been initiated pursuant to State law to insure that the assets of such private foundation are preserved for such charitable or other purposes specified in section 501(c)(3) as may be ordered or approved by a court of competent jurisdiction, and upon completion of the corrective action, the Secretary receives certification from the appropriate State officer that such action has resulted in such preservation of assets.

(Added Pub. L. 91–172, title I, §101(a), Dec. 30, 1969, 83 Stat. 492; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title III, §313(a), July 18, 1984, 98 Stat. 786.)

AMENDMENTS

1984—Subsec. (d)(2)(C). Pub. L. 98–369 added subpar. (C).

1976—Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary'' wherever appearing.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title III, §313(b), July 18, 1984, 98 Stat. 787, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1984.''

EFFECTIVE DATE

Section effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as a note under section 4940 of this title.

APPLICABILITY TO DETERMINATION OF STATUS AS SUBSTANTIAL CONTRIBUTOR FOR PURPOSES OF TAXES ON SELF-DEALING OF CONTRIBUTIONS MADE PRIOR TO OCTOBER 9, 1969

Pub. L. 95–170, §3, Nov. 12, 1977, 91 Stat. 1352, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In determining whether a person is a substantial contributor within the meaning of section 507(d)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for purposes of applying section 4941 of such Code (relating to taxes on self-dealing), contributions made before October 9, 1969, which—

''(1) were made on account of or in lieu of payments required under a lease in effect before such date, and

''(2) were coincident with or by reason of the reduction in the required payments under such lease,

shall not be taken into account. For purposes of applying section 507(d)(2)(B)(iv) of such Code, the preceding sentence shall be treated as having taken effect on January 1, 1970.''

§ 508. Special rules with respect to section 501(c)(3) organizations

(a) New organizations must notify Secretary that they are applying for recognition of section 501(c)(3) status

Except as provided in subsection (c), an organization organized after October 9, 1969, shall not be treated as an organization described in section 501(c)(3)—

(1) unless it has given notice to the Secretary in such manner as the Secretary may by regulations prescribe, that it is applying for recognition of such status, or

(2) for any period before the giving of such notice, if such notice is given after the time prescribed by the Secretary by regulations for giving notice under this subsection.

(b) Presumption that organizations are private foundations

Except as provided in subsection (c), any organization (including an organization in existence on October 9, 1969) which is described in section 501(c)(3) and which does not notify the Secretary, at such time and in such manner as the Secretary may by regulations prescribe, that it is not a private foundation shall be presumed to be a private foundation.

(c) Exceptions

(1) Mandatory exceptions

Subsections (a) and (b) shall not apply to—

(A) churches, their integrated auxiliaries, and conventions or associations of churches, or

(B) any organization which is not a private foundation (as defined in section 509(a)) and the gross receipts of which in each taxable year are normally not more than $5,000.

(2) Exceptions by regulations

The Secretary may by regulations exempt (to the extent and subject to such conditions as may be prescribed in such regulations) from the provisions of subsection (a) or (b) or both—

(A) educational organizations described in section 170(b)(1)(A)(ii), and

(B) any other class of organizations with respect to which the Secretary determines that full compliance with the provisions of subsections (a) and (b) is not necessary to the efficient administration of the provisions of this title relating to private foundations.

(d) Disallowance of certain charitable, etc., deductions

(1) Gift or bequest to organizations subject to section 507(c) tax

No gift or bequest made to an organization upon which the tax provided by section 507(c) has been imposed shall be allowed as a deduction under section 170, 545(b)(2), 642(c), 2055, 2106(a)(2), or 2522, if such gift or bequest is made—

(A) by any person after notification is made under section 507(a), or

(B) by a substantial contributor (as defined in section 507(d)(2)) in his taxable year which includes the first day on which action is taken by such organization which culminates in the imposition of tax under section 507(c) and any subsequent taxable year.

(2) Gift or bequest to taxable private foundation, section 4947 trust, etc.

No gift or bequest made to an organization shall be allowed as a deduction under section 170, 545(b)(2), 642(c), 2055, 2106(a)(2), or 2522, if such gift or bequest is made—

(A) to a private foundation or a trust described in section 4947 in a taxable year for which it fails to meet the requirements of subsection (e) (determined without regard to subsection (e)(2)), or

(B) to any organization in a period for which it is not treated as an organization described in section 501(c)(3) by reason of subsection (a).

(3) Exception

Paragraph (1) shall not apply if the entire amount of the unpaid portion of the tax imposed by section 507(c) is abated by the Secretary under section 507(g).

(e) Governing instruments

(1) General rule

A private foundation shall not be exempt from taxation under section 501(a) unless its governing instrument includes provisions the effects of which are—

(A) to require its income for each taxable year to be distributed at such time and in such manner as not to subject the foundation to tax under section 4942, and

(B) to prohibit the foundation from engaging in any act of self-dealing (as defined in section 4941(d)), from retaining any excess business holdings (as defined in section 4943(c)), from making any investments in such manner as to subject the foundation to tax under section 4944, and from making any taxable expenditures (as defined in section 4945(d)).

(2) Special rules for existing private foundations

In the case of any organization organized before January 1, 1970, paragraph (1) shall not apply—

(A) to any period after December 31, 1971, during the pendency of any judicial proceeding begun before January 1, 1972, by the private foundation which is necessary to reform, or to excuse such foundation from compliance with, its governing instrument or any other instrument in order to meet the requirements of paragraph (1), and

(B) to any period after the termination of any judicial proceeding described in subparagraph (A) during which its governing instrument or any other instrument does not permit it to meet the requirements of paragraph (1).

(f) Additional provisions relating to sponsoring organizations

A sponsoring organization (as defined in section 4966(d)(1)) shall give notice to the Secretary (in such manner as the Secretary may provide) whether such organization maintains or intends to maintain donor advised funds (as defined in section 4966(d)(2)) and the manner in which such organization plans to operate such funds.

(Added Pub. L. 91–172, title I, §101(a), Dec. 30, 1969, 83 Stat. 494; amended Pub. L. 94–455, title XIX, §§1901(a)(71), (b)(8)(E), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1776, 1794, 1834; Pub. L. 108–357, title IV, §413(c)(30), Oct. 22, 2004, 118 Stat. 1509; Pub. L. 109–280, title XII, §1235(b)(1), Aug. 17, 2006, 120 Stat. 1101.)

AMENDMENTS

2006—Subsec. (f). Pub. L. 109–280, which directed the addition of subsec. (f) to section 508, without specifying the act to be amended, was executed by making the addition to this section, which is section 508 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

2004—Subsec. (d)(1), (2). Pub. L. 108–357 struck out ''556(b)(2),'' after ''545(b)(2),''.

1976—Subsec. (a). Pub. L. 94–455, §1901(a)(71)(A), struck out last sentence providing that for purposes of paragraph (2), the time prescribed for giving notice under this subsection shall not expire before the 90th day after the day on which regulations first prescribed under this subsection become final.

Subsec. (a)(1), (2). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' in three places after ''Secretary''.

Subsec. (b). Pub. L. 94–455, §§1901(a)(71)(A), 1906(b)(13)(A), struck out ''or his delegate'' in two places after ''Secretary'' and ''The time prescribed for giving notice under this subsection shall not expire before the 90th day after the day on which regulations first prescribed under this subsection become final'' after ''a private foundation''.

Subsec. (c)(2). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c)(2)(A). Pub. L. 94–455, §1901(b)(8)(E), substituted ''(A) educational organizations described in section 170(b)(1)(A)(ii), and'' for ''(A) educational organizations which normally maintain a regular faculty and curriculum and normally have a regularly enrolled body of pupils or students in attendance at the place

where their educational activities are regularly carried on; and'' after ''(b) or both—''.

Subsec. (c)(2)(B). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (d)(2)(A). Pub. L. 94–455, §1901(a)(71)(C), substituted ''(e)(2)'' for ''(e)(2)(B) and (C)'' after ''regard to subsection''.

Subsec. (d)(3). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (e)(2)(A). Pub. L. 94–455, §1901(a)(71)(B), struck out subpar. (A) relating to taxable years beginning before 1972, and redesignated subpars. (B) and (C) as (A) and (B), respectively.

Subsec. (e)(2)(B). Pub. L. 94–455, §1901(a)(71)(B), redesignated subpar. (C) as (B) and substituted ''(A)'' for ''(B)'' after ''described in subparagraph''.

Subsec. (e)(2)(C). Pub. L. 94–455, §1901(a)(71)(B), redesignated subpar. (C) as (B).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title XII, §1235(b)(2), Aug. 17, 2006, 120 Stat. 1102, provided that: ''The amendment made by this subsection [amending this section] shall apply to organizations applying for tax-exempt status after the date of the enactment of this Act [Aug. 17, 2006].''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(71)(A)–(C), (b)(8)(E) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1970, except that subsecs. (a), (b), and (c) effective Oct. 9, 1969, see section 101(k)(1), (3) of Pub. L. 91–172, set out as a note under section 4940 of this title.

SAVINGS PROVISION

Limits on inclusion of provisions inconsistent with subsec. (e) of this section in governing instruments, see section 101(*l*)(6) of Pub. L. 91–172, set out as a note under section 4940 of this title.

§ 509. Private foundation defined

(a) General rule

For purposes of this title, the term ''private foundation'' means a domestic or foreign organization described in section 501(c)(3) other than—

(1) an organization described in section 170(b)(1)(A) (other than in clauses (vii) and (viii));

(2) an organization which—

(A) normally receives more than one-third of its support in each taxable year from any combination of—

(i) gifts, grants, contributions, or membership fees, and

(ii) gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities, in an activity which is not an unrelated trade or business (within the meaning of section 513), not including such receipts from any person, or from any bureau or similar agency of a governmental unit (as described in section 170(c)(1)), in any taxable year to the extent such receipts exceed the greater of $5,000 or 1 percent of the organization's support in such taxable year,

from persons other than disqualified persons (as defined in section 4946) with respect to the organization, from governmental units described in section 170(c)(1), or from organizations described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)), and

(B) normally receives not more than one-third of its support in each taxable year from the sum of—

(i) gross investment income (as defined in subsection (e)) and

(ii) the excess (if any) of the amount of the unrelated business taxable income (as defined in section 512) over the amount of the tax imposed by section 511;

(3) an organization which—

(A) is organized, and at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more specified organizations described in paragraph (1) or (2),

(B) is—

(i) operated, supervised, or controlled by one or more organizations described in paragraph (1) or (2),

(ii) supervised or controlled in connection with one or more such organizations, or

(iii) operated in connection with one or more such organizations, and

(C) is not controlled directly or indirectly by one or more disqualified persons (as defined in section 4946) other than foundation managers and other than one or more organizations described in paragraph (1) or (2); and

(4) an organization which is organized and operated exclusively for testing for public safety.

For purposes of paragraph (3), an organization described in paragraph (2) shall be deemed to include an organization described in section 501(c)(4), (5), or (6) which would be described in paragraph (2) if it were an organization described in section 501(c)(3).

(b) Continuation of private foundation status

For purposes of this title, if an organization is a private foundation (within the meaning of subsection (a)) on October 9, 1969, or becomes a private foundation on any subsequent date, such organization shall be treated as a private foundation for all periods after October 9, 1969, or after such subsequent date, unless its status as such is terminated under section 507.

(c) Status of organization after termination of private foundation status

For purposes of this part, an organization the status of which as a private foundation is terminated under section 507 shall (except as provided in section 507(b)(2)) be treated as an organization created on the day after the date of such termination.

(d) Definition of support

For purposes of this part and chapter 42, the term ''support'' includes (but is not limited to)—

(1) gifts, grants, contributions, or membership fees,

(2) gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities in any activity which is not an unrelated trade or business (within the meaning of section 513),

(3) net income from unrelated business activities, whether or not such activities are carried on regularly as a trade or business,

(4) gross investment income (as defined in subsection (e)),

(5) tax revenues levied for the benefit of an organization and either paid to or expended on behalf of such organization, and

(6) the value of services or facilities (exclusive of services or facilities generally furnished to the public without charge) furnished by a governmental unit referred to in section 170(c)(1) to an organization without charge.

Such term does not include any gain from the sale or other disposition of property which would be considered as gain from the sale or exchange of a capital asset, or the value of exemption from any Federal, State, or local tax or any similar benefit.

(e) Definition of gross investment income

For purposes of subsection (d), the term ''gross investment income'' means the gross amount of income from interest, dividends, payments with respect to securities loans (as defined in section 512(a)(5)), rents, and royalties, but not including any such income to the extent included in computing the tax imposed by section 511. Such term shall also include income from sources similar to those in the preceding sentence.

(f) Requirements for supporting organizations

(1) Type III supporting organizations

For purposes of subsection (a)(3)(B)(iii), an organization shall not be considered to be operated in connection with any organization described in paragraph (1) or (2) of subsection (a) unless such organization meets the following requirements:

(A) Responsiveness

For each taxable year beginning after the date of the enactment of this subsection, the organization provides to each supported organization such information as the Secretary may require to ensure that such organization is responsive to the needs or demands of the supported organization.

(B) Foreign supported organizations

(i) In general

The organization is not operated in connection with any supported organization that is not organized in the United States.

(ii) Transition rule for existing organizations

If the organization is operated in connection with an organization that is not organized in the United States on the date of the enactment of this subsection, clause (i) shall not apply until the first day of the third taxable year of the organization beginning after the date of the enactment of this subsection.

(2) Organizations controlled by donors

(A) In general

For purposes of subsection (a)(3)(B), an organization shall not be considered to be—

(i) operated, supervised, or controlled by any organization described in paragraph (1) or (2) of subsection (a), or

(ii) operated in connection with any organization described in paragraph (1) or (2) of subsection (a),

if such organization accepts any gift or contribution from any person described in subparagraph (B).

(B) Person described

A person is described in this subparagraph if, with respect to a supported organization of an organization described in subparagraph (A), such person is—

(i) a person (other than an organization described in paragraph (1), (2), or (4) of section 509(a)) who directly or indirectly controls, either alone or together with persons described in clauses (ii) and (iii), the governing body of such supported organization,

(ii) a member of the family (determined under section 4958(f)(4)) of an individual described in clause (i), or

(iii) a 35-percent controlled entity (as defined in section 4958(f)(3) by substituting ''persons described in clause (i) or (ii) of section 509(f)(2)(B)'' for ''persons described in subparagraph (A) or (B) of paragraph (1)'' in subparagraph (A)(i) thereof).

(3) Supported organization

For purposes of this subsection, the term ''supported organization'' means, with respect to an organization described in subsection (a)(3), an organization described in paragraph (1) or (2) of subsection (a)—

(A) for whose benefit the organization described in subsection (a)(3) is organized and operated, or

(B) with respect to which the organization performs the functions of, or carries out the purposes of.

(Added Pub. L. 91–172, title I, §101(a), Dec. 30, 1969, 83 Stat. 496; amended Pub. L. 94–81, §3(a), Aug. 9, 1975, 89 Stat. 418; Pub. L. 95–345, §2(a)(1), Aug. 15, 1978, 92 Stat. 481; Pub. L. 109–280, title XII, §§1221(a)(2), 1241(a), (b), Aug. 17, 2006, 120 Stat. 1089, 1102.)

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (f)(1)(A), (B)(ii), is the date of enactment of Pub. L. 109–280, which was approved Aug. 17, 2006.

CODIFICATION

Sections 1221(a)(2) and 1241(a), (b) of Pub. L. 109–280, which directed the amendment of section 509 without specifying the act to be amended, were executed to this section, which is section 509 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

AMENDMENTS

2006—Subsec. (a)(3)(B). Pub. L. 109–280, §1241(a), amended subpar. (B) generally. Prior to amendment,

subpar. (B) read as follows: ''is operated, supervised, or controlled by or in connection with one or more organizations described in paragraph (1) or (2), and''. See Codification note above.

Subsec. (e). Pub. L. 109–280, § 1221(a)(2), inserted at end ''Such term shall also include income from sources similar to those in the preceding sentence.'' See Codification note above.

Subsec. (f). Pub. L. 109–280, § 1241(b), added subsec. (f). See Codification note above.

1978—Subsec. (e). Pub. L. 95–345 inserted provision relating to payments with respect to securities loans.

1975—Subsec. (a)(2)(B). Pub. L. 94–81 designated existing provisions as cl. (i) and added cl. (ii).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title XII, § 1221(c), Aug. 17, 2006, 120 Stat. 1089, provided that: ''The amendments made by this section [amending this section and section 4940 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 17, 2006].''

Pub. L. 109–280, title XII, § 1241(e), Aug. 17, 2006, 120 Stat. 1103, provided that:

''(1) IN GENERAL.—The amendments made by subsections (a) and (b) [amending this section] shall take effect on the date of the enactment of this Act [Aug. 17, 2006].

''(2) CHARITABLE TRUSTS WHICH ARE TYPE III SUPPORTING ORGANIZATIONS.—Subsection (c) [enacting provisions set out as a note below] shall take effect—

''(A) in the case of trusts operated in connection with an organization described in paragraph (1) or (2) of section 509(a) of the Internal Revenue Code of 1986 on the date of the enactment of this Act, on the date that is one year after the date of the enactment of this Act, and

''(B) in the case of any other trust, on the date of the enactment of this Act.''

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–345, § 2(e), Aug. 15, 1978, 92 Stat. 483, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [enacting section 1058 of this title and amending sections 509, 512, 514, 851, and 4940 of this title] apply with respect to—

''(1) amounts received after December 31, 1976, as payments with respect to securities loans (as defined in section 512(a)(5) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]), and

''(2) transfers of securities, under agreements described in section 1058 of such Code, occurring after such date.''

EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 94–81, § 3(b), Aug. 9, 1975, 89 Stat. 418, provided that: ''The amendment made by this section [amending this section] shall apply to unrelated business taxable income derived from trades and businesses which are acquired by the organization after June 30, 1975.''

EFFECTIVE DATE

Section effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as a note under section 4940 of this title.

SAVINGS PROVISION

Applicability of subsec. (a) of this section to testamentary trusts, see section 101(*l*)(7) of Pub. L. 91–172, set out as a note under section 4940 of this title.

CHARITABLE TRUSTS WHICH ARE TYPE III SUPPORTING ORGANIZATIONS

Pub. L. 109–280, title XII, § 1241(c), Aug. 17, 2006, 120 Stat. 1103, provided that: ''For purposes of section 509(a)(3)(B)(iii) of the Internal Revenue Code of 1986, an organization which is a trust shall not be considered to be operated in connection with any organization described in paragraph (1) or (2) of section 509(a) of such Code solely because—

''(1) it is a charitable trust under State law,

''(2) the supported organization (as defined in section 509(f)(3) of such Code) is a beneficiary of such trust, and

''(3) the supported organization (as so defined) has the power to enforce the trust and compel an accounting.''

PAYOUT REQUIREMENTS FOR TYPE III SUPPORTING ORGANIZATIONS

Pub. L. 109–280, title XII, § 1241(d), Aug. 17, 2006, 120 Stat. 1103, provided that:

''(1) IN GENERAL.—The Secretary of the Treasury shall promulgate new regulations under section 509 of the Internal Revenue Code of 1986 on payments required by type III supporting organizations which are not functionally integrated type III supporting organizations. Such regulations shall require such organizations to make distributions of a percentage of either income or assets to supported organizations (as defined in section 509(f)(3) of such Code) in order to ensure that a significant amount is paid to such organizations.

''(2) TYPE III SUPPORTING ORGANIZATION; FUNCTIONALLY INTEGRATED TYPE III SUPPORTING ORGANIZATION.—For purposes of paragraph (1), the terms 'type III supporting organization' and 'functionally integrated type III supporting organization' have the meanings given such terms under subparagraphs (A) and (B) section 4943(f)(5) of the Internal Revenue Code of 1986 (as added by this Act), respectively.''

PART III—TAXATION OF BUSINESS INCOME OF CERTAIN EXEMPT ORGANIZATIONS

AMENDMENTS

1969—Pub. L. 91–172, title I, §§ 101(a), 121(d)(3)(C), Dec. 30, 1969, 83 Stat. 492, 548, substituted ''PART III'' for ''PART II'' as part designation and substituted ''Unrelated debt-financed income'' for ''Business leases'' in item 514.

§ 511. Imposition of tax on unrelated business income of charitable, etc., organizations

(a) Charitable, etc., organizations taxable at corporation rates

(1) Imposition of tax

There is hereby imposed for each taxable year on the unrelated business taxable income (as defined in section 512) of every organization described in paragraph (2) a tax computed as provided in section 11. In making such computation for purposes of this section, the term ''taxable income'' as used in section 11 shall be read as ''unrelated business taxable income''.

(2) Organizations subject to tax

(A) Organizations described in sections 401(a) and 501(c)

The tax imposed by paragraph (1) shall apply in the case of any organization (other than a trust described in subsection (b) or an organization described in section 501(c)(1))

[1] So in original. Does not conform to section catchline.

which is exempt, except as provided in this part or part II (relating to private foundations), from taxation under this subtitle by reason of section 501(a).

(B) State colleges and universities

The tax imposed by paragraph (1) shall apply in the case of any college or university which is an agency or instrumentality of any government or any political subdivision thereof, or which is owned or operated by a government or any political subdivision thereof, or by any agency or instrumentality of one or more governments or political subdivisions. Such tax shall also apply in the case of any corporation wholly owned by one or more such colleges or universities.

(b) Tax on charitable, etc., trusts

(1) Imposition of tax

There is hereby imposed for each taxable year on the unrelated business taxable income of every trust described in paragraph (2) a tax computed as provided in section 1(e). In making such computation for purposes of this section, the term ''taxable income'' as used in section 1 shall be read as ''unrelated business taxable income'' as defined in section 512.

(2) Charitable, etc., trusts subject to tax

The tax imposed by paragraph (1) shall apply in the case of any trust which is exempt, except as provided in this part or part II (relating to private foundations), from taxation under this subtitle by reason of section 501(a) and which, if it were not for such exemption, would be subject to subchapter J (sec. 641 and following, relating to estates, trusts, beneficiaries, and decedents).

(c) Special rule for section 501(c)(2) corporations

If a corporation described in section 501(c)(2)—

(1) pays any amount of its net income for a taxable year to an organization exempt from taxation under section 501(a) (or which would pay such an amount but for the fact that the expenses of collecting its income exceed its income), and

(2) such corporation and such organization file a consolidated return for the taxable year,

such corporation shall be treated, for purposes of the tax imposed by subsection (a), as being organized and operated for the same purposes as such organization, in addition to the purposes described in section 501(c)(2).

(Aug. 16, 1954, ch. 736, 68A Stat. 169; Pub. L. 86–667, § 3, July 14, 1960, 74 Stat. 535; Pub. L. 89–352, § 2, Feb. 2, 1966, 80 Stat. 4; Pub. L. 91–172, title I, § 121(a)(1)–(3), title III, § 301(b)(8), title VIII, § 803(d)(2), Dec. 30, 1969, 83 Stat. 536, 585, 684; Pub. L. 95–30, title I, § 101(d)(6), May 23, 1977, 91 Stat. 133; Pub. L. 95–600, title III, § 301(b)(5), title IV, § 421(e)(3), Nov. 6, 1978, 92 Stat. 2821, 2876; Pub. L. 97–248, title II, § 201(d)(5), formerly § 201(c)(5), Sept. 3, 1982, 96 Stat. 419, renumbered § 201(d)(5), Pub. L. 97–448, title III, § 306(a)(1)(A)(i), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 100–647, title I, § 1007(g)(6), Nov. 10, 1988, 102 Stat. 3435.)

AMENDMENTS

1988—Subsec. (d). Pub. L. 100–647 struck out subsec. (d) which read as follows: ''TAX PREFERENCES.—

''(1) ORGANIZATIONS TAXABLE AT CORPORATE RATES.—If an organization is subject to tax on unrelated business taxable income pursuant to subsection (a), the tax imposed by section 56 shall apply to such organizations with respect to items of tax preference which enter into the computation of unrelated business taxable income in the same manner as section 56 applies to corporations.

''(2) ORGANIZATIONS TAXABLE AS TRUSTS.—If an organization is subject to tax on unrelated business taxable income pursuant to subsection (b), the taxes imposed by section 55 shall apply to such organization with respect to items of tax preference which enter into the computation of unrelated business taxable income.''

1982—Subsec. (d)(2). Pub. L. 97–248 substituted ''section 55'' for ''section 55 and section 56 (as the case may be)''.

1978—Subsec. (a)(1). Pub. L. 95–600, § 301(b)(5)(A), substituted ''a tax'' for ''a normal tax and a surtax''.

Subsec. (a)(2). Pub. L. 95–600, § 301(b)(5)(B), substituted ''tax'' for ''taxes'' wherever appearing.

Subsec. (d). Pub. L. 95–600, § 421(e)(3), substituted provisions relating to organizations taxable at corporate rates and organizations taxable as trusts, for provisions relating to imposition of the tax imposed by section 56 of this title to an organization subject to tax under this section for tax preferences computed in unrelated business taxable income.

1977—Subsec. (b)(1). Pub. L. 95–30 substituted ''section 1(e)'' for ''section 1(d)''.

1969—Subsec. (a)(2)(A). Pub. L. 91–172, § 121(a)(1), removed reference, in heading, to pars. (2), (3), (5), (6), (14)(B), (C), and (17) of section 501(c) of this title, and, in text, struck out exemptions to churches, conventions, or associations of churches, from the imposition of tax on their unrelated business income, made corporations organized under section 501(c)(1) of this title (i.e. organized under Acts of Congress), exempt from such tax, but made all such exemptions subservient to the exceptions in part II and section 501(a) of this title.

Subsec. (b)(1). Pub. L. 91–172, § 803(d)(2), substituted section 1(d) for section 1 in reference to section under which the computation of the tax dealing with the imposition of tax on the unrelated business taxable income of trusts, is computed.

Subsec. (b)(2). Pub. L. 91–172, § 121(a)(2), pluralized ''trust'' in heading and in text made the imposition of tax on the unrelated business income of exempt trusts subject to provisions of part II, and, for purposes of determining trusts exempt from taxation, substituted reference to section 501(a) for reference to ''section 501(c)(3) or (17) or section 401(a)''.

Subsec. (c). Pub. L. 91–172, § 121(a)(3), added subsec. (c). Former subsec. (c), covering the effective date, was struck out.

Subsec. (d). Pub. L. 91–172, § 301(b)(8), added subsec. (d).

1966—Subsec. (a)(2)(A). Pub. L. 89–352 inserted ''(14)(B) or (C),'' after ''(6),'' in heading and in text.

1960—Subsec. (a)(2). Pub. L. 86–667, § 3(a), included organizations described in section 501(c)(17) within subpar. (A).

Subsec. (b). Pub. L. 86–667, § 3(b), inserted a reference to section 501(c)(17).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to taxable years beginning after Dec. 31, 1982, see section 201(e)(1) of Pub. L. 97–248, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 301(b)(5)(A), (B) of Pub. L. 95–600 applicable to taxable years beginning after Dec.

31, 1978, see section 301(c) of Pub. L. 95–600, set out as a note under section 11 of this title.

Amendment by section 421(e)(3) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 421(g) of Pub. L. 95–600, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title I, §121(g), Dec. 30, 1969, 83 Stat. 549, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [amending this section and sections 48, 501, 502, 503, 512 to 514, 681, 801, 810, 1443, 1504, and 7605 of this title] (other than by subsections (b)(3) and (e) [enacting sections 277 and 6050 of this title]) shall apply to taxable years beginning after December 31, 1969. The amendments made by subsection (b)(3) [enacting section 277 of this title] shall apply to taxable years beginning after December 31, 1970. The amendments made by subsection (e) [enacting section 6050 of this title] shall apply with respect to transfers of property after December 31, 1969. Where an organization makes a bargain purchase of property before October 9, 1969, which is subject to a mortgage which was placed on the property more than 5 years before the purchase, and the organization paid the seller a total amount no greater than the amount of the seller's cost (including attorneys' fees) directly related to the transfer of such property to the organization (but in any event no more than 10 percent of the value of the seller's equity in the property), the indebtedness secured by such mortgage shall not be treated, notwithstanding the amendments made by subsection (d)(1) [amending section 514 of this title], as acquisition indebtedness for purposes of section 514(c)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] during a period of 10 years following the date of the transaction.''

Amendment by section 301(b)(8) of Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1969, see section 301(c) of Pub. L. 91–172, set out as a note under section 5 of this title.

Amendment by section 803(d)(2) of Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1970, see section 803(f) of Pub. L. 91–172, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89–352, §3, Feb. 2, 1966, 80 Stat. 4, provided in part that: ''The amendment made by section 2 [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Feb. 2, 1966].''

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–667 applicable to taxable years beginning after Dec. 31, 1959, see section 6 of Pub. L. 86–667, set out as a note under section 501 of this title.

§ 512. Unrelated business taxable income

(a) Definition

For purposes of this title—

(1) General rule

Except as otherwise provided in this subsection, the term ''unrelated business taxable income'' means the gross income derived by any organization from any unrelated trade or business (as defined in section 513) regularly carried on by it, less the deductions allowed by this chapter which are directly connected with the carrying on of such trade or business, both computed with the modifications provided in subsection (b).

(2) Special rule for foreign organizations

In the case of an organization described in section 511 which is a foreign organization, the unrelated business taxable income shall be—

(A) its unrelated business taxable income which is derived from sources within the United States and which is not effectively connected with the conduct of a trade or business within the United States, plus

(B) its unrelated business taxable income which is effectively connected with the conduct of a trade or business within the United States.

(3) Special rules applicable to organizations described in paragraph (7), (9), (17), or (20) of section 501(c)

(A) General rule

In the case of an organization described in paragraph (7), (9), (17), or (20)[1] of section 501(c), the term ''unrelated business taxable income'' means the gross income (excluding any exempt function income), less the deductions allowed by this chapter which are directly connected with the production of the gross income (excluding exempt function income), both computed with the modifications provided in paragraphs (6), (10), (11), and (12) of subsection (b). For purposes of the preceding sentence, the deductions provided by sections 243 and 245 (relating to dividends received by corporations) shall be treated as not directly connected with the production of gross income.

(B) Exempt function income

For purposes of subparagraph (A), the term ''exempt function income'' means the gross income from dues, fees, charges, or similar amounts paid by members of the organization as consideration for providing such members or their dependents or guests goods, facilities, or services in furtherance of the purposes constituting the basis for the exemption of the organization to which such income is paid. Such term also means all income (other than an amount equal to the gross income derived from any unrelated trade or business regularly carried on by such organization computed as if the organization were subject to paragraph (1)), which is set aside—

(i) for a purpose specified in section 170(c)(4), or

(ii) in the case of an organization described in paragraph (9), (17), or (20)[1] of section 501(c), to provide for the payment of life, sick, accident, or other benefits,

including reasonable costs of administration directly connected with a purpose described in clause (i) or (ii). If during the taxable year, an amount which is attributable to income so set aside is used for a purpose other than that described in clause (i) or (ii), such amount shall be included, under subpara-

[1] See References in Text note below.

graph (A), in unrelated business taxable income for the taxable year.

(C) Applicability to certain corporations described in section 501(c)(2)

In the case of a corporation described in section 501(c)(2), the income of which is payable to an organization described in paragraph (7), (9), (17), or (20)[1] of section 501(c), subparagraph (A) shall apply as if such corporation were the organization to which the income is payable. For purposes of the preceding sentence, such corporation shall be treated as having exempt function income for a taxable year only if it files a consolidated return with such organization for such year.

(D) Nonrecognition of gain

If property used directly in the performance of the exempt function of an organization described in paragraph (7), (9), (17), or (20)[1] of section 501(c) is sold by such organization, and within a period beginning 1 year before the date of such sale, and ending 3 years after such date, other property is purchased and used by such organization directly in the performance of its exempt function, gain (if any) from such sale shall be recognized only to the extent that such organization's sales price of the old property exceeds the organization's cost of purchasing the other property. For purposes of this subparagraph, the destruction in whole or in part, theft, seizure, requisition, or condemnation of property, shall be treated as the sale of such property, and rules similar to the rules provided by subsections (b), (c), (e), and (j) of section 1034 (as in effect on the day before the date of the enactment of the Taxpayer Relief Act of 1997) shall apply.

(E) Limitation on amount of setaside in the case of organizations described in paragraph (9), (17), or (20) of section 501(c)

(i) In general

In the case of any organization described in paragraph (9), (17), or (20)[1] of section 501(c), a set-aside for any purpose specified in clause (ii) of subparagraph (B) may be taken into account under subparagraph (B) only to the extent that such set-aside does not result in an amount of assets set aside for such purpose in excess of the account limit determined under section 419A (without regard to subsection (f)(6) thereof) for the taxable year (not taking into account any reserve described in section 419A(c)(2)(A) for post-retirement medical benefits).

(ii) Treatment of existing reserves for post-retirement medical or life insurance benefits

(I) Clause (i) shall not apply to any income attributable to an existing reserve for post-retirement medical or life insurance benefits.

(II) For purposes of subclause (I), the term ''reserve for post-retirement medical or life insurance benefits'' means the greater of the amount of assets set aside for purposes of post-retirement medical or life insurance benefits to be provided to covered employees as of the close of the last plan year ending before the date of the enactment of the Tax Reform Act of 1984 or on July 18, 1984.

(III) All payments during plan years ending on or after the date of the enactment of the Tax Reform Act of 1984 of post-retirement medical benefits or life insurance benefits shall be charged against the reserve referred to in subclause (II). Except to the extent provided in regulations prescribed by the Secretary, all plans of an employer shall be treated as 1 plan for purposes of the preceding sentence.

(iii) Treatment of tax exempt organizations

This subparagraph shall not apply to any organization if substantially all of the contributions to such organization are made by employers who were exempt from tax under this chapter throughout the 5-taxable year period ending with the taxable year in which the contributions are made.

(4) Special rule applicable to organizations described in section 501(c)(19)

In the case of an organization described in section 501(c)(19), the term ''unrelated business taxable income'' does not include any amount attributable to payments for life, sick, accident, or health insurance with respect to members of such organizations or their dependents which is set aside for the purpose of providing for the payment of insurance benefits or for a purpose specified in section 170(c)(4). If an amount set aside under the preceding sentence is used during the taxable year for a purpose other than a purpose described in the preceding sentence, such amount shall be included, under paragraph (1), in unrelated business taxable income for the taxable year.

(5) Definition of payments with respect to securities loans

(A) The term ''payments with respect to securities loans'' includes all amounts received in respect of a security (as defined in section 1236(c)) transferred by the owner to another person in a transaction to which section 1058 applies (whether or not title to the security remains in the name of the lender) including—

(i) amounts in respect of dividends, interest, or other distributions,

(ii) fees computed by reference to the period beginning with the transfer of securities by the owner and ending with the transfer of identical securities back to the transferor by the transferee and the fair market value of the security during such period,

(iii) income from collateral security for such loan, and

(iv) income from the investment of collateral security.

(B) Subparagraph (A) shall apply only with respect to securities transferred pursuant to

an agreement between the transferor and the transferee which provides for—

(i) reasonable procedures to implement the obligation of the transferee to furnish to the transferor, for each business day during such period, collateral with a fair market value not less than the fair market value of the security at the close of business on the preceding business day,

(ii) termination of the loan by the transferor upon notice of not more than 5 business days, and

(iii) return to the transferor of securities identical to the transferred securities upon termination of the loan.

(6) Special rule for organization with more than 1 unrelated trade or business

In the case of any organization with more than 1 unrelated trade or business—

(A) unrelated business taxable income, including for purposes of determining any net operating loss deduction, shall be computed separately with respect to each such trade or business and without regard to subsection (b)(12),

(B) the unrelated business taxable income of such organization shall be the sum of the unrelated business taxable income so computed with respect to each such trade or business, less a specific deduction under subsection (b)(12), and

(C) for purposes of subparagraph (B), unrelated business taxable income with respect to any such trade or business shall not be less than zero.

(7) Increase in unrelated business taxable income by disallowed fringe

Unrelated business taxable income of an organization shall be increased by any amount for which a deduction is not allowable under this chapter by reason of section 274 and which is paid or incurred by such organization for any qualified transportation fringe (as defined in section 132(f)), any parking facility used in connection with qualified parking (as defined in section 132(f)(5)(C)), or any on-premises athletic facility (as defined in section 132(j)(4)(B)). The preceding sentence shall not apply to the extent the amount paid or incurred is directly connected with an unrelated trade or business which is regularly carried on by the organization. The Secretary shall issue such regulations or other guidance as may be necessary or appropriate to carry out the purposes of this paragraph, including regulations or other guidance providing for the appropriate allocation of depreciation and other costs with respect to facilities used for parking or for on-premises athletic facilities.

(b) Modifications

The modifications referred to in subsection (a) are the following:

(1) There shall be excluded all dividends, interest, payments with respect to securities loans (as defined in subsection (a)(5)), amounts received or accrued as consideration for entering into agreements to make loans, and annuities, and all deductions directly connected with such income.

(2) There shall be excluded all royalties (including overriding royalties) whether measured by production or by gross or taxable income from the property, and all deductions directly connected with such income.

(3) In the case of rents—

(A) Except as provided in subparagraph (B), there shall be excluded—

(i) all rents from real property (including property described in section 1245(a)(3)(C)), and

(ii) all rents from personal property (including for purposes of this paragraph as personal property any property described in section 1245(a)(3)(B)) leased with such real property, if the rents attributable to such personal property are an incidental amount of the total rents received or accrued under the lease, determined at the time the personal property is placed in service.

(B) Subparagraph (A) shall not apply—

(i) if more than 50 percent of the total rent received or accrued under the lease is attributable to personal property described in subparagraph (A)(ii), or

(ii) if the determination of the amount of such rent depends in whole or in part on the income or profits derived by any person from the property leased (other than an amount based on a fixed percentage or percentages of receipts or sales).

(C) There shall be excluded all deductions directly connected with rents excluded under subparagraph (A).

(4) Notwithstanding paragraph (1), (2), (3), or (5), in the case of debt-financed property (as defined in section 514) there shall be included, as an item of gross income derived from an unrelated trade or business, the amount ascertained under section 514(a)(1), and there shall be allowed, as a deduction, the amount ascertained under section 514(a)(2).

(5) There shall be excluded all gains or losses from the sale, exchange, or other disposition of property other than—

(A) stock in trade or other property of a kind which would properly be includible in inventory if on hand at the close of the taxable year, or

(B) property held primarily for sale to customers in the ordinary course of the trade or business.

There shall also be excluded all gains or losses recognized, in connection with the organization's investment activities, from the lapse or termination of options to buy or sell securities (as defined in section 1236(c)) or real property and all gains or losses from the forfeiture of good-faith deposits (that are consistent with established business practice) for the purchase, sale, or lease of real property in connection with the organization's investment activities. This paragraph shall not apply with respect to the cutting of timber which is considered, on the application of section 631, as a sale or exchange of such timber.

(6) The net operating loss deduction provided in section 172 shall be allowed, except that—

(A) the net operating loss for any taxable year, the amount of the net operating loss carryback or carryover to any taxable year, and the net operating loss deduction for any taxable year shall be determined under section 172 without taking into account any amount of income or deduction which is excluded under this part in computing the unrelated business taxable income; and

(B) the terms ''preceding taxable year'' and ''preceding taxable years'' as used in section 172 shall not include any taxable year for which the organization was not subject to the provisions of this part.

(7) There shall be excluded all income derived from research for (A) the United States, or any of its agencies or instrumentalities, or (B) any State or political subdivision thereof; and there shall be excluded all deductions directly connected with such income.

(8) In the case of a college, university, or hospital, there shall be excluded all income derived from research performed for any person, and all deductions directly connected with such income.

(9) In the case of an organization operated primarily for purposes of carrying on fundamental research the results of which are freely available to the general public, there shall be excluded all income derived from research performed for any person, and all deductions directly connected with such income.

(10) In the case of any organization described in section 511(a), the deduction allowed by section 170 (relating to charitable etc. contributions and gifts) shall be allowed (whether or not directly connected with the carrying on of the trade or business), but shall not exceed 10 percent of the unrelated business taxable income computed without the benefit of this paragraph.

(11) In the case of any trust described in section 511(b), the deduction allowed by section 170 (relating to charitable etc. contributions and gifts) shall be allowed (whether or not directly connected with the carrying on of the trade or business), and for such purpose a distribution made by the trust to a beneficiary described in section 170 shall be considered as a gift or contribution. The deduction allowed by this paragraph shall be allowed with the limitations prescribed in section 170(b)(1)(A) and (B) determined with reference to the unrelated business taxable income computed without the benefit of this paragraph (in lieu of with reference to adjusted gross income).

(12) Except for purposes of computing the net operating loss under section 172 and paragraph (6), there shall be allowed a specific deduction of $1,000. In the case of a diocese, province of a religious order, or a convention or association of churches, there shall also be allowed, with respect to each parish, individual church, district, or other local unit, a specific deduction equal to the lower of—

(A) $1,000, or

(B) the gross income derived from any unrelated trade or business regularly carried on by such local unit.

(13) SPECIAL RULES FOR CERTAIN AMOUNTS RECEIVED FROM CONTROLLED ENTITIES.—

(A) IN GENERAL.—If an organization (in this paragraph referred to as the ''controlling organization'') receives or accrues (directly or indirectly) a specified payment from another entity which it controls (in this paragraph referred to as the ''controlled entity''), notwithstanding paragraphs (1), (2), and (3), the controlling organization shall include such payment as an item of gross income derived from an unrelated trade or business to the extent such payment reduces the net unrelated income of the controlled entity (or increases any net unrelated loss of the controlled entity). There shall be allowed all deductions of the controlling organization directly connected with amounts treated as derived from an unrelated trade or business under the preceding sentence.

(B) NET UNRELATED INCOME OR LOSS.—For purposes of this paragraph—

(i) NET UNRELATED INCOME.—The term ''net unrelated income'' means—

(I) in the case of a controlled entity which is not exempt from tax under section 501(a), the portion of such entity's taxable income which would be unrelated business taxable income if such entity were exempt from tax under section 501(a) and had the same exempt purposes as the controlling organization, or

(II) in the case of a controlled entity which is exempt from tax under section 501(a), the amount of the unrelated business taxable income of the controlled entity.

(ii) NET UNRELATED LOSS.—The term ''net unrelated loss'' means the net operating loss adjusted under rules similar to the rules of clause (i).

(C) SPECIFIED PAYMENT.—For purposes of this paragraph, the term ''specified payment'' means any interest, annuity, royalty, or rent.

(D) DEFINITION OF CONTROL.—For purposes of this paragraph—

(i) CONTROL.—The term ''control'' means—

(I) in the case of a corporation, ownership (by vote or value) of more than 50 percent of the stock in such corporation,

(II) in the case of a partnership, ownership of more than 50 percent of the profits interests or capital interests in such partnership, or

(III) in any other case, ownership of more than 50 percent of the beneficial interests in the entity.

(ii) CONSTRUCTIVE OWNERSHIP.—Section 318 (relating to constructive ownership of stock) shall apply for purposes of determining ownership of stock in a corporation. Similar principles shall apply for purposes of determining ownership of interests in any other entity.

(E) PARAGRAPH TO APPLY ONLY TO CERTAIN EXCESS PAYMENTS.—

(i) IN GENERAL.—Subparagraph (A) shall apply only to the portion of a qualifying specified payment received or accrued by

the controlling organization that exceeds the amount which would have been paid or accrued if such payment met the requirements prescribed under section 482.

(ii) ADDITION TO TAX FOR VALUATION MISSTATEMENTS.—The tax imposed by this chapter on the controlling organization shall be increased by an amount equal to 20 percent of the larger of—

(I) such excess determined without regard to any amendment or supplement to a return of tax, or

(II) such excess determined with regard to all such amendments and supplements.

(iii) QUALIFYING SPECIFIED PAYMENT.—The term ''qualifying specified payment'' means a specified payment which is made pursuant to—

(I) a binding written contract in effect on the date of the enactment of this subparagraph, or

(II) a contract which is a renewal, under substantially similar terms, of a contract described in subclause (I).

(F) RELATED PERSONS.—The Secretary shall prescribe such rules as may be necessary or appropriate to prevent avoidance of the purposes of this paragraph through the use of related persons.

[(14) Repealed. Pub. L. 101–508, title XI, § 11801(a)(23), Nov. 5, 1990, 104 Stat. 1388–521.]

(15) Except as provided in paragraph (4), in the case of a trade or business—

(A) which consists of providing services under license issued by a Federal regulatory agency,

(B) which is carried on by a religious order or by an educational organization described in section 170(b)(1)(A)(ii) maintained by such religious order, and which was so carried on before May 27, 1959, and

(C) less than 10 percent of the net income of which for each taxable year is used for activities which are not related to the purpose constituting the basis for the religious order's exemption,

there shall be excluded all gross income derived from such trade or business and all deductions directly connected with the carrying on of such trade or business, so long as it is established to the satisfaction of the Secretary that the rates or other charges for such services are competitive with rates or other charges charged for similar services by persons not exempt from taxation.

(16)(A) Notwithstanding paragraph (5)(B), there shall be excluded all gains or losses from the sale, exchange, or other disposition of any real property described in subparagraph (B) if—

(i) such property was acquired by the organization from—

(I) a financial institution described in section 581 or 591(a) which is in conservatorship or receivership, or

(II) the conservator or receiver of such an institution (or any government agency or corporation succeeding to the rights or interests of the conservator or receiver),

(ii) such property is designated by the organization within the 9-month period beginning on the date of its acquisition as property held for sale, except that not more than one-half (by value determined as of such date) of property acquired in a single transaction may be so designated,

(iii) such sale, exchange, or disposition occurs before the later of—

(I) the date which is 30 months after the date of the acquisition of such property, or

(II) the date specified by the Secretary in order to assure an orderly disposition of property held by persons described in subparagraph (A), and

(iv) while such property was held by the organization, the aggregate expenditures on improvements and development activities included in the basis of the property are (or were) not in excess of 20 percent of the net selling price of such property.

(B) Property is described in this subparagraph if it is real property which—

(i) was held by the financial institution at the time it entered into conservatorship or receivership, or

(ii) was foreclosure property (as defined in section 514(c)(9)(H)(v)) which secured indebtedness held by the financial institution at such time.

For purposes of this subparagraph, real property includes an interest in a mortgage.

(17) TREATMENT OF CERTAIN AMOUNTS DERIVED FROM FOREIGN CORPORATIONS.—

(A) IN GENERAL.—Notwithstanding paragraph (1), any amount included in gross income under section 951(a)(1)(A) shall be included as an item of gross income derived from an unrelated trade or business to the extent the amount so included is attributable to insurance income (as defined in section 953) which, if derived directly by the organization, would be treated as gross income from an unrelated trade or business. There shall be allowed all deductions directly connected with amounts included in gross income under the preceding sentence.

(B) EXCEPTION.—

(i) IN GENERAL.—Subparagraph (A) shall not apply to income attributable to a policy of insurance or reinsurance with respect to which the person (directly or indirectly) insured is—

(I) such organization,

(II) an affiliate of such organization which is exempt from tax under section 501(a), or

(III) a director or officer of, or an individual who (directly or indirectly) performs services for, such organization or affiliate but only if the insurance covers primarily risks associated with the performance of services in connection with such organization or affiliate.

(ii) AFFILIATE.—For purposes of this subparagraph—

(I) IN GENERAL.—The determination as to whether an entity is an affiliate of an organization shall be made under rules

similar to the rules of section 168(h)(4)(B).

(II) SPECIAL RULE.—Two or more organizations (and any affiliates of such organizations) shall be treated as affiliates if such organizations are colleges or universities described in section 170(b)(1)(A)(ii) or organizations described in section 170(b)(1)(A)(iii) and participate in an insurance arrangement that provides for any profits from such arrangement to be returned to the policyholders in their capacity as such.

(C) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph, including regulations for the application of this paragraph in the case of income paid through 1 or more entities or between 2 or more chains of entities.

(18) TREATMENT OF MUTUAL OR COOPERATIVE ELECTRIC COMPANIES.—In the case of a mutual or cooperative electric company described in section 501(c)(12), there shall be excluded income which is treated as member income under subparagraph (H) thereof.

(19) TREATMENT OF GAIN OR LOSS ON SALE OR EXCHANGE OF CERTAIN BROWNFIELD SITES.—

(A) IN GENERAL.—Notwithstanding paragraph (5)(B), there shall be excluded any gain or loss from the qualified sale, exchange, or other disposition of any qualifying brownfield property by an eligible taxpayer.

(B) ELIGIBLE TAXPAYER.—For purposes of this paragraph—

(i) IN GENERAL.—The term ''eligible taxpayer'' means, with respect to a property, any organization exempt from tax under section 501(a) which—

(I) acquires from an unrelated person a qualifying brownfield property, and

(II) pays or incurs eligible remediation expenditures with respect to such property in an amount which exceeds the greater of $550,000 or 12 percent of the fair market value of the property at the time such property was acquired by the eligible taxpayer, determined as if there was not a presence of a hazardous substance, pollutant, or contaminant on the property which is complicating the expansion, redevelopment, or reuse of the property.

(ii) EXCEPTION.—Such term shall not include any organization which is—

(I) potentially liable under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 with respect to the qualifying brownfield property,

(II) affiliated with any other person which is so potentially liable through any direct or indirect familial relationship or any contractual, corporate, or financial relationship (other than a contractual, corporate, or financial relationship which is created by the instruments by which title to any qualifying brownfield property is conveyed or financed or by a contract of sale of goods or services), or

(III) the result of a reorganization of a business entity which was so potentially liable.

(C) QUALIFYING BROWNFIELD PROPERTY.—For purposes of this paragraph—

(i) IN GENERAL.—The term ''qualifying brownfield property'' means any real property which is certified, before the taxpayer incurs any eligible remediation expenditures (other than to obtain a Phase I environmental site assessment), by an appropriate State agency (within the meaning of section 198(c)(4)) in the State in which such property is located as a brownfield site within the meaning of section 101(39) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as in effect on the date of the enactment of this paragraph).

(ii) REQUEST FOR CERTIFICATION.—Any request by an eligible taxpayer for a certification described in clause (i) shall include a sworn statement by the eligible taxpayer and supporting documentation of the presence of a hazardous substance, pollutant, or contaminant on the property which is complicating the expansion, redevelopment, or reuse of the property given the property's reasonably anticipated future land uses or capacity for uses of the property (including a Phase I environmental site assessment and, if applicable, evidence of the property's presence on a local, State, or Federal list of brownfields or contaminated property) and other environmental assessments prepared or obtained by the taxpayer.

(D) QUALIFIED SALE, EXCHANGE, OR OTHER DISPOSITION.—For purposes of this paragraph—

(i) IN GENERAL.—A sale, exchange, or other disposition of property shall be considered as qualified if—

(I) such property is transferred by the eligible taxpayer to an unrelated person, and

(II) within 1 year of such transfer the eligible taxpayer has received a certification from the Environmental Protection Agency or an appropriate State agency (within the meaning of section 198(c)(4)) in the State in which such property is located that, as a result of the eligible taxpayer's remediation actions, such property would not be treated as a qualifying brownfield property in the hands of the transferee.

For purposes of subclause (II), before issuing such certification, the Environmental Protection Agency or appropriate State agency shall respond to comments received pursuant to clause (ii)(V) in the same form and manner as required under section 117(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as in effect on the date of the enactment of this paragraph).

(ii) REQUEST FOR CERTIFICATION.—Any request by an eligible taxpayer for a certification described in clause (i) shall be made not later than the date of the transfer and shall include a sworn statement by the eligible taxpayer certifying the following:

(I) Remedial actions which comply with all applicable or relevant and appropriate requirements (consistent with section 121(d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980) have been substantially completed, such that there are no hazardous substances, pollutants, or contaminants which complicate the expansion, redevelopment, or reuse of the property given the property's reasonably anticipated future land uses or capacity for uses of the property.

(II) The reasonably anticipated future land uses or capacity for uses of the property are more economically productive or environmentally beneficial than the uses of the property in existence on the date of the certification described in subparagraph (C)(i). For purposes of the preceding sentence, use of property as a landfill or other hazardous waste facility shall not be considered more economically productive or environmentally beneficial.

(III) A remediation plan has been implemented to bring the property into compliance with all applicable local, State, and Federal environmental laws, regulations, and standards and to ensure that the remediation protects human health and the environment.

(IV) The remediation plan described in subclause (III), including any physical improvements required to remediate the property, is either complete or substantially complete, and, if substantially complete, sufficient monitoring, funding, institutional controls, and financial assurances have been put in place to ensure the complete remediation of the property in accordance with the remediation plan as soon as is reasonably practicable after the sale, exchange, or other disposition of such property.

(V) Public notice and the opportunity for comment on the request for certification was completed before the date of such request. Such notice and opportunity for comment shall be in the same form and manner as required for public participation required under section 117(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as in effect on the date of the enactment of this paragraph). For purposes of this subclause, public notice shall include, at a minimum, publication in a major local newspaper of general circulation.

(iii) ATTACHMENT TO TAX RETURNS.—A copy of each of the requests for certification described in clause (ii) of subparagraph (C) and this subparagraph shall be included in the tax return of the eligible taxpayer (and, where applicable, of the qualifying partnership) for the taxable year during which the transfer occurs.

(iv) SUBSTANTIAL COMPLETION.—For purposes of this subparagraph, a remedial action is substantially complete when any necessary physical construction is complete, all immediate threats have been eliminated, and all long-term threats are under control.

(E) ELIGIBLE REMEDIATION EXPENDITURES.—For purposes of this paragraph—

(i) IN GENERAL.—The term ''eligible remediation expenditures'' means, with respect to any qualifying brownfield property, any amount paid or incurred by the eligible taxpayer to an unrelated third person to obtain a Phase I environmental site assessment of the property, and any amount so paid or incurred after the date of the certification described in subparagraph (C)(i) for goods and services necessary to obtain a certification described in subparagraph (D)(i) with respect to such property, including expenditures—

(I) to manage, remove, control, contain, abate, or otherwise remediate a hazardous substance, pollutant, or contaminant on the property,

(II) to obtain a Phase II environmental site assessment of the property, including any expenditure to monitor, sample, study, assess, or otherwise evaluate the release, threat of release, or presence of a hazardous substance, pollutant, or contaminant on the property,

(III) to obtain environmental regulatory certifications and approvals required to manage the remediation and monitoring of the hazardous substance, pollutant, or contaminant on the property, and

(IV) regardless of whether it is necessary to obtain a certification described in subparagraph (D)(i)(II), to obtain remediation cost-cap or stop-loss coverage, re-opener or regulatory action coverage, or similar coverage under environmental insurance policies, or financial guarantees required to manage such remediation and monitoring.

(ii) EXCEPTIONS.—Such term shall not include—

(I) any portion of the purchase price paid or incurred by the eligible taxpayer to acquire the qualifying brownfield property,

(II) environmental insurance costs paid or incurred to obtain legal defense coverage, owner/operator liability coverage, lender liability coverage, professional liability coverage, or similar types of coverage,

(III) any amount paid or incurred to the extent such amount is reimbursed, funded, or otherwise subsidized by grants provided by the United States, a State, or a political subdivision of a State for use in connection with the property, proceeds of an issue of State or local gov-

ernment obligations used to provide financing for the property the interest of which is exempt from tax under section 103, or subsidized financing provided (directly or indirectly) under a Federal, State, or local program provided in connection with the property, or

(IV) any expenditure paid or incurred before the date of the enactment of this paragraph.

For purposes of subclause (III), the Secretary may issue guidance regarding the treatment of government-provided funds for purposes of determining eligible remediation expenditures.

(F) DETERMINATION OF GAIN OR LOSS.—For purposes of this paragraph, the determination of gain or loss shall not include an amount treated as gain which is ordinary income with respect to section 1245 or section 1250 property, including amounts deducted as section 198 expenses which are subject to the recapture rules of section 198(e), if the taxpayer had deducted such amounts in the computation of its unrelated business taxable income.

(G) SPECIAL RULES FOR PARTNERSHIPS.—

(i) IN GENERAL.—In the case of an eligible taxpayer which is a partner of a qualifying partnership which acquires, remediates, and sells, exchanges, or otherwise disposes of a qualifying brownfield property, this paragraph shall apply to the eligible taxpayer's distributive share of the qualifying partnership's gain or loss from the sale, exchange, or other disposition of such property.

(ii) QUALIFYING PARTNERSHIP.—The term ''qualifying partnership'' means a partnership which—

(I) has a partnership agreement which satisfies the requirements of section 514(c)(9)(B)(vi) at all times beginning on the date of the first certification received by the partnership under subparagraph (C)(i),

(II) satisfies the requirements of subparagraphs (B)(i), (C), (D), and (E), if ''qualified partnership'' is substituted for ''eligible taxpayer'' each place it appears therein (except subparagraph (D)(iii)), and

(III) is not an organization which would be prevented from constituting an eligible taxpayer by reason of subparagraph (B)(ii).

(iii) REQUIREMENT THAT TAX-EXEMPT PARTNER BE A PARTNER SINCE FIRST CERTIFICATION.—This paragraph shall apply with respect to any eligible taxpayer which is a partner of a partnership which acquires, remediates, and sells, exchanges, or otherwise disposes of a qualifying brownfield property only if such eligible taxpayer was a partner of the qualifying partnership at all times beginning on the date of the first certification received by the partnership under subparagraph (C)(i) and ending on the date of the sale, exchange, or other disposition of the property by the partnership.

(iv) REGULATIONS.—The Secretary shall prescribe such regulations as are necessary to prevent abuse of the requirements of this subparagraph, including abuse through—

(I) the use of special allocations of gains or losses, or

(II) changes in ownership of partnership interests held by eligible taxpayers.

(H) SPECIAL RULES FOR MULTIPLE PROPERTIES.—

(i) IN GENERAL.—An eligible taxpayer or a qualifying partnership of which the eligible taxpayer is a partner may make a 1-time election to apply this paragraph to more than 1 qualifying brownfield property by averaging the eligible remediation expenditures for all such properties acquired during the election period. If the eligible taxpayer or qualifying partnership makes such an election, the election shall apply to all qualified sales, exchanges, or other dispositions of qualifying brownfield properties the acquisition and transfer of which occur during the period for which the election remains in effect.

(ii) ELECTION.—An election under clause (i) shall be made with the eligible taxpayer's or qualifying partnership's timely filed tax return (including extensions) for the first taxable year for which the taxpayer or qualifying partnership intends to have the election apply. An election under clause (i) is effective for the period—

(I) beginning on the date which is the first day of the taxable year of the return in which the election is included or a later day in such taxable year selected by the eligible taxpayer or qualifying partnership, and

(II) ending on the date which is the earliest of a date of revocation selected by the eligible taxpayer or qualifying partnership, the date which is 8 years after the date described in subclause (I), or, in the case of an election by a qualifying partnership of which the eligible taxpayer is a partner, the date of the termination of the qualifying partnership.

(iii) REVOCATION.—An eligible taxpayer or qualifying partnership may revoke an election under clause (i)(II)[2] by filing a statement of revocation with a timely filed tax return (including extensions). A revocation is effective as of the first day of the taxable year of the return in which the revocation is included or a later day in such taxable year selected by the eligible taxpayer or qualifying partnership. Once an eligible taxpayer or qualifying partnership revokes the election, the eligible taxpayer or qualifying partnership is ineligible to make another election under clause (i) with respect to any qualifying brownfield property subject to the revoked election.

(I) RECAPTURE.—If an eligible taxpayer excludes gain or loss from a sale, exchange, or

[2] So in original.

other disposition of property to which an election under subparagraph (H) applies, and such property fails to satisfy the requirements of this paragraph, the unrelated business taxable income of the eligible taxpayer for the taxable year in which such failure occurs shall be determined by including any previously excluded gain or loss from such sale, exchange, or other disposition allocable to such taxpayer, and interest shall be determined at the overpayment rate established under section 6621 on any resulting tax for the period beginning with the due date of the return for the taxable year during which such sale, exchange, or other disposition occurred, and ending on the date of payment of the tax.

(J) RELATED PERSONS.—For purposes of this paragraph, a person shall be treated as related to another person if—

(i) such person bears a relationship to such other person described in section 267(b) (determined without regard to paragraph (9) thereof), or section 707(b)(1), determined by substituting ''25 percent'' for ''50 percent'' each place it appears therein, and

(ii) in the case such other person is a nonprofit organization, if such person controls directly or indirectly more than 25 percent of the governing body of such organization.

(K) TERMINATION.—Except for purposes of determining the average eligible remediation expenditures for properties acquired during the election period under subparagraph (H), this paragraph shall not apply to any property acquired by the eligible taxpayer or qualifying partnership after December 31, 2009.

(c) Special rules for partnerships

(1) In general

If a trade or business regularly carried on by a partnership of which an organization is a member is an unrelated trade or business with respect to such organization, such organization in computing its unrelated business taxable income shall, subject to the exceptions, additions, and limitations contained in subsection (b), include its share (whether or not distributed) of the gross income of the partnership from such unrelated trade or business and its share of the partnership deductions directly connected with such gross income.

(2) Special rule where partnership year is different from organization's year

If the taxable year of the organization is different from that of the partnership, the amounts to be included or deducted in computing the unrelated business taxable income under paragraph (1) shall be based upon the income and deductions of the partnership for any taxable year of the partnership ending within or with the taxable year of the organization.

(d) Treatment of dues of agricultural or horticultural organizations

(1) In general

If—

(A) an agricultural or horticultural organization described in section 501(c)(5) requires annual dues to be paid in order to be a member of such organization, and

(B) the amount of such required annual dues does not exceed $100,

in no event shall any portion of such dues be treated as derived by such organization from an unrelated trade or business by reason of any benefits or privileges to which members of such organization are entitled.

(2) Indexation of $100 amount

In the case of any taxable year beginning in a calendar year after 1995, the $100 amount in paragraph (1) shall be increased by an amount equal to—

(A) $100, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting ''calendar year 1994'' for ''calendar year 2016'' in subparagraph (A)(ii) thereof.

(3) Dues

For purposes of this subsection, the term ''dues'' means any payment (whether or not designated as dues) which is required to be made in order to be recognized by the organization as a member of the organization.

(e) Special rules applicable to S corporations

(1) In general

If an organization described in section 1361(c)(2)(A)(vi) or 1361(c)(6) holds stock in an S corporation—

(A) such interest shall be treated as an interest in an unrelated trade or business, and

(B) notwithstanding any other provision of this part—

(i) all items of income, loss, or deduction taken into account under section 1366(a), and

(ii) any gain or loss on the disposition of the stock in the S corporation,

shall be taken into account in computing the unrelated business taxable income of such organization.

(2) Basis reduction

Except as provided in regulations, for purposes of paragraph (1), the basis of any stock acquired by purchase (as defined in section 1361(e)(1)(C)) shall be reduced by the amount of any dividends received by the organization with respect to the stock.

(3) Exception for ESOPs

This subsection shall not apply to employer securities (within the meaning of section 409(*l*)) held by an employee stock ownership plan described in section 4975(e)(7).

(Aug. 16, 1954, ch. 736, 68A Stat. 170; Pub. L. 85–367, §1(a), Apr. 7, 1958, 72 Stat. 80; Pub. L. 88–380, §1, July 17, 1964, 78 Stat. 333; Pub. L. 89–809, title I, §104(g), Nov. 13, 1966, 80 Stat. 1559; Pub. L. 91–172, title I, §121(b)(1), (2), Dec. 30, 1969, 83 Stat. 537, 538; Pub. L. 92–418, §1(b), Aug. 29, 1972, 86 Stat. 656; Pub. L. 94–396, §1(a), Sept. 3, 1976, 90 Stat. 1201; Pub. L. 94–455, title XIX,

§§ 1901(b)(8)(F), 1906(b)(13)(A), 1951(b)(8)(A), Oct. 4, 1976, 90 Stat. 1794, 1834, 1839; Pub. L. 94–568, § 1(b), Oct. 20, 1976, 90 Stat. 2697; Pub. L. 95–345, § 2(a)(2), (b), Aug. 15, 1978, 92 Stat. 481; Pub. L. 97–448, title I, § 102(m)(3), Jan. 12, 1983, 96 Stat. 2374; Pub. L. 98–369, div. A, title V, § 511(b), July 18, 1984, 98 Stat. 860; Pub. L. 99–514, title XVIII, § 1851(a)(10), Oct. 22, 1986, 100 Stat. 2861; Pub. L. 100–203, title X, § 10213(a), Dec. 22, 1987, 101 Stat. 1330–406; Pub. L. 100–647, title I, § 1018(t)(2)(B), Nov. 10, 1988, 102 Stat. 3587; Pub. L. 101–508, title XI, § 11801(a)(23), Nov. 5, 1990, 104 Stat. 1388–521; Pub. L. 103–66, title XIII, §§ 13145(a), 13147(a), 13148(a), (b), Aug. 10, 1993, 107 Stat. 443, 444; Pub. L. 104–188, title I, §§ 1115(a), 1316(c), 1603(a), Aug. 20, 1996, 110 Stat. 1761, 1786, 1835; Pub. L. 105–34, title III, § 312(d)(5), title X, § 1041(a), title XV, § 1523(a), title XVI, § 1601(c)(4)(A), (D), Aug. 5, 1997, 111 Stat. 840, 938, 1070, 1087; Pub. L. 105–206, title VI, §§ 6010(j)(1), (2), 6023(8), July 22, 1998, 112 Stat. 815, 825; Pub. L. 108–357, title II, § 233(d), title III, § 319(c), title VII, § 702(a), Oct. 22, 2004, 118 Stat. 1434, 1472, 1540; Pub. L. 109–135, title IV, § 412(dd), (ee)(1), Dec. 21, 2005, 119 Stat. 2639; Pub. L. 109–280, title XII, § 1205(a), Aug. 17, 2006, 120 Stat. 1066; Pub. L. 110–343, div. C, title III, § 306(a), Oct. 3, 2008, 122 Stat. 3868; Pub. L. 111–312, title VII, § 747(a), Dec. 17, 2010, 124 Stat. 3320; Pub. L. 112–240, title III, § 319(a), Jan. 2, 2013, 126 Stat. 2331; Pub. L. 113–295, div. A, title I, § 131(a), title II, § 221(a)(41)(G), Dec. 19, 2014, 128 Stat. 4018, 4044; Pub. L. 114–113, div. Q, title I, § 114(a), Dec. 18, 2015, 129 Stat. 3049; Pub. L. 115–97, title I, §§ 11002(d)(1)(Y), 13702(a), 13703(a), Dec. 22, 2017, 131 Stat. 2060, 2168, 2169.)

Inflation Adjusted Items for Certain Years

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

References in Text

Section 501(c)(20), referred to in subsec. (a)(3), was repealed by Pub. L. 113–295, div. A, title II, § 221(a)(19)(B)(iii), Dec. 19, 2014, 128 Stat. 4040.

The date of the enactment of the Taxpayer Relief Act of 1997, referred to in subsec. (a)(3)(D), is the date of enactment of Pub. L. 105–34, which was approved Aug. 5, 1997.

The date of the enactment of the Tax Reform Act of 1984, referred to in subsec. (a)(3)(E)(ii)(II), (III), is the date of enactment of division A of Pub. L. 98–369, which was approved July 18, 1984.

The date of the enactment of this subparagraph, referred to in subsec. (b)(13)(E)(iii)(I), is the date of enactment of Pub. L. 109–280, which was approved Aug. 17, 2006.

Sections 101(39), 107, 117(a), (b), and 121(d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, referred to in subsec. (b)(19)(B)(ii)(I), (C)(i), (D)(i), (ii)(I), (V), are classified to sections 9601(39), 9607, 9617(a), (b), and 9621(d), respectively, of Title 42, The Public Health and Welfare.

The date of the enactment of this paragraph, referred to in subsec. (b)(19)(C)(i), (D)(i), (ii)(V), (E)(ii)(IV), is the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

Amendments

2017—Subsec. (a)(6). Pub. L. 115–97, § 13702(a), added par. (6).

Subsec. (a)(7). Pub. L. 115–97, § 13703(a), added par. (7).

Subsec. (d)(2)(B). Pub. L. 115–97, § 11002(d)(1)(Y), substituted ''for 'calendar year 2016' in subparagraph (A)(ii)'' for ''for 'calendar year 1992' in subparagraph (B)''.

2015—Subsec. (b)(13)(E)(iv). Pub. L. 114–113 struck out cl. (iv). Text read as follows: ''This subparagraph shall not apply to payments received or accrued after December 31, 2014.''

2014—Subsec. (a)(3)(A). Pub. L. 113–295, § 221(a)(41)(G), struck out '', 244,'' after ''sections 243''.

Subsec. (b)(13)(E)(iv). Pub. L. 113–295, § 131(a), substituted ''December 31, 2014'' for ''December 31, 2013''.

2013—Subsec. (b)(13)(E)(iv). Pub. L. 112–240 substituted ''December 31, 2013'' for ''December 31, 2011''.

2010—Subsec. (b)(13)(E)(iv). Pub. L. 111–312 substituted ''December 31, 2011'' for ''December 31, 2009''.

2008—Subsec. (b)(13)(E)(iv). Pub. L. 110–343 substituted ''December 31, 2009'' for ''December 31, 2007''.

2006—Subsec. (b)(13)(E), (F). Pub. L. 109–280, which directed the amendment of section 512(b)(13) by adding subpar. (E) and redesignating former subpar. (E) as (F), without specifying the act to be amended, was executed by making the amendments to this section, which is section 512 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

2005—Subsec. (b)(1). Pub. L. 109–135, § 412(dd), substituted ''subsection (a)(5)'' for ''section 512(a)(5)''.

Subsec. (b)(18), (19). Pub. L. 109–135, § 412(ee)(1), redesignated par. (18), relating to treatment of gain or loss on sale or exchange of certain brownfield sites, as (19).

2004—Subsec. (b)(18). Pub. L. 108–357, § 702(a), added par. (18) relating to treatment of gain or loss on sale or exchange of certain brownfield sites.

Pub. L. 108–357, § 319(c), added par. (18) relating to treatment of mutual or cooperative electric companies.

Subsec. (e)(1). Pub. L. 108–357, § 233(d), inserted ''1361(c)(2)(A)(vi) or'' before ''1361(c)(6)'' in introductory provisions.

1998—Subsec. (b)(13)(A). Pub. L. 105–206, § 6010(j)(1), inserted ''or accrues'' after ''receives'' in first sentence.

Subsec. (b)(13)(B)(i)(I). Pub. L. 105–206, § 6010(j)(2), struck out ''(as defined in section 513A(a)(5)(A))'' after ''exempt purposes''.

Subsec. (b)(17)(B)(ii)(II). Pub. L. 105–206, § 6023(8), substituted ''rule'' for ''Rule'' in subcl. heading.

1997—Subsec. (a)(3)(D). Pub. L. 105–34, § 312(d)(5), inserted ''(as in effect on the day before the date of the enactment of the Taxpayer Relief Act of 1997)'' after ''1034''.

Subsec. (b)(13). Pub. L. 105–34, § 1041(a), amended par. (13) generally. Prior to amendment, par. (13) related to inclusion in gross income of controlling organization of amounts of interest, annuities, royalties, and rents derived from a controlled organization.

Subsec. (e)(1). Pub. L. 105–34, § 1601(c)(4)(D), substituted ''section 1361(c)(6)'' for ''section 1361(c)(7)''.

Subsec. (e)(2). Pub. L. 105–34, § 1601(c)(4)(A), substituted ''as defined in section 1361(e)(1)(C)'' for ''within the meaning of section 1012''.

Subsec. (e)(3). Pub. L. 105–34, § 1523(a), added par. (3).

1996—Subsec. (b)(17). Pub. L. 104–188, § 1603(a), added par. (17).

Subsec. (d). Pub. L. 104–188, § 1115(a), added subsec. (d).

Subsec. (e). Pub. L. 104–188, § 1316(c), added subsec. (e).

1993—Subsec. (b)(1). Pub. L. 103–66, § 13148(a), inserted ''amounts received or accrued as consideration for entering into agreements to make loans,'' before ''and annuities''.

Subsec. (b)(5). Pub. L. 103–66, § 13148(b), in second sentence, substituted ''all gains or losses recognized, in connection with the organization's investment activities, from'' for ''all gains on'', struck out '', written by the organization in connection with its investment activities,'' after ''termination of options'', and inserted before period at end ''or real property and all gains or losses from the forfeiture of good-faith deposits (that are consistent with established business practice) for the purchase, sale, or lease of real property in connection with the organization's investment activities''.

Subsec. (b)(16). Pub. L. 103–66, § 13147(a), added par. (16).

Subsec. (c)(2), (3). Pub. L. 103–66, § 13145(a), redesignated par. (3) as (2), substituted ''paragraph (1)'' for

''paragraph (1) or (2)'', and struck out heading and text of former par. (2). Text read as follows: ''Notwithstanding any other provision of this section—

''(A) any organization's share (whether or not distributed) of the gross income of a publicly traded partnership (as defined in section 469(k)(2)) shall be treated as gross income derived from an unrelated trade or business, and

''(B) such organization's share of the partnership deductions shall be allowed in computing unrelated business taxable income.''

1990—Subsec. (b)(14). Pub. L. 101–508 struck out par. (14) which read as follows: ''Except as provided in paragraph (4), in the case of a church, or convention or association of churches, for taxable years beginning before January 1, 1976, there shall be excluded all gross income derived from a trade or business and all deductions directly connected with the carrying on of such trade or business if such trade or business was carried on by such organization or its predecessor before May 27, 1969.''

1988—Subsec. (a)(3)(E)(ii)(II). Pub. L. 100–647 substituted ''subclause (I)'' for ''subclause (II)'' and a period for comma at end.

1987—Subsec. (c). Pub. L. 100–203 substituted ''for partnerships'' for ''applicable to partnerships'' in heading and amended text generally. Prior to amendment, text read as follows: ''If a trade or business regularly carried on by a partnership of which an organization is a member is an unrelated trade or business with respect to such organization, such organization in computing its unrelated business taxable income shall, subject to the exceptions, additions, and limitations contained in subsection (b), include its share (whether or not distributed) of the gross income of the partnership from such unrelated trade or business and its share of the partnership deductions directly connected with such gross income. If the taxable year of the organization is different from that of the partnership, the amounts to be so included or deducted in computing the unrelated business taxable income shall be based upon the income and deductions of the partnership for any taxable year of the partnership ending within or with the taxable year of the organization.''

1986—Subsec. (a)(3)(E)(i). Pub. L. 99–514, §1851(a)(10)(A), substituted ''determined under section 419A (without regard to subsection (f)(6) thereof)'' for ''determined under section 419A(c)''.

Subsec. (a)(3)(E)(ii). Pub. L. 99–514, §1851(a)(10)(B), (C), redesignated cl. (iii) as (ii), in subcl. I substituted ''an existing reserve'' for ''a existing reserve'', and substituted new subcl. (II) for former subcl. (II) which read as follows: ''For purposes of subclause (I), the term 'existing reserve or post-retirement medical or life insurance benefit' means the amount of assets set aside as of the close of the last plan year ending before the date of the enactment of the Tax Reform Act of 1984 for purposes of post-retirement medical benefits or life insurance benefits to be provided to covered employees.'' Former cl. (ii), which provided that no set aside for assets used in the provision of benefits described in cl. (ii) of subpar. (B), could be taken into account, was struck out.

Subsec. (a)(3)(E)(iii), (iv). Pub. L. 99–514, §1851(a)(10)(B), (D), redesignated former cl. (iv) as (iii) and substituted ''subparagraph shall not'' for ''paragraph shall not''. Former cl. (iii) redesignated (ii).

1984—Subsec. (a)(3). Pub. L. 98–369, §511(b)(1)(A), substituted ''paragraph (7), (9), (17), or (20) of section 501(c)'' for ''section 501(c)(7) or (9)'' wherever appearing in heading and in text.

Subsec. (a)(3)(B)(ii). Pub. L. 98–369, §511(b)(1)(B), substituted ''paragraph (9), (17), or (20) of section 501(c)'' for ''section 501(c)(9)''.

Subsec. (a)(3)(C), (D). Pub. L. 98–369, §511(b)(1)(A), substituted in subpars. (C) and (D) ''paragraph (7), (9), (17), or (20) of section 501(c)'' for ''section 501(c)(7) or (9)'' wherever appearing.

Subsec. (a)(3)(E). Pub. L. 98–369, §511(b)(2), added subpar. (E).

1983—Subsec. (b)(10). Pub. L. 97–448 substituted ''10 percent'' for ''5 percent''.

1978—Subsec. (a)(5). Pub. L. 95–345, §2(b), added par. (5).

Subsec. (b)(1). Pub. L. 95–345, §2(a)(2), inserted provision relating to payments with respect to securities loans.

1976—Subsec. (a)(3)(A). Pub. L. 94–568 provided that for purposes of the general rule, the deductions provided by sections 243, 244, and 245 (relating to dividends received by corporations) shall be treated as not directly connected with the production of gross income.

Subsec. (b). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (b)(5). Pub. L. 94–396 inserted provision relating to exclusion of gains on the lapse or termination of options to buy or sell securities.

Subsec. (b)(13), (14). Pub. L. 94–455, §1951(b)(8)(A), redesignated pars. (15) and (16) as (13) and (14), respectively. Former pars. (13) and (14), relating to exceptions, additions, and limitations applicable in determining unrelated business taxable income, were struck out.

Subsec. (b)(15). Pub. L. 94–455, §§1901(b)(8)(F), 1906(b)(13)(A), 1951(b)(8)(A), redesignated par. (17) as (15) and substituted in subpar. (B) ''educational organization described in section 170(b)(1)(A)(ii)'' for ''educational institution (as defined in section 151(e)(4))'' after ''order or by an'', and struck out ''or his delegate'' after ''Secretary''. Former par. (15) redesignated (13).

Subsec. (b)(16), (17). Pub. L. 94–455, §1951(b)(8)(A), redesignated pars. (16) and (17) as (14) and (15), respectively.

1972—Subsec. (a)(4). Pub. L. 92–418 added par. (4).

1969—Subsec. (a). Pub. L. 91–172, §121(b)(1), designated existing provisions as pars. (1) and (2)(B) and added pars. (2)(A) and (3).

Subsec. (b). Pub. L. 91–172, §121(b)(2)(D), substituted ''Modifications'' for ''Exceptions, additions, and limitations'', in heading, and, in text preceding par. (1) substituted ''The modifications referred to in subsection (a)'' for ''The exceptions, additions, and limitations applicable in determining unrelated business taxable income''.

Subsec. (b)(3)(A). Pub. L. 91–172, §121(b)(2)(A), inserted reference to exceptions set out in subsec. (b)(3)(B) in text preceding cl. (i), substituted ''property described in section 1245(a)(3)(C)'' for ''personal property leased with the real property'' in parenthetical of cl. (i), and added cl. (ii).

Subsec. (b)(3)(B). Pub. L. 91–172, §121(b)(2)(A), added subpar. (B).

Subsec. (b)(3)(C). Pub. L. 91–172, §121(b)(2)(A), substituted ''rents excluded under subparagraph (A)'' for ''such rents''.

Subsec. (b)(4). Pub. L. 91–172, §121(b)(2)(A), inserted reference to pars. (1), (3) and (5) of this subsec., and substituted ''debt financed property'' for ''a business lease''.

Subsec. (b)(12). Pub. L. 91–172, §121(b)(2)(B), made the allowance of the specific $1,000 deduction inapplicable for the purposes of computing the net operating loss under section 172 of this title and par. (6) of this subsec., and provided for the allowance of specific deductions equal to the lower of $1,000 or the gross income derived from any unrelated trade or business carried on by a parish, individual church, district, or other local unit.

Subsec. (b)(15) to (17). Pub. L. 91–172, §121(b)(2)(C), added pars. (15) to (17).

1966—Subsec. (a). Pub. L. 89–809 substituted '', the unrelated business taxable income shall be its unrelated business taxable income which is effectively connected with the conduct of a trade or business within the United States'' for '', the unrelated business taxable income shall be its unrelated business taxable income derived from sources within the United States determined under subchapter N (sec. 861 and following), relating to tax based on income from sources within or without the United States''.

1964—Subsec. (b)(14). Pub. L. 88–380 added par. (14).
1958—Subsec. (b)(13). Pub. L. 85–367 added par. (13).

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 11002(d)(1)(Y) of Pub. L. 115–97 applicable to taxable years beginning after Dec. 31, 2017, see section 11002(e) of Pub. L. 115–97, set out as a note under section 1 of this title.

Pub. L. 115–97, title I, § 13702(b), Dec. 22, 2017, 131 Stat. 2168, provided that:

''(1) IN GENERAL.—Except to the extent provided in paragraph (2), the amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2017.

''(2) CARRYOVERS OF NET OPERATING LOSSES.—If any net operating loss arising in a taxable year beginning before January 1, 2018, is carried over to a taxable year beginning on or after such date—

''(A) subparagraph (A) of section 512(a)(6) of the Internal Revenue Code of 1986, as added by this Act, shall not apply to such net operating loss, and

''(B) the unrelated business taxable income of the organization, after the application of subparagraph (B) of such section, shall be reduced by the amount of such net operating loss.''

Pub. L. 115–97, title I, § 13703(b), Dec. 22, 2017, 131 Stat. 2169, provided that: ''The amendment made by this section [amending this section] shall apply to amounts paid or incurred after December 31, 2017.''

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114–113, div. Q, title I, § 114(b), Dec. 18, 2015, 129 Stat. 3049, provided that: ''The amendment made by this section [amending this section] shall apply to payments received or accrued after December 31, 2014.''

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113–295, div. A, title I, § 131(b), Dec. 19, 2014, 128 Stat. 4018, provided that: ''The amendment made by this section [amending this section] shall apply to payments received or accrued after December 31, 2013.''

Amendment by section 221(a)(41)(G) of Pub. L. 113–295 not applicable to preferred stock issued before Oct. 1, 1942 (determined in the same manner as under section 247 of this title as in effect before its repeal by Pub. L. 113–295), see section 221(a)(41)(K) of Pub. L. 113–295, set out as a note under section 172 of this title.

Except as otherwise provided in section 221(a) of Pub. L. 113–295, amendment by section 221(a)(41)(G) of Pub. L. 113–295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113–295, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title III, § 319(b), Jan. 2, 2013, 126 Stat. 2332, provided that: ''The amendment made by this section [amending this section] shall apply to payments received or accrued after December 31, 2011.''

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, § 747(b), Dec. 17, 2010, 124 Stat. 3320, provided that: ''The amendment made by this section [amending this section] shall apply to payments received or accrued after December 31, 2009.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title III, § 306(b), Oct. 3, 2008, 122 Stat. 3868, provided that: ''The amendment made by this section [amending this section] shall apply to payments received or accrued after December 31, 2007.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title XII, § 1205(c)(1), Aug. 17, 2006, 120 Stat. 1067, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to payments received or accrued after December 31, 2005.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title II, § 233(e), Oct. 22, 2004, 118 Stat. 1435, provided that: ''The amendments made by this section [amending this section and sections 1361 and 4975 of this title] shall take effect on the date of the enactment of this Act [Oct. 22, 2004].''

Amendment by section 319(c) of Pub. L. 108–357 applicable to taxable years beginning after Oct. 22, 2004, see section 319(e) of Pub. L. 108–357, set out as a note under section 501 of this title.

Pub. L. 108–357, title VII, § 702(d), Oct. 22, 2004, 118 Stat. 1546, provided that: ''The amendments made by this section [amending this section and section 514 of this title] shall apply to any gain or loss on the sale, exchange, or other disposition of any property acquired by the taxpayer after December 31, 2004.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 6023(8) of Pub. L. 105–206 effective July 22, 1998, see section 6023(32) of Pub. L. 105–206, set out as a note under section 34 of this title.

Amendment by section 6010(j)(1), (2) of Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 312(d)(5) of Pub. L. 105–34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d)[(e)] of Pub. L. 105–34, set out as a note under section 121 of this title.

Pub. L. 105–34, title X, § 1041(b), Aug. 5, 1997, 111 Stat. 939, as amended by Pub. L. 105–206, title VI, § 6010(j)(3), July 22, 1998, 112 Stat. 815, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 5, 1997].

''(2) BINDING CONTRACTS.—The amendments made by this section shall not apply to any amount received or accrued during the first 2 taxable years beginning on or after the date of the enactment of this Act if such amount is received or accrued pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before such amount is received or accrued. The preceding sentence shall not apply to any amount which would (but for the exercise of an option to accelerate payment of such amount) be received or accrued after such 2 taxable years.''

Pub. L. 105–34, title XV, § 1523(b), Aug. 5, 1997, 111 Stat. 1071, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997.''

Amendment by section 1601(c)(4)(A), (D) of Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, § 1115(b), Aug. 20, 1996, 110 Stat. 1761, provided that:

''(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1986.

''(2) TRANSITIONAL RULE.—If—

''(A) for purposes of applying part III of subchapter F of chapter 1 of the Internal Revenue Code of 1986 to any taxable year beginning before January 1, 1987, an agricultural or horticultural organization did not treat any portion of membership dues received by it as income derived in an unrelated trade or business, and

''(B) such organization had a reasonable basis for not treating such dues as income derived in an unrelated trade or business,

then, for purposes of applying such part III to any such taxable year, in no event shall any portion of such dues be treated as derived in an unrelated trade or business.

''(3) REASONABLE BASIS.—For purposes of paragraph (2), an organization shall be treated as having a reason-

able basis for not treating membership dues as income derived in an unrelated trade or business if the taxpayer's treatment of such dues was in reasonable reliance on any of the following:

''(A) Judicial precedent, published rulings, technical advice with respect to the organization, or a letter ruling to the organization.

''(B) A past Internal Revenue Service audit of the organization in which there was no assessment attributable to the reclassification of membership dues for purposes of the tax on unrelated business income.

''(C) Long-standing recognized practice of agricultural or horticultural organizations.''

Amendment by section 1316(c) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1997, see section 1316(f) of Pub. L. 104–188, set out as a note under section 170 of this title.

Pub. L. 104–188, title I, §1603(b), Aug. 20, 1996, 110 Stat. 1836, provided that: ''The amendment made by this section [amending this section] shall apply to amounts included in gross income in any taxable year beginning after December 31, 1995.''

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13145(b), Aug. 10, 1993, 107 Stat. 443, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to partnership years beginning on or after January 1, 1994.''

Pub. L. 103–66, title XIII, §13147(b), Aug. 10, 1993, 107 Stat. 444, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to property acquired on or after January 1, 1994.''

Pub. L. 103–66, title XIII, §13148(c), Aug. 10, 1993, 107 Stat. 444, provided that: ''The amendments made by this section [amending this section] shall apply to amounts received on or after January 1, 1994.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title X, §10213(b), Dec. 22, 1987, 101 Stat. 1330–407, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to partnership interests acquired after December 17, 1987.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years ending after Dec. 31, 1985, with such amendments treated as a change in the rate of tax imposed by chapter 1 of this title for purposes of section 15 of this title, see section 511(e)(6) of Pub. L. 98–369, set out as an Effective Date note under section 419 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–345 applicable with respect to amounts received after Dec. 31, 1976, as payments with respect to securities loans (as defined in subsec. (a)(5) of this section), and transfers of securities, under agreements described in section 1058 of this title, occurring after such date, see section 2(e) of Pub. L. 95–345, set out as a note under section 509 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–568 applicable to taxable years beginning after Oct. 20, 1976, see section 1(d) of Pub. L. 94–568, set out as a note under section 501 of this title.

Amendment by section 1901(b)(8)(F) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 1951(b)(8)(A) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1951(d) of Pub. L. 94–455, set out as a note under section 72 of this title.

Pub. L. 94–396, §1(b), Sept. 3, 1976, 90 Stat. 1201, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to gain from options which lapse or terminate on or after January 1, 1976, in taxable years ending on or after such date.''

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–418 applicable to taxable years beginning after Dec. 31, 1969, see section 1(c) of Pub. L. 92–418, set out as a note under section 501 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 121(g) of Pub. L. 91–172, set out as a note under section 511 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–380, §2, July 17, 1964, 78 Stat. 333, provided that: ''The amendment made by the first section of this Act [amending this section] shall apply with respect to taxable years beginning after December 31, 1963.''

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–367, §1(b), Apr. 7, 1958, 72 Stat. 80, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years of trusts beginning after December 31, 1955.''

SAVINGS PROVISION

Pub. L. 108–357, title VII, §702(c), Oct. 22, 2004, 118 Stat. 1546, provided that: ''Nothing in the amendments made by this section [amending this section and section 514 of this title] shall affect any duty, liability, or other requirement imposed under any other Federal or State law. Notwithstanding section 128(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 U.S.C. 9628(b)], a certification provided by the Environmental Protection Agency or an appropriate State agency (within the meaning of section 198(c)(4) of the Internal Revenue Code of 1986) shall not affect the liability of any person under section 107(a) of such Act [42 U.S.C. 9607(a)].''

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

Pub. L. 94–455, title XIX, §1951(b)(8)(B), Oct. 4, 1976, 90 Stat. 1839, provided that: ''Notwithstanding subpara-

graph (A) [amending this section], income received in a taxable year beginning after December 31, 1975, shall be excluded from gross income in determining unrelated business taxable income, if such income would have been excluded by paragraph (13) or (14) of section 512(b) if received in a taxable year beginning before such date. Any deductions directly connected with income excluded under the preceding sentence in determining unrelated business taxable income shall also be excluded for such purpose.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 513. Unrelated trade or business

(a) General rule

The term ''unrelated trade or business'' means, in the case of any organization subject to the tax imposed by section 511, any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501 (or, in the case of an organization described in section 511(a)(2)(B), to the exercise or performance of any purpose or function described in section 501(c)(3)), except that such term does not include any trade or business—

(1) in which substantially all the work in carrying on such trade or business is performed for the organization without compensation; or

(2) which is carried on, in the case of an organization described in section 501(c)(3) or in the case of a college or university described in section 511(a)(2)(B), by the organization primarily for the convenience of its members, students, patients, officers, or employees, or, in the case of a local association of employees described in section 501(c)(4) organized before May 27, 1969, which is the selling by the organization of items of work-related clothes and equipment and items normally sold through vending machines, through food dispensing facilities, or by snack bars, for the convenience of its members at their usual places of employment; or

(3) which is the selling of merchandise, substantially all of which has been received by the organization as gifts or contributions.

(b) Special rule for trusts

The term ''unrelated trade or business'' means, in the case of—

(1) a trust computing its unrelated business taxable income under section 512 for purposes of section 681; or

(2) a trust described in section 401(a), or section 501(c)(17), which is exempt from tax under section 501(a);

any trade or business regularly carried on by such trust or by a partnership of which it is a member.

(c) Advertising, etc., activities

For purposes of this section, the term ''trade or business'' includes any activity which is carried on for the production of income from the sale of goods or the performance of services. For purposes of the preceding sentence, an activity does not lose identity as a trade or business merely because it is carried on within a larger aggregate of similar activities or within a larger complex of other endeavors which may, or may not, be related to the exempt purposes of the organization. Where an activity carried on for profit constitutes an unrelated trade or business, no part of such trade or business shall be excluded from such classification merely because it does not result in profit.

(d) Certain activities of trade shows, State fairs, etc.

(1) General rule

The term ''unrelated trade or business'' does not include qualified public entertainment activities of an organization described in paragraph (2)(C), or qualified convention and trade show activities of an organization described in paragraph (3)(C).

(2) Qualified public entertainment activities

For purposes of this subsection—

(A) Public entertainment activity

The term ''public entertainment activity'' means any entertainment or recreational activity of a kind traditionally conducted at fairs or expositions promoting agricultural and educational purposes, including, but not limited to, any activity one of the purposes of which is to attract the public to fairs or expositions or to promote the breeding of animals or the development of products or equipment.

(B) Qualified public entertainment activity

The term ''qualified public entertainment activity'' means a public entertainment activity which is conducted by a qualifying organization described in subparagraph (C) in—

(i) conjunction with an international, national, State, regional, or local fair or exposition,

(ii) accordance with the provisions of State law which permit the activity to be operated or conducted solely by such an organization, or by an agency, instrumentality, or political subdivision of such State, or

(iii) accordance with the provisions of State law which permit such an organization to be granted a license to conduct not more than 20 days of such activity on payment to the State of a lower percentage of the revenue from such licensed activity than the State requires from organizations not described in section 501(c)(3), (4), or (5).

(C) Qualifying organization

For purposes of this paragraph, the term ''qualifying organization'' means an organization which is described in section 501(c)(3), (4), or (5) which regularly conducts, as one of its substantial exempt purposes, an

agricultural and educational fair or exposition.

(3) Qualified convention and trade show activities

(A) Convention and trade show activities

The term ''convention and trade show activity'' means any activity of a kind traditionally conducted at conventions, annual meetings, or trade shows, including, but not limited to, any activity one of the purposes of which is to attract persons in an industry generally (without regard to membership in the sponsoring organization) as well as members of the public to the show for the purpose of displaying industry products or to stimulate interest in, and demand for, industry products or services, or to educate persons engaged in the industry in the development of new products and services or new rules and regulations affecting the industry.

(B) Qualified convention and trade show activity

The term ''qualified convention and trade show activity'' means a convention and trade show activity carried out by a qualifying organization described in subparagraph (C) in conjunction with an international, national, State, regional, or local convention, annual meeting, or show conducted by an organization described in subparagraph (C) if one of the purposes of such organization in sponsoring the activity is the promotion and stimulation of interest in, and demand for, the products and services of that industry in general or to educate persons in attendance regarding new developments or products and services related to the exempt activities of the organization, and the show is designed to achieve such purpose through the character of the exhibits and the extent of the industry products displayed.

(C) Qualifying organization

For purposes of this paragraph, the term ''qualifying organization'' means an organization described in section 501(c)(3), (4), (5), or (6) which regularly conducts as one of its substantial exempt purposes a show which stimulates interest in, and demand for, the products of a particular industry or segment of such industry or which educates persons in attendance regarding new developments or products and services related to the exempt activities of the organization.

(4) Such activities not to affect exempt status

An organization described in section 501(c)(3), (4), or (5) shall not be considered as not entitled to the exemption allowed under section 501(a) solely because of qualified public entertainment activities conducted by it.

(e) Certain hospital services

In the case of a hospital described in section 170(b)(1)(A)(iii), the term ''unrelated trade or business'' does not include the furnishing of one or more of the services described in section 501(e)(1)(A) to one or more hospitals described in section 170(b)(1)(A)(iii) if—

(1) such services are furnished solely to such hospitals which have facilities to serve not more than 100 inpatients;

(2) such services, if performed on its own behalf by the recipient hospital, would constitute activities in exercising or performing the purpose or function constituting the basis for its exemption; and

(3) such services are provided at a fee or cost which does not exceed the actual cost of providing such services, such cost including straight line depreciation and a reasonable amount for return on capital goods used to provide such services.

(f) Certain bingo games

(1) In general

The term ''unrelated trade or business'' does not include any trade or business which consists of conducting bingo games.

(2) Bingo game defined

For purposes of paragraph (1), the term ''bingo game'' means any game of bingo—

(A) of a type in which usually—

(i) the wagers are placed,

(ii) the winners are determined, and

(iii) the distribution of prizes or other property is made,

in the presence of all persons placing wagers in such game,

(B) the conducting of which is not an activity ordinarily carried out on a commercial basis, and

(C) the conducting of which does not violate any State or local law.

(g) Certain pole rentals

In the case of a mutual or cooperative telephone or electric company, the term ''unrelated trade or business'' does not include engaging in qualified pole rentals (as defined in section 501(c)(12)(D)).

(h) Certain distributions of low cost articles without obligation to purchase and exchanges and rentals of member lists

(1) In general

In the case of an organization which is described in section 501 and contributions to which are deductible under paragraph (2) or (3) of section 170(c), the term ''unrelated trade or business'' does not include—

(A) activities relating to the distribution of low cost articles if the distribution of such articles is incidental to the solicitation of charitable contributions, or

(B) any trade or business which consists of—

(i) exchanging with another such organization names and addresses of donors to (or members of) such organization, or

(ii) renting such names and addresses to another such organization.

(2) Low cost article defined

For purposes of this subsection—

(A) In general

The term ''low cost article'' means any article which has a cost not in excess of $5 to the organization which distributes such item (or on whose behalf such item is distributed).

(B) Aggregation rule

If more than 1 item is distributed by or on behalf of an organization to a single dis-

tributee in any calendar year, the aggregate of the items so distributed in such calendar year to such distributee shall be treated as 1 article for purposes of subparagraph (A).

(C) Indexation of $5 amount

In the case of any taxable year beginning in a calendar year after 1987, the $5 amount in subparagraph (A) shall be increased by an amount equal to—

(i) $5, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting ''calendar year 1987'' for ''calendar year 2016'' in subparagraph (A)(ii) thereof.

(3) Distribution which is incidental to the solicitation of charitable contributions described

For purposes of this subsection, any distribution of low cost articles by an organization shall be treated as a distribution incidental to the solicitation of charitable contributions only if—

(A) such distribution is not made at the request of the distributee,

(B) such distribution is made without the express consent of the distributee, and

(C) the articles so distributed are accompanied by—

(i) a request for a charitable contribution (as defined in section 170(c)) by the distributee to such organization, and

(ii) a statement that the distributee may retain the low cost article regardless of whether such distributee makes a charitable contribution to such organization.

(i) Treatment of certain sponsorship payments

(1) In general

The term ''unrelated trade or business'' does not include the activity of soliciting and receiving qualified sponsorship payments.

(2) Qualified sponsorship payments

For purposes of this subsection—

(A) In general

The term ''qualified sponsorship payment'' means any payment made by any person engaged in a trade or business with respect to which there is no arrangement or expectation that such person will receive any substantial return benefit other than the use or acknowledgement of the name or logo (or product lines) of such person's trade or business in connection with the activities of the organization that receives such payment. Such a use or acknowledgement does not include advertising such person's products or services (including messages containing qualitative or comparative language, price information, or other indications of savings or value, an endorsement, or an inducement to purchase, sell, or use such products or services).

(B) Limitations

(i) Contingent payments

The term ''qualified sponsorship payment'' does not include any payment if the amount of such payment is contingent upon the level of attendance at one or more events, broadcast ratings, or other factors indicating the degree of public exposure to one or more events.

(ii) Safe harbor does not apply to periodicals and qualified convention and trade show activities

The term ''qualified sponsorship payment'' does not include—

(I) any payment which entitles the payor to the use or acknowledgement of the name or logo (or product lines) of the payor's trade or business in regularly scheduled and printed material published by or on behalf of the payee organization that is not related to and primarily distributed in connection with a specific event conducted by the payee organization, or

(II) any payment made in connection with any qualified convention or trade show activity (as defined in subsection (d)(3)(B)).

(3) Allocation of portions of single payment

For purposes of this subsection, to the extent that a portion of a payment would (if made as a separate payment) be a qualified sponsorship payment, such portion of such payment and the other portion of such payment shall be treated as separate payments.

(j) Debt management plan services

The term ''unrelated trade or business'' includes the provision of debt management plan services (as defined in section 501(q)(4)(B)) by any organization other than an organization which meets the requirements of section 501(q).

(Aug. 16, 1954, ch. 736, 68A Stat. 172; Pub. L. 86–667, § 4, July 14, 1960, 74 Stat. 536; Pub. L. 91–172, title I, § 121(b)(4), (c), Dec. 30, 1969, 83 Stat. 541, 542; Pub. L. 94–455, title XIII, §§ 1305(a), 1311(a), Oct. 4, 1976, 90 Stat. 1716, 1729; Pub. L. 95–502, title III, § 301(a), Oct. 21, 1978, 92 Stat. 1702; Pub. L. 96–605, title I, § 106(b), Dec. 28, 1980, 94 Stat. 3524; Pub. L. 99–514, title XVI, §§ 1601(a), 1602(a), (b), Oct. 22, 1986, 100 Stat. 2766, 2767; Pub. L. 101–508, title XI, § 11101(d)(1)(G), Nov. 5, 1990, 104 Stat. 1388–405; Pub. L. 103–66, title XIII, § 13201(b)(3)(H), Aug. 10, 1993, 107 Stat. 459; Pub. L. 105–34, title IX, § 965(a), Aug. 5, 1997, 111 Stat. 893; Pub. L. 109–280, title XII, § 1220(b), Aug. 17, 2006, 120 Stat. 1088; Pub. L. 115–97, title I, § 11002(d)(1)(Z), Dec. 22, 2017, 131 Stat. 2060.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

AMENDMENTS

2017—Subsec. (h)(2)(C)(ii). Pub. L. 115–97 substituted ''for 'calendar year 2016' in subparagraph (A)(ii)'' for ''for 'calendar year 1992' in subparagraph (B)''.

2006—Subsec. (j). Pub. L. 109–280, which directed the addition of subsec. (j) to section 513, without specifying the act to be amended, was executed by making the addition to this section, which is section 513 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

1997—Subsec. (i). Pub. L. 105–34 added subsec. (i).

1993—Subsec. (h)(2)(C)(ii). Pub. L. 103–66 substituted ''calendar year 1992'' for ''calendar year 1989''.

1990—Subsec. (h)(2)(C)(ii). Pub. L. 101–508 inserted before period at end '', by substituting 'calendar year 1987' for 'calendar year 1989' in subparagraph (B) thereof''.

1986—Subsec. (d)(3)(B). Pub. L. 99–514, §1602(a), inserted ''or to educate persons in attendance regarding new developments or products and services related to the exempt activities of the organization''.

Subsec. (d)(3)(C). Pub. L. 99–514, §1602(b), substituted ''section 501(c)(3), (4), (5), or (6)'' for ''section 501(c)(5) or (6)'' and inserted ''or which educates persons in attendance regarding new developments or products and services related to the exempt activities of the organization''.

Subsec. (h). Pub. L. 99–514, §1601(a), added subsec. (h).

1980—Subsec. (g). Pub. L. 96–605 added subsec. (g).

1978—Subsec. (f). Pub. L. 95–502 added subsec. (f).

1976—Subsec. (d). Pub. L. 94–455, §1305(a), added subsec. (d).

Subsec. (e). Pub. L. 94–455, §1311(a), added subsec. (e).

1969—Subsec. (a)(2). Pub. L. 91–172, §121(b)(4), inserted reference to local associations of employees described in section 501(c)(4) of this title and organized before May 27, 1969.

Subsec. (c). Pub. L. 91–172, §121(c), substituted ''Advertising, etc., activities'' for ''Special rule for certain publishing businesses'', in heading, and, in text, substituted provisions extending definition of trade or business to include any activity carried on for the production of income from the sale of goods or the performance of services, for provisions referring to publishing businesses carried on by an organization during a taxable year beginning before Jan. 1, 1953.

1960—Subsec. (b)(2). Pub. L. 86–667 included trusts described in section 501(c)(17).

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–97 applicable to taxable years beginning after Dec. 31, 2017, see section 11002(e) of Pub. L. 115–97, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 applicable to taxable years beginning after Aug. 17, 2006, with transition rule for existing organizations, see section 1220(c) of Pub. L. 109–280, set out as a note under section 501 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title IX, §965(b), Aug. 5, 1997, 111 Stat. 894, provided that: ''The amendment made by this section [amending this section] shall apply to payments solicited or received after December 31, 1997.''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1992, see section 13201(c) of Pub. L. 103–66, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11101(e) of Pub. L. 101–508, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XVI, §1601(b), Oct. 22, 1986, 100 Stat. 2767, provided that: ''The amendment made by this section [amending this section] shall apply to distributions of low cost articles and exchanges and rentals of member lists after the date of the enactment of this Act [Oct. 22, 1986].''

Pub. L. 99–514, title XVI, §1602(c), Oct. 22, 1986, 100 Stat. 2768, provided that: ''The amendments made by this section [amending this section] shall apply to activities in taxable years beginning after the date of the enactment of this Act [Oct. 22, 1986].''

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–605, title I, §106(c)(2), Dec. 29, 1980, 94 Stat. 3524, provided that: ''The amendment made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1969.''

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–502, title III, §301(b), Oct. 21, 1978, 92 Stat. 1702, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1969.''

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XIII, §1305(b), Oct. 4, 1976, 90 Stat. 1717, provided that: ''The amendments made by subsection (a) [amending this section] apply to qualified public entertainment activities in taxable years beginning after December 31, 1962, and to qualified convention and trade show activities in taxable years beginning after the date of enactment of this Act [Oct. 4, 1976].''

Pub. L. 94–455, title XIII, §1311(b), Oct. 4, 1976, 90 Stat. 1730, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by this section [amending this section] shall apply to all taxable years to which the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [this title] applies.''

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 121(g) of Pub. L. 91–172, set out as a note under section 511 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–667 applicable to taxable years beginning after Dec. 31, 1959, see section 6 of Pub. L. 86–667, set out as a note under section 501 of this title.

CONDUCTING OF CERTAIN GAMES OF CHANCE NOT TREATED AS UNRELATED TRADE OR BUSINESS

Pub. L. 98–369, div. A, title III, §311, July 18, 1984, 98 Stat. 786, as amended by Pub. L. 99–514, §2, title XVIII, §1834, Oct. 22, 1986, 100 Stat. 2095, 2852, provided that:

''(a) GENERAL RULE.—For purposes of section 513 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (defining unrelated trade or business), the term 'unrelated trade or business' does not include any trade or business which consists of conducting any game of chance if—

''(1) such game of chance is conducted by a nonprofit organization,

''(2) the conducting of such game by such organization does not violate any State or local law, and

''(3) as of October 5, 1983—

''(A) there was a State law (originally enacted on April 22, 1977) in effect which permitted the conducting of such game of chance by such nonprofit organization, but

''(B) the conducting of such game of chance by organizations which were not nonprofit organizations would have violated such law.

''(b) EFFECTIVE DATE.—Subsection (a) shall apply to games of chance conducted after June 30, 1981, in taxable years ending after such date.''

[Pub. L. 99–514, title XVIII, §1834, Oct. 22, 1986, 100 Stat. 2852, as amended by Pub. L. 100–647, title VI, §6201, Nov. 10, 1988, 102 Stat. 3730, provided in part that: ''The amendment made by this section [amending section 311 of Pub. L. 98–369, set out above] shall apply to games of chance conducted after October 22, 1986, in taxable years ending after such date''.]

§ 514. Unrelated debt-financed income

(a) Unrelated debt-financed income and deductions

In computing under section 512 the unrelated business taxable income for any taxable year—

(1) Percentage of income taken into account

There shall be included with respect to each debt-financed property as an item of gross income derived from an unrelated trade or business an amount which is the same percentage (but not in excess of 100 percent) of the total gross income derived during the taxable year from or on account of such property as (A) the average acquisition indebtedness (as defined in subsection (c)(7)) for the taxable year with respect to the property is of (B) the average amount (determined under regulations prescribed by the Secretary) of the adjusted basis of such property during the period it is held by the organization during such taxable year.

(2) Percentage of deductions taken into account

There shall be allowed as a deduction with respect to each debt-financed property an amount determined by applying (except as provided in the last sentence of this paragraph) the percentage derived under paragraph (1) to the sum determined under paragraph (3). The percentage derived under this paragraph shall not be applied with respect to the deduction of any capital loss resulting from the carryback or carryover of net capital losses under section 1212.

(3) Deductions allowable

The sum referred to in paragraph (2) is the sum of the deductions under this chapter which are directly connected with the debt-financed property or the income therefrom, except that if the debt-financed property is of a character which is subject to the allowance for depreciation provided in section 167, the allowance shall be computed only by use of the straight-line method.

(b) Definition of debt-financed property

(1) In general

For purposes of this section, the term ''debt-financed property'' means any property which is held to produce income and with respect to which there is an acquisition indebtedness (as defined in subsection (c)) at any time during the taxable year (or, if the property was disposed of during the taxable year, with respect to which there was an acquisition indebtedness at any time during the 12-month period ending with the date of such disposition), except that such term does not include—

(A)(i) any property substantially all the use of which is substantially related (aside from the need of the organization for income or funds) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501 (or, in the case of an organization described in section 511(a)(2)(B), to the exercise or performance of any purpose or function designated in section 501(c)(3)), or (ii) any property to which clause (i) does not apply, to the extent that its use is so substantially related;

(B) except in the case of income excluded under section 512(b)(5), any property to the extent that the income from such property is taken into account in computing the gross income of any unrelated trade or business;

(C) any property to the extent that the income from such property is excluded by reason of the provisions of paragraph (7), (8), or (9) of section 512(b) in computing the gross income of any unrelated trade or business;

(D) any property to the extent that it is used in any trade or business described in paragraph (1), (2), or (3) of section 513(a); or

(E) any property the gain or loss from the sale, exchange, or other disposition of which would be excluded by reason of the provisions of section 512(b)(19) in computing the gross income of any unrelated trade or business.

For purposes of subparagraph (A), substantially all the use of a property shall be considered to be substantially related to the exercise or performance by an organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501 if such property is real property subject to a lease to a medical clinic entered into primarily for purposes which are substantially related (aside from the need of such organization for income or funds or the use it makes of the rents derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501.

(2) Special rule for related uses

For purposes of applying paragraphs (1) (A), (C), and (D), the use of any property by an exempt organization which is related to an organization shall be treated as use by such organization.

(3) Special rules when land is acquired for exempt use within 10 years

(A) Neighborhood land

If an organization acquires real property for the principal purpose of using the land (commencing within 10 years of the time of acquisition) in the manner described in paragraph (1)(A) and at the time of acquisition the property is in the neighborhood of other property owned by the organization which is used in such manner, the real property acquired for such future use shall not be treated as debt-financed property so long as the organization does not abandon its intent to so use the land within the 10-year period. The preceding sentence shall not apply for any period after the expiration of the 10-year period, and shall apply after the first 5 years of the 10-year period only if the organization establishes to the satisfaction of the Secretary that it is reasonably certain that the land will be used in the described manner before the expiration of the 10-year period.

(B) Other cases

If the first sentence of subparagraph (A) is inapplicable only because—

(i) the acquired land is not in the neighborhood referred to in subparagraph (A), or

(ii) the organization (for the period after the first 5 years of the 10-year period) is unable to establish to the satisfaction of the Secretary that it is reasonably certain that the land will be used in the manner described in paragraph (1)(A) before the expiration of the 10-year period,

but the land is converted to such use by the organization within the 10-year period, the real property (subject to the provisions of subparagraph (D)) shall not be treated as debt-financed property for any period before such conversion. For purposes of this subparagraph, land shall not be treated as used in the manner described in paragraph (1)(A) by reason of the use made of any structure which was on the land when acquired by the organization.

(C) Limitations

Subparagraphs (A) and (B)—

(i) shall apply with respect to any structure on the land when acquired by the organization, or to the land occupied by the structure, only if (and so long as) the intended future use of the land in the manner described in paragraph (1)(A) requires that the structure be demolished or removed in order to use the land in such manner;

(ii) shall not apply to structures erected on the land after the acquisition of the land; and

(iii) shall not apply to property subject to a lease which is a business lease (as defined in this section immediately before the enactment of the Tax Reform Act of 1976).

(D) Refund of taxes when subparagraph (B) applies

If an organization for any taxable year has not used land in the manner to satisfy the actual use condition of subparagraph (B) before the time prescribed by law (including extensions thereof) for filing the return for such taxable year, the tax for such year shall be computed without regard to the application of subparagraph (B), but if and when such use condition is satisfied, the provisions of subparagraph (B) shall then be applied to such taxable year. If the actual use condition of subparagraph (B) is satisfied for any taxable year after such time for filing the return, and if credit or refund of any overpayment for the taxable year resulting from the satisfaction of such use condition is prevented at the close of the taxable year in which the use condition is satisfied, by the operation of any law or rule of law (other than chapter 74, relating to closing agreements and compromises), credit or refund of such overpayment may nevertheless be allowed or made if claim therefor is filed before the expiration of 1 year after the close of the taxable year in which the use condition is satisfied.

(E) Special rule for churches

In applying this paragraph to a church or convention or association of churches, in lieu of the 10-year period referred to in subparagraphs (A) and (B) a 15-year period shall be applied, and subparagraphs (A) and (B)(ii) shall apply whether or not the acquired land meets the neighborhood test.

(c) Acquisition indebtedness

(1) General rule

For purposes of this section, the term ''acquisition indebtedness'' means, with respect to any debt-financed property, the unpaid amount of—

(A) the indebtedness incurred by the organization in acquiring or improving such property;

(B) the indebtedness incurred before the acquisition or improvement of such property if such indebtedness would not have been incurred but for such acquisition or improvement; and

(C) the indebtedness incurred after the acquisition or improvement of such property if such indebtedness would not have been incurred but for such acquisition or improvement and the incurrence of such indebtedness was reasonably foreseeable at the time of such acquisition or improvement.

(2) Property acquired subject to mortgage, etc.

For purposes of this subsection—

(A) General rule

Where property (no matter how acquired) is acquired subject to a mortgage or other similar lien, the amount of the indebtedness secured by such mortgage or lien shall be considered as an indebtedness of the organization incurred in acquiring such property even though the organization did not assume or agree to pay such indebtedness.

(B) Exceptions

Where property subject to a mortgage is acquired by an organization by bequest or devise, the indebtedness secured by the mortgage shall not be treated as acquisition indebtedness during a period of 10 years following the date of the acquisition. If an organization acquires property by gift subject to a mortgage which was placed on the property more than 5 years before the gift, which property was held by the donor more than 5 years before the gift, the indebtedness secured by such mortgage shall not be treated as acquisition indebtedness during a period of 10 years following the date of such gift. This subparagraph shall not apply if the organization, in order to acquire the equity in the property by bequest, devise, or gift, assumes and agrees to pay the indebtedness secured by the mortgage, or if the organization makes any payment for the equity in the property owned by the decedent or the donor.

(C) Liens for taxes or assessments

Where State law provides that—

(i) a lien for taxes, or

(ii) a lien for assessments,

made by a State or a political subdivision thereof attaches to property prior to the time when such taxes or assessments become

due and payable, then such lien shall be treated as similar to a mortgage (within the meaning of subparagraph (A)) but only after such taxes or assessments become due and payable and the organization has had an opportunity to pay such taxes or assessments in accordance with State law.

(3) Extension of obligations

For purposes of this section, an extension, renewal, or refinancing of an obligation evidencing a pre-existing indebtedness shall not be treated as the creation of a new indebtedness.

(4) Indebtedness incurred in performing exempt purpose

For purposes of this section, the term ''acquisition indebtedness'' does not include indebtedness the incurrence of which is inherent in the performance or exercise of the purpose or function constituting the basis of the organization's exemption, such as the indebtedness incurred by a credit union described in section 501(c)(14) in accepting deposits from its members.

(5) Annuities

For purposes of this section, the term ''acquisition indebtedness'' does not include an obligation to pay an annuity which—

(A) is the sole consideration (other than a mortgage to which paragraph (2)(B) applies) issued in exchange for property if, at the time of the exchange, the value of the annuity is less than 90 percent of the value of the property received in the exchange,

(B) is payable over the life of one individual in being at the time the annuity is issued, or over the lives of two individuals in being at such time, and

(C) is payable under a contract which—

(i) does not guarantee a minimum amount of payments or specify a maximum amount of payments, and

(ii) does not provide for any adjustment of the amount of the annuity payments by reference to the income received from the transferred property or any other property.

(6) Certain Federal financing

(A) In general

For purposes of this section, the term ''acquisition indebtedness'' does not include—

(i) an obligation, to the extent that it is insured by the Federal Housing Administration, to finance the purchase, rehabilitation, or construction of housing for low and moderate income persons, or

(ii) indebtedness incurred by a small business investment company licensed after the date of the enactment of the American Jobs Creation Act of 2004 under the Small Business Investment Act of 1958 if such indebtedness is evidenced by a debenture—

(I) issued by such company under section 303(a) of such Act, and

(II) held or guaranteed by the Small Business Administration.

(B) Limitation

Subparagraph (A)(ii) shall not apply with respect to any small business investment company during any period that—

(i) any organization which is exempt from tax under this title (other than a governmental unit) owns more than 25 percent of the capital or profits interest in such company, or

(ii) organizations which are exempt from tax under this title (including governmental units other than any agency or instrumentality of the United States) own, in the aggregate, 50 percent or more of the capital or profits interest in such company.

(7) Average acquisition indebtedness

For purposes of this section, the term ''average acquisition indebtedness'' for any taxable year with respect to a debt-financed property means the average amount, determined under regulations prescribed by the Secretary of the acquisition indebtedness during the period the property is held by the organization during the taxable year, except that for the purpose of computing the percentage of any gain or loss to be taken into account on a sale or other disposition of debt-financed property, such term means the highest amount of the acquisition indebtedness with respect to such property during the 12-month period ending with the date of the sale or other disposition.

(8) Securities subject to loans

For purposes of this section—

(A) payments with respect to securities loans (as defined in section 512(a)(5)) shall be deemed to be derived from the securities loaned and not from collateral security or the investment of collateral security from such loans,

(B) any deductions which are directly connected with collateral security for such loan, or with the investment of collateral security, shall be deemed to be deductions which are directly connected with the securities loaned, and

(C) an obligation to return collateral security shall not be treated as acquisition indebtedness (as defined in paragraph (1)).

(9) Real property acquired by a qualified organization

(A) In general

Except as provided in subparagraph (B), the term ''acquisition indebtedness'' does not, for purposes of this section, include indebtedness incurred by a qualified organization in acquiring or improving any real property. For purposes of this paragraph, an interest in a mortgage shall in no event be treated as real property.

(B) Exceptions

The provisions of subparagraph (A) shall not apply in any case in which—

(i) the price for the acquisition or improvement is not a fixed amount determined as of the date of the acquisition or the completion of the improvement;

(ii) the amount of any indebtedness or any other amount payable with respect to

such indebtedness, or the time for making any payment of any such amount, is dependent, in whole or in part, upon any revenue, income, or profits derived from such real property;

(iii) the real property is at any time after the acquisition leased by the qualified organization to the person selling such property to such organization or to any person who bears a relationship described in section 267(b) or 707(b) to such person;

(iv) the real property is acquired by a qualified trust from, or is at any time after the acquisition leased by such trust to, any person who—

(I) bears a relationship which is described in subparagraph (C), (E), or (G) of section 4975(e)(2) to any plan with respect to which such trust was formed, or

(II) bears a relationship which is described in subparagraph (F) or (H) of section 4975(e)(2) to any person described in subclause (I);

(v) any person described in clause (iii) or (iv) provides the qualified organization with financing in connection with the acquisition or improvement; or

(vi) the real property is held by a partnership unless the partnership meets the requirements of clauses (i) through (v) and unless—

(I) all of the partners of the partnership are qualified organizations,

(II) each allocation to a partner of the partnership which is a qualified organization is a qualified allocation (within the meaning of section 168(h)(6)), or

(III) such partnership meets the requirements of subparagraph (E).

For purposes of subclause (I) of clause (vi), an organization shall not be treated as a qualified organization if any income of such organization is unrelated business taxable income.

(C) Qualified organization

For purposes of this paragraph, the term ''qualified organization'' means—

(i) an organization described in section 170(b)(1)(A)(ii) and its affiliated support organizations described in section 509(a)(3);

(ii) any trust which constitutes a qualified trust under section 401;

(iii) an organization described in section 501(c)(25); or

(iv) a retirement income account described in section 403(b)(9).

(D) Other pass-thru entities; tiered entities

Rules similar to the rules of subparagraph (B)(vi) shall also apply in the case of any pass-thru entity other than a partnership and in the case of tiered partnerships and other entities.

(E) Certain allocations permitted

(i) In general

A partnership meets the requirements of this subparagraph if—

(I) the allocation of items to any partner which is a qualified organization cannot result in such partner having a share of the overall partnership income for any taxable year greater than such partner's share of the overall partnership loss for the taxable year for which such partner's loss share will be the smallest, and

(II) each allocation with respect to the partnership has substantial economic effect within the meaning of section 704(b)(2).

For purposes of this clause, items allocated under section 704(c) shall not be taken into account.

(ii) Special rules

(I) Chargebacks

Except as provided in regulations, a partnership may without violating the requirements of this subparagraph provide for chargebacks with respect to disproportionate losses previously allocated to qualified organizations and disproportionate income previously allocated to other partners. Any chargeback referred to in the preceding sentence shall not be at a ratio in excess of the ratio under which the loss or income (as the case may be) was allocated.

(II) Preferred rates of return, etc.

To the extent provided in regulations, a partnership may without violating the requirements of this subparagraph provide for reasonable preferred returns or reasonable guaranteed payments.

(iii) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subparagraph, including regulations which may provide for exclusion or segregation of items.

(F) Special rules for organizations described in section 501(c)(25)

(i) In general

In computing under section 512 the unrelated business taxable income of a disqualified holder of an interest in an organization described in section 501(c)(25), there shall be taken into account—

(I) as gross income derived from an unrelated trade or business, such holder's pro rata share of the items of income described in clause (ii)(I) of such organization, and

(II) as deductions allowable in computing unrelated business taxable income, such holder's pro rata share of the items of deduction described in clause (ii)(II) of such organization.

Such amounts shall be taken into account for the taxable year of the holder in which (or with which) the taxable year of such organization ends.

(ii) Description of amounts

For purposes of clause (i)—

(I) gross income is described in this clause to the extent such income would

(but for this paragraph) be treated under subsection (a) as derived from an unrelated trade or business, and

(II) any deduction is described in this clause to the extent it would (but for this paragraph) be allowable under subsection (a)(2) in computing unrelated business taxable income.

(iii) Disqualified holder

For purposes of this subparagraph, the term ''disqualified holder'' means any shareholder (or beneficiary) which is not described in clause (i) or (ii) of subparagraph (C).

(G) Special rules for purposes of the exceptions

Except as otherwise provided by regulations—

(i) Small leases disregarded

For purposes of clauses (iii) and (iv) of subparagraph (B), a lease to a person described in such clause (iii) or (iv) shall be disregarded if no more than 25 percent of the leasable floor space in a building (or complex of buildings) is covered by the lease and if the lease is on commercially reasonable terms.

(ii) Commercially reasonable financing

Clause (v) of subparagraph (B) shall not apply if the financing is on commercially reasonable terms.

(H) Qualifying sales by financial institutions

(i) In general

In the case of a qualifying sale by a financial institution, except as provided in regulations, clauses (i) and (ii) of subparagraph (B) shall not apply with respect to financing provided by such institution for such sale.

(ii) Qualifying sale

For purposes of this clause, there is a qualifying sale by a financial institution if—

(I) a qualified organization acquires property described in clause (iii) from a financial institution and any gain recognized by the financial institution with respect to the property is ordinary income,

(II) the stated principal amount of the financing provided by the financial institution does not exceed the amount of the outstanding indebtedness (including accrued but unpaid interest) of the financial institution with respect to the property described in clause (iii) immediately before the acquisition referred to in clause (iii) or (v), whichever is applicable, and

(III) the present value (determined as of the time of the sale and by using the applicable Federal rate determined under section 1274(d)) of the maximum amount payable pursuant to the financing that is determined by reference to the revenue, income, or profits derived from the property cannot exceed 30 percent of the total purchase price of the property (including the contingent payments).

(iii) Property to which subparagraph applies

Property is described in this clause if such property is foreclosure property, or is real property which—

(I) was acquired by the qualified organization from a financial institution which is in conservatorship or receivership, or from the conservator or receiver of such an institution, and

(II) was held by the financial institution at the time it entered into conservatorship or receivership.

(iv) Financial institution

For purposes of this subparagraph, the term ''financial institution'' means—

(I) any financial institution described in section 581 or 591(a),

(II) any other corporation which is a direct or indirect subsidiary of an institution referred to in subclause (I) but only if, by virtue of being affiliated with such institution, such other corporation is subject to supervision and examination by a Federal or State agency which regulates institutions referred to in subclause (I), and

(III) any person acting as a conservator or receiver of an entity referred to in subclause (I) or (II) (or any government agency or corporation succeeding to the rights or interest of such person).

(v) Foreclosure property

For purposes of this subparagraph, the term ''foreclosure property'' means any real property acquired by the financial institution as the result of having bid on such property at foreclosure, or by operation of an agreement or process of law, after there was a default (or a default was imminent) on indebtedness which such property secured.

(d) Basis of debt-financed property acquired in corporate liquidation

For purposes of this subtitle, if the property was acquired in a complete or partial liquidation of a corporation in exchange for its stock, the basis of the property shall be the same as it would be in the hands of the transferor corporation, increased by the amount of gain recognized to the transferor corporation upon such distribution and by the amount of any gain to the organization which was included, on account of such distribution, in unrelated business taxable income under subsection (a).

(e) Allocation rules

Where debt-financed property is held for purposes described in subsection (b)(1)(A), (B), (C), or (D) as well as for other purposes, proper allocation shall be made with respect to basis, indebtedness, and income and deductions. The allocations required by this section shall be made in accordance with regulations prescribed by the Secretary to the extent proper to carry out the purposes of this section.

(f) Personal property leased with real property

For purposes of this section, the term ''real property'' includes personal property of the lessor leased by it to a lessee of its real estate if the lease of such personal property is made under, or in connection with, the lease of such real estate.

(g) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations to prevent the circumvention of any provision of this section through the use of segregated asset accounts.

(Aug. 16, 1954, ch. 736, 68A Stat. 172; Pub. L. 86–667, § 5, July 14, 1960, 74 Stat. 536; Pub. L. 91–172, title I, § 121(d)(1), (3)(A), (B), Dec. 30, 1969, 83 Stat. 543, 548; Pub. L. 93–625, § 7(b)(2), Jan. 3, 1975, 88 Stat. 2115; Pub. L. 94–455, title XIII, § 1308(a), title XIX, §§ 1901(a)(72), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1729, 1776, 1834; Pub. L. 95–345, § 2(c), Aug. 15, 1978, 92 Stat. 482; Pub. L. 96–605, title I, § 110(a), Dec. 28, 1980, 94 Stat. 3525; Pub. L. 98–369, div. A, title I, § 174(b)(5)(B), title X, § 1034(a), (b), July 18, 1984, 98 Stat. 707, 1039, 1040; Pub. L. 99–514, title II, § 201(d)(9), title XVI, § 1603(b), title XVIII, § 1878(e), Oct. 22, 1986, 100 Stat. 2141, 2768, 2903; Pub. L. 100–203, title X, § 10214(a), (b), Dec. 22, 1987, 101 Stat. 1330–407; Pub. L. 100–647, title I, §§ 1016(a)(5)(A), (6), 1018(u)(13), title II, § 2004(h), Nov. 10, 1988, 102 Stat. 3574, 3575, 3590, 3603; Pub. L. 101–239, title VII, § 7811(*l*), Dec. 19, 1989, 103 Stat. 2412; Pub. L. 103–66, title XIII, § 13144(a), (b), Aug. 10, 1993, 107 Stat. 441, 442; Pub. L. 108–357, title II, § 247(a), title VII, § 702(b), Oct. 22, 2004, 118 Stat. 1449, 1546; Pub. L. 109–135, title IV, § 412(ee)(2), Dec. 21, 2005, 119 Stat. 2639; Pub. L. 109–280, title VIII, § 866(a), Aug. 17, 2006, 120 Stat. 1025.)

REFERENCES IN TEXT

The Tax Reform Act of 1976, referred to in subsec. (b)(3)(C)(iii), is Pub. L. 94–455, Oct. 4, 1976, 90 Stat. 1520, as amended, which was enacted Oct. 4, 1976. For complete classification of this Act to the Code, see Tables.

The date of the enactment of the American Jobs Creation Act of 2004, referred to in subsec. (c)(6)(A)(ii), is the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

The Small Business Investment Act of 1958, referred to in subsec. (c)(6)(A)(ii), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689, as amended, which is classified principally to chapter 14B (§ 661 et seq.) of Title 15, Commerce and Trade. Section 303(a) of the Act is classified to section 683(a) of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 661 of Title 15 and Tables.

AMENDMENTS

2006—Subsec. (c)(9)(C)(iv). Pub. L. 109–280 added cl. (iv).

2005—Subsec. (b)(1)(E). Pub. L. 109–135 substituted ''section 512(b)(19)'' for ''section 512(b)(18)''.

2004—Subsec. (b)(1)(E). Pub. L. 108–357, § 702(b), added subpar. (E).

Subsec. (c)(6). Pub. L. 108–357, § 247(a), reenacted heading without change and amended text of par. (6) generally. Prior to amendment, text read as follows: ''For purposes of this section, the term 'acquisition indebtedness' does not include an obligation, to the extent that it is insured by the Federal Housing Administration, to finance the purchase, rehabilitation, or construction of housing for low and moderate income persons.''

1993—Subsec. (c)(9)(A). Pub. L. 103–66, § 13144(b)(1), inserted at end ''For purposes of this paragraph, an interest in a mortgage shall in no event be treated as real property.''

Subsec. (c)(9)(B). Pub. L. 103–66, § 13144(b)(2), struck out at end ''For purposes of this paragraph, an interest in a mortgage shall in no event be treated as real property.''

Subsec. (c)(9)(G), (H). Pub. L. 103–66, § 13144(a), added subpars. (G) and (H).

1989—Subsec. (c)(9)(E), (F). Pub. L. 101–239 redesignated the subpar. (E), relating to special rules for organizations described in section 501(c)(25), as (F).

1988—Subsec. (c)(9)(B). Pub. L. 100–647, § 1016(a)(6), substituted ''this paragraph'' for ''clause (vi)'' in last sentence.

Pub. L. 100–647, § 1018(u)(13)(A), amended directory language of Pub. L. 99–514, § 1878(e)(1), (3), to clarify that general amendment by section 1878(e)(3) included concluding provision as well as cl. (vi) and that amendment by section 1878(e)(1) should have been to the concluding provisions as amended by section 1878(e)(3).

Subsec. (c)(9)(E). Pub. L. 100–647, § 1016(a)(5)(A), added subpar. (E) relating to special rules for organizations described in section 501(c)(25).

Subsec. (c)(9)(E)(i). Pub. L. 100–647, § 2004(h)(2), in subsec. (c)(9)(E), relating to certain allocations permitted, redesignated subcls. (II) and (III) as (I) and (II), respectively, and struck out former subcl. (I) which read as follows: ''the allocation of items to any partner other than a qualified organization cannot result in such partner having a share of the overall partnership loss for any taxable year greater than such partner's share of the overall partnership income for the taxable year for which such partner's income share will be the smallest,''.

Subsec. (c)(9)(E)(iii). Pub. L. 100–647, § 2004(h)(1), in subsec. (c)(9)(E) relating to certain allocations permitted, added cl. (iii).

1987—Subsec. (c)(9)(B)(vi). Pub. L. 100–203, § 10214(a), amended cl. (vi) generally. Prior to amendment, cl. (vi) read as follows: ''the real property is held by a partnership (which does not fail to meet the requirements of clauses (i) through (v)), and—

''(I) any partner of the partnership is not a qualified organization, and

''(II) the principal purpose of any allocation to any partner of the partnership which is a qualified organization which is not a qualified allocation (within the meaning of section 168(h)(6)) is the avoidance of income tax.''

Subsec. (c)(9)(E). Pub. L. 100–203, § 10214(b), added subpar. (E).

1986—Subsec. (c)(9)(B). Pub. L. 99–514, § 1878(e)(1), as amended by Pub. L. 100–647, § 1018(u)(13)(A), which directed amendment of penultimate sentence by substituting ''is unrelated business taxable income'' for ''would be unrelated business taxable income (determined without regard to this paragraph)'', was executed by making the substitution for ''would be unrelated business taxable income (determined without regard to this paragraph'', as the probable intent of Congress.

Pub. L. 99–514, § 1878(e)(3), as amended by Pub. L. 100–647, § 1018(u)(13)(B), amended concluding provisions generally. Prior to amendment, concluding provisions read as follows: ''For purposes of clause (vi)(I), an organization shall not be treated as a qualified organization if any income of such organization would be unrelated business taxable income (determined without regard to this paragraph).''

Subsec. (c)(9)(B)(vi). Pub. L. 99–514, § 1878(e)(3), as amended by Pub. L. 100–647, § 1018(u)(13)(B), amended cl. (vi) generally. Prior to amendment, cl. (vi) read as follows: ''the real property is held by a partnership unless the partnership meets the requirements of clauses (i) through (v) and unless—

''(I) all of the partners of the partnership are qualified organizations, or

''(II) each allocation to a partner of the partnership which is a qualified organization is a qualified allocation (within the meaning of section 168(j)(9)).''

Subsec. (c)(9)(B)(vi)(II). Pub. L. 99–514, § 201(d)(9), substituted ''section 168(h)(6)'' for ''section 168(j)(9)''.

Subsec. (c)(9)(C)(i). Pub. L. 99–514, § 1878(e)(2), substituted ''section 509(a)(3)'' for ''section 509(a)''.

Subsec. (c)(9)(C)(iii). Pub. L. 99–514, § 1603(b), added cl. (iii).

1984—Subsec. (c)(9). Pub. L. 98–369, § 1034(a), amended par. (9) generally, substituting provisions relating to real property acquired by a qualified organization for provisions relating to real property acquired by a qualified trust, with ''qualified organization'' expanded to include trusts constituting qualified trusts under section 401 of this title as well as organizations described in section 170(b)(1)(A)(ii) of this title and their affiliated support organizations described in section 509(a) of this title.

Subsec. (c)(9)(B)(iii). Pub. L. 98–369, § 174(b)(5)(B), inserted reference to section 707(b).

Subsec. (g). Pub. L. 98–369, § 1034(b), added subsec. (g).

1980—Subsec. (c)(9). Pub. L. 96–605 added par. (9).

1978—Subsec. (c)(8). Pub. L. 95–345 added par. (8).

1976—Subsecs. (a)(1), (b)(3)(A), (B)(ii). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (b)(3)(C)(iii). Pub. L. 94–455, § 1901(a)(72)(C), substituted ''(as defined in this section immediately before the enactment of the Tax Reform Act of 1976)'' for ''as (defined in subsection (f))'' after ''is a business lease''.

Subsec. (c)(1). Pub. L. 94–455, § 1901(a)(72)(A), struck out exception following subpar. (C) that in any taxable year beginning before January 1, 1972, any acquisition indebtedness incurred prior to June 28, 1966, would not be taken into account except for business lease indebtedness of certain organizations.

Subsec. (c)(2)(C). Pub. L. 94–455, § 1308(a), added subpar. (C).

Subsecs. (c)(7), (e). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (f). Pub. L. 94–455, § 1901(a)(72(B), struck out subsec. (f) relating to definition of business lease, special rules applicable to such leases, and exceptions to the definition and applicable rules, and redesignated subsec. (h) as (f).

Subsec. (g). Pub. L. 94–455, § 1901(a)(72)(B), struck out subsec. (g) relating to definition and special rules applicable to business lease indebtedness.

Subsec. (h). Pub. L. 94–455, § 1901(a)(72)(B), redesignated subsec. (h) as (f).

1975—Subsec. (b)(3)(D). Pub. L. 93–625 struck out last sentence providing for allowance and payment of interest on any overpayment for a taxable year resulting from application of subpar. (B) after actual use condition was satisfied at rate of 4 in lieu of 6 percent per annum.

1969—Subsec. (a). Pub. L. 91–172, § 121(d)(1), substituted ''Unrelated debt-financed income'' for ''Business leases'' in heading and substituted in text material covering unrelated debt-financed income and deductions for material covering business lease rents and deductions.

Subsecs. (b) to (e). Pub. L. 91–172, § 121(d)(1), (3)(A), added subsecs. (b), (c), (d) and (e). Former subsecs. (b), (c), and (d) redesignated (f), (g), and (h), respectively.

Subsec. (f). Pub. L. 91–172, § 121(d)(3)(A), (B), redesignated subsec. (b) as subsec. (f), and, in par. (1) of subsec. (f) as so redesignated, substituted reference to subsec. (g) for reference to subsec. (c).

Subsecs. (g), (h). Pub. L. 91–172, § 121(d)(3)(A), redesignated subsecs. (c) and (d) as (g) and (h), respectively.

1960—Subsec. (c)(8). Pub. L. 86–667 added par. (8).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title VIII, § 866(b), Aug. 17, 2006, 120 Stat. 1025, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning on or after the date of enactment of this Act [Aug. 17, 2006].''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title II, § 247(b), Oct. 22, 2004, 118 Stat. 1449, provided that: ''The amendment made by this section [amending this section] shall apply to indebtedness incurred after the date of the enactment of this Act [Oct. 22, 2004] by a small business investment company licensed after the date of the enactment of this Act.''

Amendment by section 702(b) of Pub. L. 108–357 applicable to any gain or loss on the sale, exchange, or other disposition of any property acquired by the taxpayer after Dec. 31, 2004, see section 702(d) of Pub. L. 108–357, set out as a note under section 512 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, § 13144(c), Aug. 10, 1993, 107 Stat. 442, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to acquisitions on or after January 1, 1994.

''(2) SMALL LEASES.—The provisions of section 514(c)(9)(G)(i) of the Internal Revenue Code of 1986 shall, in addition to any leases to which the provisions apply by reason of paragraph (1), apply to leases entered into on or after January 1, 1994.''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, § 1016(a)(5)(B), Nov. 10, 1988, 102 Stat. 3575, provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply with respect to interests in the organization acquired after June 10, 1987, except that such amendment shall not apply to any such interest acquired after June 10, 1987, pursuant to a binding written contract in effect on June 10, 1987, and at all times thereafter before such acquisition.''

Amendment by sections 1016(a)(6) and 1018(u)(13) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 2004(h) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title X, § 10214(c), Dec. 22, 1987, 101 Stat. 1330–408, provided that: ''The amendments made by this section [amending this section] shall apply to—

''(1) property acquired by the partnership after October 13, 1987, and

''(2) partnership interests acquired after October 13, 1987,

except that such amendments shall not apply in the case of any property (or partnership interest) acquired pursuant to a written binding contract in effect on October 13, 1987, and at all times thereafter before such property (or interest) is acquired.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 201(d)(9) of Pub. L. 99–514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, with exceptions, see sections 203 and 204 of Pub. L. 99–514, set out as a note under section 168 of this title.

Amendment by section 201(d)(9) of Pub. L. 99–514 not applicable to any property placed in service before Jan. 1, 1994, if such property placed in service as part of specified rehabilitations, and not applicable to certain additional rehabilitations, see section 251(d)(2), (3) of

Pub. L. 99–514, set out as a note under section 46 of this title.

Amendment by section 1603(b) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1603(c) of Pub. L. 99–514, set out as a note under section 501 of this title.

Amendment by section 1878(e) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 174(b)(5)(B) of Pub. L. 98–369 applicable to transactions after Dec. 31, 1983, in taxable years ending after that date, see section 174(c)(2)(A) of Pub. L. 98–369, set out as a note under section 267 of this title.

Pub. L. 98–369, div. A, title X, §1034(c), July 18, 1984, 98 Stat. 1040, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to indebtedness incurred after the date of the enactment of this Act [July 18, 1984].

''(2) EXCEPTION FOR INDEBTEDNESS ON CERTAIN PROPERTY ACQUIRED BEFORE JANUARY 1, 1985.—

''(A) The amendment made by subsection (a) [amending this section] shall not apply to any indebtedness incurred before January 1, 1985, by a partnership described in subparagraph (B) if such indebtedness is incurred with respect to property acquired (directly or indirectly) by such partnership before such date.

''(B) A partnership is described in this subparagraph if—

''(i) before October 21, 1983, the partnership was organized, a request for exemption with respect to such partnership was filed with the Department of Labor, and a private placement memorandum stating the maximum number of units in the partnership that would be offered had been circulated,

''(ii) the interest in the property to be acquired, directly or indirectly (including through acquiring an interest in another partnership) by such partnership was described in such private placement memorandum, and

''(iii) the marketing of partnership interests in such partnership is completed not later than 2 years after the later of the date of enactment of this Act [July 18, 1984] or the date of publication in the Federal Register of such exemption by the Department of Labor and the aggregate number of units in such partnership sold does not exceed the amount described in clause (i).

''(3) EXCEPTION FOR INDEBTEDNESS ON CERTAIN PROPERTY ACQUIRED BEFORE JANUARY 1, 1986.—

''(A) The amendment made by subsection (a) [amending this section] shall not apply to any indebtedness incurred before January 1, 1986, by a partnership described in subparagraph (B) if such indebtedness is incurred with respect to property acquired (directly or indirectly) by such partnership before such date.

''(B) A partnership is described in this paragraph if—

''(i) before March 6, 1984, the partnership was organized and publicly announced, the maximum amount of interests which would be sold in such partnership, and

''(ii) the marketing of partnership interests in such partnership is completed not later than the 90th day after the date of the enactment of this Act [July 18, 1984] and the aggregate amount of interests in such partnership sold does not exceed the maximum amount described in clause (i).

For purposes of clause (i), the maximum amount taken into account shall be the greatest of the amounts shown in the registration statement, prospectus, or partnership agreement.

''(C) BINDING CONTRACTS.—For purposes of this paragraph, property shall be deemed to have been acquired before January 1, 1986, if such property is acquired pursuant to a written contract which, on January 1, 1986, and at all times thereafter, required the acquisition of such property and such property is placed in service not later than 6 months after the date such contract was entered into.''

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–605, title I, §110(c), Dec. 28, 1980, 94 Stat. 3526, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1980.''

EXTENSION OF 1980 AMENDMENT OF THIS SECTION TO OTHER PERSONS

Pub. L. 96–605, title I, §110(b), Dec. 28, 1980, 94 Stat. 3526, provided that: ''The amendment made by subsection (a) [amending this section] shall not be considered a precedent with respect to extending such amendment (or similar rules) to any other person.''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–345 applicable with respect to amounts received after Dec. 31, 1976, as payments with respect to securities loans (as defined in section 512(a)(5) of this title), and transfers of securities, under agreements described in section 1058 of this title, occurring after such date, see section 2(e) of Pub. L. 95–345, set out as a note under section 509 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XIII, §1308(b), Oct. 4, 1976, 90 Stat. 1729, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years ending after December 31, 1969.''

Amendment by section 1901(a)(72) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–625 effective July 1, 1975, and applicable to amounts outstanding on such date or arising thereafter, see section 7(e) of Pub. L. 93–625, set out as an Effective Date note under section 6621 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, and to the manner of treatment to be accorded indebtednesses secured by certain mortgages on properties bargain-purchased before Oct. 9, 1969, see section 121(g) of Pub. L. 91–172, set out as a note under section 511 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–667 applicable to taxable years beginning after Dec. 31, 1959, see section 6 of Pub. L. 86–667, set out as a note under section 501 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TRANSITION RULE FOR ACQUISITION INDEBTEDNESS WITH RESPECT TO CERTAIN LAND

Pub. L. 99–514, title XVI, §1607, Oct. 22, 1986, 100 Stat. 2771, provided that: ''For purposes of applying section

514(c) of the Internal Revenue Code of 1986, with respect to a disposition during calendar year 1986 or calendar year 1987 of land acquired during calendar year 1984, the term 'acquisition indebtedness' does not include indebtedness incurred in connection with bonds issued after January 1, 1984, and before July 19, 1984, on behalf of an organization which is a community college and which is described in section 511(a)(2)(B) of such Code.''

§ 515. Taxes of foreign countries and possessions of the United States

The amount of taxes imposed by foreign countries and possessions of the United States shall be allowed as a credit against the tax of an organization subject to the tax imposed by section 511 to the extent provided in section 901; and in the case of the tax imposed by section 511, the term ''taxable income'' as used in section 901 shall be read as ''unrelated business taxable income''.

(Aug. 16, 1954, ch. 736, 68A Stat. 176.)

PART IV—FARMERS' COOPERATIVES

AMENDMENTS

1969—Pub. L. 91–172, title I, § 101(a), Dec. 30, 1969, 83 Stat. 492, substituted ''PART IV'' for ''PART III'' as part designation.

1962—Pub. L. 87–834, § 17(b)(5), Oct. 16, 1962, 76 Stat. 1051, struck out item 522 ''Tax on farmers' cooperatives''.

§ 521. Exemption of farmers' cooperatives from tax

(a) Exemption from tax

A farmers' cooperative organization described in subsection (b)(1) shall be exempt from taxation under this subtitle except as otherwise provided in part I of subchapter T (sec. 1381 and following). Notwithstanding part I of subchapter T (sec. 1381 and following), such an organization shall be considered an organization exempt from income taxes for purposes of any law which refers to organizations exempt from income taxes.

(b) Applicable rules

(1) Exempt farmers' cooperatives

The farmers' cooperatives exempt from taxation to the extent provided in subsection (a) are farmers', fruit growers', or like associations organized and operated on a cooperative basis (A) for the purpose of marketing the products of members or other producers, and turning back to them the proceeds of sales, less the necessary marketing expenses, on the basis of either the quantity or the value of the products furnished by them, or (B) for the purpose of purchasing supplies and equipment for the use of members or other persons, and turning over such supplies and equipment to them at actual cost, plus necessary expenses.

(2) Organizations having capital stock

Exemption shall not be denied any such association because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the State of incorporation or 8 percent per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than nonvoting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the association, upon dissolution or otherwise, beyond the fixed dividends) is owned by producers who market their products or purchase their supplies and equipment through the association.

(3) Organizations maintaining reserve

Exemption shall not be denied any such association because there is accumulated and maintained by it a reserve required by State law or a reasonable reserve for any necessary purpose.

(4) Transactions with nonmembers

Exemption shall not be denied any such association which markets the products of nonmembers in an amount the value of which does not exceed the value of the products marketed for members, or which purchases supplies and equipment for nonmembers in an amount the value of which does not exceed the value of the supplies and equipment purchased for members, provided the value of the purchases made for persons who are neither members nor producers does not exceed 15 percent of the value of all its purchases.

(5) Business for the United States

Business done for the United States or any of its agencies shall be disregarded in determining the right to exemption under this section.

(6) Netting of losses

Exemption shall not be denied any such association because such association computes its net earnings for purposes of determining any amount available for distribution to patrons in the manner described in paragraph (1) of section 1388(j).

(7) Cross reference

For treatment of value-added processing involving animals, see section 1388(k).

(Aug. 16, 1954, ch. 736, 68A Stat. 176; Pub. L. 87–834, § 17(b)(1), Oct. 16, 1962, 76 Stat. 1051; Pub. L. 99–272, title XIII, § 13210(b), Apr. 7, 1986, 100 Stat. 324; Pub. L. 108–357, title III, § 316(b), Oct. 22, 2004, 118 Stat. 1469.)

AMENDMENTS

2004—Subsec. (b)(7). Pub. L. 108–357 added par. (7).

1986—Subsec. (b)(6). Pub. L. 99–272 added par. (6).

1962—Subsec. (a). Pub. L. 87–834 substituted ''part I of subchapter T (sec. 1381 and following)'' for ''section 522'' in two places.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title III, § 316(c), Oct. 22, 2004, 118 Stat. 1469, provided that: ''The amendments made by this section [amending this section and section 1388 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 applicable to taxable years beginning after Dec. 31, 1962, see section 13210(c) of Pub. L. 99–272, set out as a note under section 1388 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable, except as otherwise provided, to taxable years of organizations described in section 1381(a) of this title beginning after Dec. 31, 1962, see section 17(c) of Pub. L. 87–834, set out as an Effective Date note under section 1381 of this title.

[§ 522. Repealed. Pub. L. 87–834, § 17(b)(2), Oct. 16, 1962, 76 Stat. 1051]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 177, related to tax on farmers' cooperatives.

EFFECTIVE DATE OF REPEAL

Repeal applicable, except as otherwise provided, to taxable years of organizations described in section 1381(a) of this title beginning after Dec. 31, 1962, see section 17(c) of Pub. L. 87–834, set out as an Effective Date note under section 1381 of this title.

PART V—SHIPOWNERS' PROTECTION AND INDEMNITY ASSOCIATIONS

Sec.
526. Shipowners' protection and indemnity associations.

AMENDMENTS

1969—Pub. L. 91–172, title I, § 101(a), Dec. 30, 1969, 83 Stat. 492, substituted ''PART V'' for ''PART IV'' as part designation.

§ 526. Shipowners' protection and indemnity associations

There shall not be included in gross income the receipts of shipowners' mutual protection and indemnity associations not organized for profit, and no part of the net earnings of which inures to the benefit of any private shareholder; but such corporations shall be subject as other persons to the tax on their taxable income from interest, dividends, and rents.

(Aug. 16, 1954, ch. 736, 68A Stat. 178.)

PART VI—POLITICAL ORGANIZATIONS

Sec.
527. Political organizations.

§ 527. Political organizations

(a) General rule

A political organization shall be subject to taxation under this subtitle only to the extent provided in this section. A political organization shall be considered an organization exempt from income taxes for the purpose of any law which refers to organizations exempt from income taxes.

(b) Tax imposed

A tax is hereby imposed for each taxable year on the political organization taxable income of every political organization. Such tax shall be computed by multiplying the political organization taxable income by the highest rate of tax specified in section 11(b).

(c) Political organization taxable income defined

(1) Taxable income defined

For purposes of this section, the political organization taxable income of any organization for any taxable year is an amount equal to the excess (if any) of—

(A) the gross income for the taxable year (excluding any exempt function income), over

(B) the deductions allowed by this chapter which are directly connected with the production of the gross income (excluding exempt function income), computed with the modifications provided in paragraph (2).

(2) Modifications

For purposes of this subsection—

(A) there shall be allowed a specific deduction of $100,

(B) no net operating loss deduction shall be allowed under section 172, and

(C) no deduction shall be allowed under part VIII of subchapter B (relating to special deductions for corporations).

(3) Exempt function income

For purposes of this subsection, the term ''exempt function income'' means any amount received as—

(A) a contribution of money or other property,

(B) membership dues, a membership fee or assessment from a member of the political organization,

(C) proceeds from a political fundraising or entertainment event, or proceeds from the sale of political campaign materials, which are not received in the ordinary course of any trade or business, or

(D) proceeds from the conducting of any bingo game (as defined in section 513(f)(2)),

to the extent such amount is segregated for use only for the exempt function of the political organization.

(d) Certain uses not treated as income to candidate

For purposes of this title, if any political organization—

(1) contributes any amount to or for the use of any political organization which is treated as exempt from tax under subsection (a) of this section,

(2) contributes any amount to or for the use of any organization described in paragraph (1) or (2) of section 509(a) which is exempt from tax under section 501(a), or

(3) deposits any amount in the general fund of the Treasury or in the general fund of any State or local government,

such amount shall be treated as an amount not diverted for the personal use of the candidate or any other person. No deduction shall be allowed under this title for the contribution or deposit of any amount described in the preceding sentence.

(e) Other definitions

For purposes of this section—

(1) Political organization

The term ''political organization'' means a party, committee, association, fund, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an exempt function.

(2) Exempt function

The term ''exempt function'' means the function of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office or office in a political organization, or the election of Presidential or Vice-Presidential electors, whether or not such individual or electors are selected, nominated, elected, or appointed. Such term includes the making of expenditures relating to an office described in the preceding sentence which, if incurred by the individual, would be allowable as a deduction under section 162(a).

(3) Contributions

The term ''contributions'' has the meaning given to such term by section 271(b)(2).

(4) Expenditures

The term ''expenditures'' has the meaning given to such term by section 271(b)(3).

(5) Qualified State or local political organization

(A) In general

The term ''qualified State or local political organization'' means a political organization—

(i) all the exempt functions of which are solely for the purposes of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any State or local public office or office in a State or local political organization,

(ii) which is subject to State law that requires the organization to report (and it so reports)—

(I) information regarding each separate expenditure from and contribution to such organization, and

(II) information regarding the person who makes such contribution or receives such expenditure,

which would otherwise be required to be reported under this section, and

(iii) with respect to which the reports referred to in clause (ii) are (I) made public by the agency with which such reports are filed, and (II) made publicly available for inspection by the organization in the manner described in section 6104(d).

(B) Certain State law differences disregarded

An organization shall not be treated as failing to meet the requirements of subparagraph (A)(ii) solely by reason of 1 or more of the following:

(i) The minimum amount of any expenditure or contribution required to be reported under State law is not more than $300 greater than the minimum amount required to be reported under subsection (j).

(ii) The State law does not require the organization to identify 1 or more of the following:

(I) The employer of any person who makes contributions to the organization.

(II) The occupation of any person who makes contributions to the organization.

(III) The employer of any person who receives expenditures from the organization.

(IV) The occupation of any person who receives expenditures from the organization.

(V) The purpose of any expenditure of the organization.

(VI) The date any contribution was made to the organization.

(VII) The date of any expenditure of the organization.

(C) De minimis errors

An organization shall not fail to be treated as a qualified State or local political organization solely because such organization makes de minimis errors in complying with the State reporting requirements and the public inspection requirements described in subparagraph (A) as long as the organization corrects such errors within a reasonable period after the organization becomes aware of such errors.

(D) Participation of Federal candidate or office holder

The term ''qualified State or local political organization'' shall not include any organization otherwise described in subparagraph (A) if a candidate for nomination or election to Federal elective public office or an individual who holds such office—

(i) controls or materially participates in the direction of the organization,

(ii) solicits contributions to the organization (unless the Secretary determines that such solicitations resulted in de minimis contributions and were made without the prior knowledge and consent, whether explicit or implicit, of the organization or its officers, directors, agents, or employees), or

(iii) directs, in whole or in part, disbursements by the organization.

(f) Exempt organization, which is not political organization, must include certain amounts in gross income

(1) In general

If an organization described in section 501(c) which is exempt from tax under section 501(a) expends any amount during the taxable year directly (or through another organization) for an exempt function (within the meaning of subsection (e)(2)), then, notwithstanding any other provision of law, there shall be included in the gross income of such organization for the taxable year, and shall be subject to tax under subsection (b) as if it constituted political organization taxable income, an amount equal to the lesser of—

(A) the net investment income of such organization for the taxable year, or

(B) the aggregate amount so expended during the taxable year for such an exempt function.

(2) Net investment income

For purposes of this subsection, the term ''net investment income'' means the excess of—

(A) the gross amount of income from interest, dividends, rents, and royalties, plus the excess (if any) of gains from the sale or exchange of assets over the losses from the sale or exchange of assets, over

(B) the deductions allowed by this chapter which are directly connected with the production of the income referred to in subparagraph (A).

For purposes of the preceding sentence, there shall not be taken into account items taken into account for purposes of the tax imposed by section 511 (relating to tax on unrelated business income).

(3) Certain separate segregated funds

For purposes of this subsection and subsection (e)(1), a separate segregated fund (within the meaning of section 610 of title 18 or of any similar State statute, or within the meaning of any State statute which permits the segregation of dues moneys for exempt functions (within the meaning of subsection (e)(2))) which is maintained by an organization described in section 501(c) which is exempt from tax under section 501(a) shall be treated as a separate organization.

(g) Treatment of newsletter funds

(1) In general

For purposes of this section, a fund established and maintained by an individual who holds, has been elected to, or is a candidate (within the meaning of paragraph (3)) for nomination or election to, any Federal, State, or local elective public office, for use by such individual exclusively for the preparation and circulation of such individual's newsletter shall, except as provided in paragraph (2), be treated as if such fund constituted a political organization.

(2) Additional modifications

In the case of any fund described in paragraph (1)—

(A) the exempt function shall be only the preparation and circulation of the newsletter, and

(B) the specific deduction provided by subsection (c)(2)(A) shall not be allowed.

(3) Candidate

For purposes of paragraph (1), the term ''candidate'' means, with respect to any Federal, State, or local elective public office, an individual who—

(A) publicly announces that he is a candidate for nomination or election to such office, and

(B) meets the qualifications prescribed by law to hold such office.

(h) Special rule for principal campaign committees

(1) In general

In the case of a political organization, which is a principal campaign committee, paragraph (1) of subsection (b) shall be applied by substituting ''the appropriate rates'' for ''the highest rate''.

(2) Principal campaign committee defined

(A) In general

For purposes of this subsection, the term ''principal campaign committee'' means the political committee designated by a candidate for Congress as his principal campaign committee for purposes of—

(i) section 302(e) of the Federal Election Campaign Act of 1971 (52 U.S.C. 30102(e)), and

(ii) this subsection.

(B) Designation

A candidate may have only 1 designation in effect under subparagraph (A)(ii) at any time and such designation—

(i) shall be made at such time and in such manner as the Secretary may prescribe by regulations, and

(ii) once made, may be revoked only with the consent of the Secretary.

Nothing in this subsection shall be construed to require any designation where there is only one political committee with respect to a candidate.

(i) Organizations must notify Secretary that they are section 527 organizations

(1) In general

Except as provided in paragraph (5), an organization shall not be treated as an organization described in this section—

(A) unless it has given notice to the Secretary electronically that it is to be so treated, or

(B) if the notice is given after the time required under paragraph (2), the organization shall not be so treated for any period before such notice is given or, in the case of any material change in the information required under paragraph (3), for the period beginning on the date on which the material change occurs and ending on the date on which such notice is given.

(2) Time to give notice

The notice required under paragraph (1) shall be transmitted not later than 24 hours after the date on which the organization is established or, in the case of any material change in the information required under paragraph (3), not later than 30 days after such material change.

(3) Contents of notice

The notice required under paragraph (1) shall include information regarding—

(A) the name and address of the organization (including any business address, if different) and its electronic mailing address,

(B) the purpose of the organization,

(C) the names and addresses of its officers, highly compensated employees, contact person, custodian of records, and members of its Board of Directors,

(D) the name and address of, and relationship to, any related entities (within the meaning of section 168(h)(4)),

(E) whether the organization intends to claim an exemption from the requirements of subsection (j) or section 6033, and

(F) such other information as the Secretary may require to carry out the internal revenue laws.

(4) Effect of failure

In the case of an organization failing to meet the requirements of paragraph (1) for any period, the taxable income of such organization shall be computed by taking into account any exempt function income (and any deductions directly connected with the production of such income) or, in the case of a failure relating to a material change, by taking into account such income and deductions only during the period beginning on the date on which the material change occurs and ending on the date on which notice is given under this subsection. For purposes of the preceding sentence, the term ''exempt function income'' means any amount described in a subparagraph of subsection (c)(3), whether or not segregated for use for an exempt function.

(5) Exceptions

This subsection shall not apply to any organization—

(A) to which this section applies solely by reason of subsection (f)(1),

(B) which reasonably anticipates that it will not have gross receipts of $25,000 or more for any taxable year, or

(C) which is a political committee of a State or local candidate or which is a State or local committee of a political party.

(6) Coordination with other requirements

This subsection shall not apply to any person required (without regard to this subsection) to report under the Federal Election Campaign Act of 1971 (52 U.S.C. 30101 et seq.) as a political committee.

(j) Required disclosure of expenditures and contributions

(1) Penalty for failure

In the case of—

(A) a failure to make the required disclosures under paragraph (2) at the time and in the manner prescribed therefor, or

(B) a failure to include any of the information required to be shown by such disclosures or to show the correct information,

there shall be paid by the organization an amount equal to the rate of tax specified in subsection (b)(1) multiplied by the amount to which the failure relates. For purposes of subtitle F, the amount imposed by this paragraph shall be assessed and collected in the same manner as penalties imposed by section 6652(c).

(2) Required disclosure

A political organization which accepts a contribution, or makes an expenditure, for an exempt function during any calendar year shall file with the Secretary either—

(A)(i) in the case of a calendar year in which a regularly scheduled election is held—

(I) quarterly reports, beginning with the first quarter of the calendar year in which a contribution is accepted or expenditure is made, which shall be filed not later than the fifteenth day after the last day of each calendar quarter, except that the report for the quarter ending on December 31 of such calendar year shall be filed not later than January 31 of the following calendar year,

(II) a pre-election report, which shall be filed not later than the twelfth day before (or posted by registered or certified mail not later than the fifteenth day before) any election with respect to which the organization makes a contribution or expenditure, and which shall be complete as of the twentieth day before the election, and

(III) a post-general election report, which shall be filed not later than the thirtieth day after the general election and which shall be complete as of the twentieth day after such general election, and

(ii) in the case of any other calendar year, a report covering the period beginning January 1 and ending June 30, which shall be filed no later than July 31 and a report covering the period beginning July 1 and ending December 31, which shall be filed no later than January 31 of the following calendar year, or

(B) monthly reports for the calendar year, beginning with the first month of the calendar year in which a contribution is accepted or expenditure is made, which shall be filed not later than the twentieth day after the last day of the month and shall be complete as if the last day of the month, except that, in lieu of filing the reports otherwise due in November and December of any year in which a regularly scheduled general election is held, a pre-general election report shall be filed in accordance with subparagraph (A)(i)(II), a post-general election report shall be filed in accordance with subparagraph (A)(i)(III), and a year end report shall be filed not later than January 31 of the following calendar year.

(3) Contents of report

A report required under paragraph (2) shall contain the following information:

(A) The amount, date, and purpose of each expenditure made to a person if the aggregate amount of expenditures to such person during the calendar year equals or exceeds $500 and the name and address of the person (in the case of an individual, including the occupation and name of employer of such individual).

(B) The name and address (in the case of an individual, including the occupation and name of employer of such individual) of all contributors which contributed an aggregate amount of $200 or more to the organization during the calendar year and the amount and date of the contribution.

Any expenditure or contribution disclosed in a previous reporting period is not required to be included in the current reporting period.

(4) Contracts to spend or contribute

For purposes of this subsection, a person shall be treated as having made an expendi-

ture or contribution if the person has contracted or is otherwise obligated to make the expenditure or contribution.

(5) Coordination with other requirements

This subsection shall not apply—

(A) to any person required (without regard to this subsection) to report under the Federal Election Campaign Act of 1971 (52 U.S.C. 30101 et seq.) as a political committee,

(B) to any State or local committee of a political party or political committee of a State or local candidate,

(C) to any organization which is a qualified State or local political organization,

(D) to any organization which reasonably anticipates that it will not have gross receipts of $25,000 or more for any taxable year,

(E) to any organization to which this section applies solely by reason of subsection (f)(1), or

(F) with respect to any expenditure which is an independent expenditure (as defined in section 301 of such Act).

(6) Election

For purposes of this subsection, the term ''election'' means—

(A) a general, special, primary, or runoff election for a Federal office,

(B) a convention or caucus of a political party which has authority to nominate a candidate for Federal office,

(C) a primary election held for the selection of delegates to a national nominating convention of a political party, or

(D) a primary election held for the expression of a preference for the nomination of individuals for election to the office of President.

(7) Electronic filing

Any report required under paragraph (2) with respect to any calendar year shall be filed in electronic form if the organization has, or has reason to expect to have, contributions exceeding $50,000 or expenditures exceeding $50,000 in such calendar year.

(k) Public availability of notices and reports

(1) In general

The Secretary shall make any notice described in subsection (i)(1) or report described in subsection (j)(7) available for public inspection on the Internet not later than 48 hours after such notice or report has been filed (in addition to such public availability as may be made under section 6104(d)(7)).

(2) Access

The Secretary shall make the entire database of notices and reports which are made available to the public under paragraph (1) searchable by the following items (to the extent the items are required to be included in the notices and reports):

(A) Names, States, zip codes, custodians of records, directors, and general purposes of the organizations.

(B) Entities related to the organizations.

(C) Contributors to the organizations.

(D) Employers of such contributors.

(E) Recipients of expenditures by the organizations.

(F) Ranges of contributions and expenditures.

(G) Time periods of the notices and reports.

Such database shall be downloadable.

***(l)* Authority to waive**

The Secretary may waive all or any portion of the—

(1) tax assessed on an organization by reason of the failure of the organization to comply with the requirements of subsection (i), or

(2) amount imposed under subsection (j) for a failure to comply with the requirements thereof,

on a showing that such failure was due to reasonable cause and not due to willful neglect.

(Added Pub. L. 93–625, §10(a), Jan. 3, 1975, 88 Stat. 2116; amended Pub. L. 94–455, title XIX, §1901(b)(33)(C), Oct. 4, 1976, 90 Stat. 1801; Pub. L. 95–502, title III, §302(a), Oct. 21, 1978, 92 Stat. 1702; Pub. L. 95–600, title III, §301(b)(6), Nov. 6, 1978, 92 Stat. 2821; Pub. L. 97–34, title I, §128(a), Aug. 13, 1981, 95 Stat. 203; Pub. L. 98–369, div. A, title IV, §474(r)(16), title VII, §722(c), July 18, 1984, 98 Stat. 843, 973; Pub. L. 99–514, title I, §112(b)(1), Oct. 22, 1986, 100 Stat. 2108; Pub. L. 100–647, title I, §1001(b)(3)(B), Nov. 10, 1988, 102 Stat. 3349; Pub. L. 106–230, §§1(a), 2(a), July 1, 2000, 114 Stat. 477, 479; Pub. L. 107–276, §§1(a), 2(a), (b), 5(a), 6(a)–(c), (e)–(g), Nov. 2, 2002, 116 Stat. 1929, 1932–1934; Pub. L. 113–295, div. A, title II, §220(*l*), Dec. 19, 2014, 128 Stat. 4036; Pub. L. 115–97, title I, §13001(b)(2)(D), Dec. 22, 2017, 131 Stat. 2096.)

REFERENCES IN TEXT

Section 610 of title 18, referred to in subsec. (f)(3), was repealed by Pub. L. 94–283, title II, §201(a), May 11, 1976, 90 Stat. 496.

The Federal Election Campaign Act of 1971, referred to in subsecs. (i)(6) and (j)(5)(A), is Pub. L. 92–225, Feb. 7, 1972, 86 Stat. 3, which is classified principally to chapter 301 (§30101 et seq.) of Title 52, Voting and Elections. Section 301 of the Act is classified to section 30101 of Title 52. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2017—Subsec. (b). Pub. L. 115–97 struck out par. (1) designation and heading and struck out par. (2) which related to alternative tax in case of capital gains.

2014—Subsec. (h)(2)(A)(i). Pub. L. 113–295, §220(*l*)(1), substituted ''(52 U.S.C. 30102(e))'' for ''(2 U.S.C. 432(e))''.

Subsecs. (i)(6), (j)(5)(A). Pub. L. 113–295, §220(*l*)(2), substituted ''(52 U.S.C. 30101 et seq.)'' for ''(2 U.S.C. 431 et seq.)''.

2002—Subsec. (e)(5). Pub. L. 107–276, §2(b), added par. (5).

Subsec. (i)(1)(A). Pub. L. 107–276, §6(c), substituted ''electronically'' for '', electronically and in writing,''.

Subsec. (i)(1)(B). Pub. L. 107–276, §6(g)(1), which directed the insertion of ''or, in the case of any material change in the information required under paragraph (3), for the period beginning on the date on which the material change occurs and ending on the date on which such notice is given'' after ''given'', was executed by making the insertion after ''given'' the second time appearing, to reflect the probable intent of Congress.

Subsec. (i)(2). Pub. L. 107–276, §6(g)(2), inserted ''or, in the case of any material change in the information re-

quired under paragraph (3), not later than 30 days after such material change'' after ''established''.

Subsec. (i)(3)(E), (F). Pub. L. 107–276, § 6(f), added subpar. (E) and redesignated former subpar. (E) as (F).

Subsec. (i)(4). Pub. L. 107–276, § 6(g)(3), which directed the insertion of ''or, in the case of a failure relating to a material change, by taking into account such income and deductions only during the period beginning on the date on which the material change occurs and ending on the date on which notice is given under this subsection'' before period at end, was executed by making the insertion before period at end of first sentence, to reflect the probable intent of Congress.

Pub. L. 107–276, § 6(a), inserted at end ''For purposes of the preceding sentence, the term 'exempt function income' means any amount described in a subparagraph of subsection (c)(3), whether or not segregated for use for an exempt function.''

Subsec. (i)(5)(C). Pub. L. 107–276, § 1(a), added subpar. (C).

Subsec. (j)(1). Pub. L. 107–276, § 6(b), inserted at end ''For purposes of subtitle F, the amount imposed by this paragraph shall be assessed and collected in the same manner as penalties imposed by section 6652(c).''

Subsec. (j)(3)(A). Pub. L. 107–276, § 6(e)(1)(A), inserted '', date, and purpose'' after ''The amount''.

Subsec. (j)(3)(B). Pub. L. 107–276, § 6(e)(1)(B), inserted ''and date'' after ''the amount''.

Subsec. (j)(5)(C) to (F). Pub. L. 107–276, § 2(a), added subpar. (C) and redesignated former subpars. (C) to (E) as (D) to (F), respectively.

Subsec. (j)(7). Pub. L. 107–276, § 6(e)(2), added par. (7).

Subsec. (k). Pub. L. 107–276, § 6(e)(3), added subsec. (k). Former subsec. (k) redesignated (*l*).

Pub. L. 107–276, § 5(a), added subsec. (k).

Subsec. (*l*). Pub. L. 107–276, § 6(e)(3), redesignated subsec. (k) as (*l*).

2000—Subsec. (i). Pub. L. 106–230, § 1(a), added subsec. (i).

Subsec. (j). Pub. L. 106–230, § 2(a), added subsec. (j).

1988—Subsec. (e)(2). Pub. L. 100–647 inserted at end ''Such term includes the making of expenditures relating to an office described in the preceding sentence which, if incurred by the individual, would be allowable as a deduction under section 162(a).''

1986—Subsec. (g)(1). Pub. L. 99–514, § 112(b)(1)(A), substituted ''paragraph (3)'' for ''section 24(c)(2)''.

Subsec. (g)(3). Pub. L. 99–514, § 112(b)(1)(B), added par. (3).

1984—Subsec. (g)(1). Pub. L. 98–369, § 474(r)(16), substituted ''section 24(c)(2)'' for ''section 41(c)(2)''.

Subsec. (h)(2)(B). Pub. L. 98–369, § 722(c), inserted ''Nothing in this subsection shall be construed to require any designation where there is only one political committee with respect to a candidate.''

1981—Subsec. (h). Pub. L. 97–34 added subsec. (h).

1978—Subsec. (b)(1). Pub. L. 95–600 substituted ''Such tax shall be computed by multiplying the political organization taxable income by the highest rate of tax specified in section 11(b)'' for ''Such tax shall consist of a normal tax and a surtax computed as provided in section 11 as though the political organization were a corporation and as though the political organization taxable income were the taxable income referred to in section 11'' and struck out provision that for purposes of this subsection, the surtax exemption provided by section 11(d) not be allowed.

Subsec. (c)(3)(D). Pub. L. 95–502 added subpar. (D).

1976—Subsec. (b)(2). Pub. L. 94–455 substituted ''net capital gain'' for ''net section 1201 gain'' after ''organization has a''.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–97 applicable to taxable years beginning after Dec. 31, 2017, see section 13001(c)(1) of Pub. L. 115–97, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–276, § 1(b), Nov. 2, 2002, 116 Stat. 1929, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect as if included in the amendments made by Public Law 106–230.''

Pub. L. 107–276, § 2(c), Nov. 2, 2002, 116 Stat. 1931, provided that: ''The amendments made by this section [amending this section] shall take effect as if included in the amendments made by Public Law 106–230.''

Pub. L. 107–276, § 5(b), Nov. 2, 2002, 116 Stat. 1932, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to any tax assessed or amount imposed after June 30, 2000.''

Pub. L. 107–276, § 6(h)(1), (2), Nov. 2, 2002, 116 Stat. 1934, provided that:

''(1) SUBSECTIONS (a) AND (b).—The amendments made by subsections (a) and (b) [amending this section] shall apply to failures occurring on or after the date of the enactment of this Act [Nov. 2, 2002].

''(2) SUBSECTION (c).—The amendments made by subsection (c) [amending this section] shall take effect as if included in the amendments made by Public Law 106–230.''

Pub. L. 107–276, § 6(h)(4)–(6), Nov. 2, 2002, 116 Stat. 1934, provided that:

''(4) SUBSECTIONS (e)(1) AND (f).—The amendments made by subsections (e)(1) and (f) [amending this section] shall apply to reports and notices required to be filed more than 30 days after the date of the enactment of this Act [Nov. 2, 2002].

''(5) SUBSECTIONS (e)(2) AND (e)(3).—The amendments made by subsections (e)(2) and (e)(3) [amending this section] shall apply to reports required to be filed on or after June 30, 2003.

''(6) SUBSECTION (g).—

''(A) IN GENERAL.—The amendments made by subsection (g) [amending this section] shall apply to material changes on or after the date of the enactment of this Act.

''(B) TRANSITION RULE.—In the case of a material change occurring during the 30-day period beginning on the date of the enactment of this Act, a notice under section 527(i) of the Internal Revenue Code of 1986 (as amended by this Act) shall not be required to be filed under such section before the later of—

''(i) 30 days after the date of such material change, or

''(ii) 45 days after the date of the enactment of this Act [Nov. 2, 2002].''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–230, § 1(d), July 1, 2000, 114 Stat. 479, provided that:

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this section and sections 6104 and 6652 of this title] shall take effect on the date of the enactment of this section [July 1, 2000].

''(2) ORGANIZATIONS ALREADY IN EXISTENCE.—In the case of an organization established before the date of the enactment of this section, the time to file the notice under section 527(i)(2) of the Internal Revenue Code of 1986, as added by this section, shall be 30 days after the date of the enactment of this section.

''(3) INFORMATION AVAILABILITY.—The amendment made by subsection (b)(2) [amending section 6104 of this title] shall take effect on the date that is 45 days after the date of the enactment of this section.''

Pub. L. 106–230, § 2(d), July 1, 2000, 114 Stat. 482, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to expenditures made and contributions received after the date of the enactment of this Act [July 1, 2000], except that such amendment shall not apply to expenditures made, or contributions received, after such date pursuant to a contract entered into on or before such date.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(16) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Pub. L. 98–369, div. A, title VII, §722(c), July 18, 1984, 98 Stat. 973, provided that the amendment made by that section is effective for taxable years beginning after Dec. 31, 1981.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title I, §128(b), Aug. 13, 1981, 95 Stat. 203, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1981.''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 301(b)(6) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95–600, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT; ELECTION CAMPAIGN CONTRIBUTIONS; COLLATERAL

Pub. L. 95–502, title III, §302(b), Oct. 21, 1978, 92 Stat. 1703, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1974, except that notwithstanding any other provision of law to the contrary, no amounts held at the date of enactment of this bill [Oct. 21, 1978] by an organization described in section 527(e)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] in escrow, in separate accounts for the payment of Federal taxes, or in any other fund which are proceeds described in section 527(c)(3)(D) of such Code may be used, directly or indirectly, to make a contribution or expenditure (as defined in section 301(e) and (f) of the Federal Election Campaign Act of 1971; 2 U.S.C. 431[(e) and] (f) [now 52 U.S.C. 30101(8) and (9)]) in connection with any election held before January 1, 1979.

''(2) Such amounts as described in (1) above shall not be considered as security or collateral for any loan by any State or national bank or any other person or organization.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE

Pub. L. 93–625, §10(e), Jan. 3, 1975, 88 Stat. 2119, provided that: ''The amendments made by subsections (a), (b), (c), and (d) [enacting this section and amending sections 501 and 6012 of this title] shall apply to taxable years beginning after December 31, 1974.''

NOTIFICATION OF INTERACTION OF REPORTING REQUIREMENTS

Pub. L. 107–276, §4, Nov. 2, 2002, 116 Stat. 1932, provided that:

''(a) IN GENERAL.—The Secretary of the Treasury, in consultation with the Federal Election Commission, shall publicize—

''(1) the effect of the amendments made by this Act [amending this section and sections 6012, 6033, 6104, and 7207 of this title], and

''(2) the interaction of requirements to file a notification or report under section 527 of the Internal Revenue Code of 1986 and reports under the Federal Election Campaign Act of 1971 [52 U.S.C. 30101 et seq.].

''(b) INFORMATION.—Information provided under subsection (a) shall be included in any appropriate form, instruction, notice, or other guidance issued to the public by the Secretary of the Treasury or the Federal Election Commission regarding reporting requirements of political organizations (as defined in section 527 of the Internal Revenue Code of 1986) or reporting requirements under the Federal Election Campaign Act of 1971 [52 U.S.C. 30101 et seq.].''

PART VII—CERTAIN HOMEOWNERS ASSOCIATIONS

AMENDMENTS

1976—Pub. L. 94–455, title XXI, §2101(a), Oct. 4, 1976, 90 Stat. 1897, added part heading and analysis for part VII.

§ 528. Certain homeowners associations

(a) General rule

A homeowners association (as defined in subsection (c)) shall be subject to taxation under this subtitle only to the extent provided in this section. A homeowners association shall be considered an organization exempt from income taxes for the purpose of any law which refers to organizations exempt from income taxes.

(b) Tax imposed

A tax is hereby imposed for each taxable year on the homeowners association taxable income of every homeowners association. Such tax shall be equal to 30 percent of the homeowners association taxable income (32 percent of such income in the case of a timeshare association).

(c) Homeowners association defined

For purposes of this section—

(1) Homeowners association

The term ''homeowners association'' means an organization which is a condominium management association, a residential real estate management association, or a timeshare association if—

(A) such organization is organized and operated to provide for the acquisition, construction, management, maintenance, and care of association property,

(B) 60 percent or more of the gross income of such organization for the taxable year consists solely of amounts received as membership dues, fees, or assessments from—

(i) owners of residential units in the case of a condominium management association,

(ii) owners of residences or residential lots in the case of a residential real estate management association, or

(iii) owners of timeshare rights to use, or timeshare ownership interests in, association property in the case of a timeshare association,

(C) 90 percent or more of the expenditures of the organization for the taxable year are expenditures for the acquisition, construction, management, maintenance, and care of association property and, in the case of a timeshare association, for activities pro-

vided to or on behalf of members of the association,

(D) no part of the net earnings of such organization inures (other than by acquiring, constructing, or providing management, maintenance, and care of association property, and other than by a rebate of excess membership dues, fees, or assessments) to the benefit of any private shareholder or individual, and

(E) such organization elects (at such time and in such manner as the Secretary by regulations prescribes) to have this section apply for the taxable year.

(2) Condominium management association

The term ''condominium management association'' means any organization meeting the requirement of subparagraph (A) of paragraph (1) with respect to a condominium project substantially all of the units of which are used by individuals for residences.

(3) Residential real estate management association

The term ''residential real estate management association'' means any organization meeting the requirements of subparagraph (A) of paragraph (1) with respect to a subdivision, development, or similar area substantially all the lots or buildings of which may only be used by individuals for residences.

(4) Timeshare association

The term ''timeshare association'' means any organization (other than a condominium management association) meeting the requirement of subparagraph (A) of paragraph (1) if any member thereof holds a timeshare right to use, or a timeshare ownership interest in, real property constituting association property.

(5) Association property

The term ''association property'' means—

(A) property held by the organization,

(B) property commonly held by the members of the organization,

(C) property within the organization privately held by the members of the organization, and

(D) property owned by a governmental unit and used for the benefit of residents of such unit.

In the case of a timeshare association, such term includes property in which the timeshare association, or members of the association, have rights arising out of recorded easements, covenants, or other recorded instruments to use property related to the timeshare project.

(d) Homeowners association taxable income defined

(1) Taxable income defined

For purposes of this section, the homeowners association taxable income of any organization for any taxable year is an amount equal to the excess (if any) of—

(A) the gross income for the taxable year (excluding any exempt function income), over

(B) the deductions allowed by this chapter which are directly connected with the production of the gross income (excluding exempt function income), computed with the modifications provided in paragraph (2).

(2) Modifications

For purposes of this subsection—

(A) there shall be allowed a specific deduction of $100,

(B) no net operating loss deduction shall be allowed under section 172, and

(C) no deduction shall be allowed under part VIII of subchapter B (relating to special deductions for corporations).

(3) Exempt function income

For purposes of this subsection, the term ''exempt function income'' means any amount received as membership dues, fees, or assessments from—

(A) owners of condominium housing units in the case of a condominium management association,

(B) owners of real property in the case of a residential real estate management association, or

(C) owners of timeshare rights to use, or timeshare ownership interests in, real property in the case of a timeshare association.

(Added Pub. L. 94–455, title XXI, § 2101(a), Oct. 4, 1976, 90 Stat. 1897; amended Pub. L. 95–600, title III, § 301(b)(7), title IV, § 403(c)(2), title VII, § 701(n)(1), Nov. 6, 1978, 92 Stat. 2821, 2868, 2907; Pub. L. 96–605, title I, § 105(a), Dec. 28, 1980, 94 Stat. 3523; Pub. L. 105–34, title IX, § 966(a)–(d), Aug. 5, 1997, 111 Stat. 894, 895.)

AMENDMENTS

1997—Subsec. (b). Pub. L. 105–34, § 966(d), which directed amendment of subsec. (b) by inserting before the period ''(32 percent of such income in the case of a timeshare association)'', was executed by making the insertion before the period at end to reflect the probable intent of Congress.

Subsec. (c)(1). Pub. L. 105–34, § 966(a)(1)(A), substituted '', a residential real estate management association, or a timeshare association'' for ''or a residential real estate management association'' in introductory provisions.

Subsec. (c)(1)(B)(iii). Pub. L. 105–34, § 966(a)(1)(B), added cl. (iii).

Subsec. (c)(1)(C). Pub. L. 105–34, § 966(a)(1)(C), inserted before comma at end ''and, in the case of a timeshare association, for activities provided to or on behalf of members of the association''.

Subsec. (c)(4). Pub. L. 105–34, § 966(a)(2), added par. (4). Former par. (4) redesignated (5).

Subsec. (c)(5). Pub. L. 105–34, § 966(c), inserted concluding provisions ''In the case of a timeshare association, such term includes property in which the timeshare association, or members of the association, have rights arising out of recorded easements, covenants, or other recorded instruments to use property related to the timeshare project.''

Pub. L. 105–34, § 966(a)(2), redesignated par. (4) as (5).

Subsec. (d)(3)(C). Pub. L. 105–34, § 966(b), added subpar. (C).

1980—Subsec. (b). Pub. L. 96–605 substituted provision that all income of a homeowners association be taxed at a rate of 30 per cent for provision that all income of a homeowners association be taxed a sum computed by multiplying the homeowners association taxable income by the highest rate of tax specified in section 11(b) of this title and struck out provision providing for alternative tax in case of capital gains.

1978—Subsec. (b)(1). Pub. L. 95–600, § 301(b)(7), substituted ''Such tax shall be computed by multiplying

the homeowners association taxable income by the highest rate of tax specified in section 11(b)'' for ''Such tax shall consist of a normal tax and a surtax computed as provided in section 11 as though the homeowners association were a corporation and as though the homeowners association taxable income were the taxable income referred to in section 11'' and struck out provision that for purposes of this subsection, the surtax exemption provided by section 11(d) not be allowed.

Subsec. (b)(2)(B). Pub. L. 95–600, § 403(c)(2), substituted provision related to amount being determined according to section 1201(a) for provision requiring an amount of 30 percent.

Subsec. (c)(2). Pub. L. 95–600, § 701(n)(1), substituted ''by individuals for residences'' for ''as residences''.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title IX, § 966(e), Aug. 5, 1997, 111 Stat. 895, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1996.''

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–605, title I, § 105(b), Dec. 28, 1980, 94 Stat. 3523, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1980.''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 301(b)(7) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95–600, set out as a note under section 11 of this title.

Pub. L. 95–600, title IV, § 403(d)(3), Nov. 6, 1978, 92 Stat. 2869, provided that: ''The amendments made by paragraphs (2), (3), and (4) of subsection (c) [amending this section and sections 857 and 904 of this title] shall take effect on the date of the enactment of this Act [Nov. 6, 1978].''

Pub. L. 95–600, title VII, § 701(n)(2), Nov. 6, 1978, 92 Stat. 2907, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1973.''

EFFECTIVE DATE

Pub. L. 94–455, title XXI, § 2101(e), Oct. 4, 1976, 90 Stat. 1899, provided that: ''Except as provided in subsection (f)(2) [set out as a note under section 216 of this title], the amendments made by this section [enacting this section and amending sections 216 and 6012 of this title] shall apply to taxable years beginning after December 31, 1973.''

PART VIII—CERTAIN SAVINGS ENTITIES

Sec.
529. Qualified tuition programs.
529A. Qualified ABLE programs.
530. Coverdell education savings accounts.

AMENDMENTS

2014—Pub. L. 113–295, div. B, title I, § 102(e)(4), (6), Dec. 19, 2014, 128 Stat. 4062, substituted ''CERTAIN'' for ''HIGHER EDUCATION'' in heading and added item 529A.

2004—Pub. L. 108–311, title IV, § 408(b)(2), Oct. 4, 2004, 118 Stat. 1192, amended directory language of Pub. L. 107–22, § 1(a)(6). See 2001 Amendment note below.

2001—Pub. L. 107–22, § 1(a)(6), July 26, 2001, 115 Stat. 196, as amended by Pub. L. 108–311, title IV, § 408(b)(2), Oct. 4, 2004, 118 Stat. 1192, substituted ''Coverdell education savings accounts'' for ''Education individual retirement accounts'' in item 530.

Pub. L. 107–16, title IV, § 402(a)(4)(E), June 7, 2001, 115 Stat. 61, struck out ''State'' before ''tuition'' in item 529.

1997—Pub. L. 105–34, title II, §§ 211(e)(1)(A), 213(e)(3), Aug. 5, 1997, 111 Stat. 812, 817, substituted ''HIGHER EDUCATION SAVINGS ENTITIES'' for ''QUALIFIED STATE TUITION PROGRAMS'' in heading and added item 530.

§ 529. Qualified tuition programs

(a) General rule

A qualified tuition program shall be exempt from taxation under this subtitle. Notwithstanding the preceding sentence, such program shall be subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable organizations).

(b) Qualified tuition program

For purposes of this section—

(1) In general

The term ''qualified tuition program'' means a program established and maintained by a State or agency or instrumentality thereof or by 1 or more eligible educational institutions—

(A) under which a person—

(i) may purchase tuition credits or certificates on behalf of a designated beneficiary which entitle the beneficiary to the waiver or payment of qualified higher education expenses of the beneficiary, or

(ii) in the case of a program established and maintained by a State or agency or instrumentality thereof, may make contributions to an account which is established for the purpose of meeting the qualified higher education expenses of the designated beneficiary of the account, and

(B) which meets the other requirements of this subsection.

Except to the extent provided in regulations, a program established and maintained by 1 or more eligible educational institutions shall not be treated as a qualified tuition program unless such program provides that amounts are held in a qualified trust and such program has received a ruling or determination that such program meets the applicable requirements for a qualified tuition program. For purposes of the preceding sentence, the term ''qualified trust'' means a trust which is created or organized in the United States for the exclusive benefit of designated beneficiaries and with respect to which the requirements of paragraphs (2) and (5) of section 408(a) are met.

(2) Cash contributions

A program shall not be treated as a qualified tuition program unless it provides that purchases or contributions may only be made in cash.

(3) Separate accounting

A program shall not be treated as a qualified tuition program unless it provides separate accounting for each designated beneficiary.

(4) Limited investment direction

A program shall not be treated as a qualified tuition program unless it provides that any contributor to, or designated beneficiary under, such program may, directly or indirectly, direct the investment of any contributions to the program (or any earnings thereon) no more than 2 times in any calendar year.

(5) No pledging of interest as security

A program shall not be treated as a qualified tuition program if it allows any interest in the program or any portion thereof to be used as security for a loan.

(6) Prohibition on excess contributions

A program shall not be treated as a qualified tuition program unless it provides adequate safeguards to prevent contributions on behalf of a designated beneficiary in excess of those necessary to provide for the qualified higher education expenses of the beneficiary.

(c) Tax treatment of designated beneficiaries and contributors

(1) In general

Except as otherwise provided in this subsection, no amount shall be includible in gross income of—

(A) a designated beneficiary under a qualified tuition program, or

(B) a contributor to such program on behalf of a designated beneficiary,

with respect to any distribution or earnings under such program.

(2) Gift tax treatment of contributions

For purposes of chapters 12 and 13—

(A) In general

Any contribution to a qualified tuition program on behalf of any designated beneficiary—

(i) shall be treated as a completed gift to such beneficiary which is not a future interest in property, and

(ii) shall not be treated as a qualified transfer under section 2503(e).

(B) Treatment of excess contributions

If the aggregate amount of contributions described in subparagraph (A) during the calendar year by a donor exceeds the limitation for such year under section 2503(b), such aggregate amount shall, at the election of the donor, be taken into account for purposes of such section ratably over the 5-year period beginning with such calendar year.

(3) Distributions

(A) In general

Any distribution under a qualified tuition program shall be includible in the gross income of the distributee in the manner as provided under section 72 to the extent not excluded from gross income under any other provision of this chapter.

(B) Distributions for qualified higher education expenses

For purposes of this paragraph—

(i) In-kind distributions

No amount shall be includible in gross income under subparagraph (A) by reason of a distribution which consists of providing a benefit to the distributee which, if paid for by the distributee, would constitute payment of a qualified higher education expense.

(ii) Cash distributions

In the case of distributions not described in clause (i), if—

(I) such distributions do not exceed the qualified higher education expenses (reduced by expenses described in clause (i)), no amount shall be includible in gross income, and

(II) in any other case, the amount otherwise includible in gross income shall be reduced by an amount which bears the same ratio to such amount as such expenses bear to such distributions.

(iii) Exception for institutional programs

In the case of any taxable year beginning before January 1, 2004, clauses (i) and (ii) shall not apply with respect to any distribution during such taxable year under a qualified tuition program established and maintained by 1 or more eligible educational institutions.

(iv) Treatment as distributions

Any benefit furnished to a designated beneficiary under a qualified tuition program shall be treated as a distribution to the beneficiary for purposes of this paragraph.

(v) Coordination with Hope and Lifetime Learning credits

The total amount of qualified higher education expenses with respect to an individual for the taxable year shall be reduced—

(I) as provided in section 25A(g)(2), and

(II) by the amount of such expenses which were taken into account in determining the credit allowed to the taxpayer or any other person under section 25A.

(vi) Coordination with Coverdell education savings accounts

If, with respect to an individual for any taxable year—

(I) the aggregate distributions to which clauses (i) and (ii) and section 530(d)(2)(A) apply, exceed

(II) the total amount of qualified higher education expenses otherwise taken into account under clauses (i) and (ii) (after the application of clause (v)) for such year,

the taxpayer shall allocate such expenses among such distributions for purposes of determining the amount of the exclusion under clauses (i) and (ii) and section 530(d)(2)(A).

(C) Change in beneficiaries or programs

(i) Rollovers

Subparagraph (A) shall not apply to that portion of any distribution which, within 60 days of such distribution, is transferred—

(I) to another qualified tuition program for the benefit of the designated beneficiary,

(II) to the credit of another designated beneficiary under a qualified tuition program who is a member of the family of the designated beneficiary with respect to which the distribution was made, or

(III) before January 1, 2026, to an ABLE account (as defined in section 529A(e)(6)) of the designated beneficiary or a member of the family of the designated beneficiary.

Subclause (III) shall not apply to so much of a distribution which, when added to all other contributions made to the ABLE account for the taxable year, exceeds the limitation under section 529A(b)(2)(B)(i).

(ii) Change in designated beneficiaries

Any change in the designated beneficiary of an interest in a qualified tuition program shall not be treated as a distribution for purposes of subparagraph (A) if the new beneficiary is a member of the family of the old beneficiary.

(iii) Limitation on certain rollovers

Clause (i)(I) shall not apply to any transfer if such transfer occurs within 12 months from the date of a previous transfer to any qualified tuition program for the benefit of the designated beneficiary.

(D) Special rule for contributions of refunded amounts

In the case of a beneficiary who receives a refund of any qualified higher education expenses from an eligible educational institution, subparagraph (A) shall not apply to that portion of any distribution for the taxable year which is recontributed to a qualified tuition program of which such individual is a beneficiary, but only to the extent such recontribution is made not later than 60 days after the date of such refund and does not exceed the refunded amount.

(4) Estate tax treatment

(A) In general

No amount shall be includible in the gross estate of any individual for purposes of chapter 11 by reason of an interest in a qualified tuition program.

(B) Amounts includible in estate of designated beneficiary in certain cases

Subparagraph (A) shall not apply to amounts distributed on account of the death of a beneficiary.

(C) Amounts includible in estate of donor making excess contributions

In the case of a donor who makes the election described in paragraph (2)(B) and who dies before the close of the 5-year period referred to in such paragraph, notwithstanding subparagraph (A), the gross estate of the donor shall include the portion of such contributions properly allocable to periods after the date of death of the donor.

(5) Other gift tax rules

For purposes of chapters 12 and 13—

(A) Treatment of distributions

Except as provided in subparagraph (B), in no event shall a distribution from a qualified tuition program be treated as a taxable gift.

(B) Treatment of designation of new beneficiary

The taxes imposed by chapters 12 and 13 shall apply to a transfer by reason of a change in the designated beneficiary under the program (or a rollover to the account of a new beneficiary) unless the new beneficiary is—

(i) assigned to the same generation as (or a higher generation than) the old beneficiary (determined in accordance with section 2651), and

(ii) a member of the family of the old beneficiary.

(6) Additional tax

The tax imposed by section 530(d)(4) shall apply to any payment or distribution from a qualified tuition program in the same manner as such tax applies to a payment or distribution from an[1] Coverdell education savings account. This paragraph shall not apply to any payment or distribution in any taxable year beginning before January 1, 2004, which is includible in gross income but used for qualified higher education expenses of the designated beneficiary.

(7) Treatment of elementary and secondary tuition

Any reference in this subsection to the term ''qualified higher education expense'' shall include a reference to expenses for tuition in connection with enrollment or attendance at an elementary or secondary public, private, or religious school.

(d) Reports

Each officer or employee having control of the qualified tuition program or their designee shall make such reports regarding such program to the Secretary and to designated beneficiaries with respect to contributions, distributions, and such other matters as the Secretary may require. The reports required by this subsection shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required by the Secretary.

(e) Other definitions and special rules

For purposes of this section—

(1) Designated beneficiary

The term ''designated beneficiary'' means—

(A) the individual designated at the commencement of participation in the qualified tuition program as the beneficiary of amounts paid (or to be paid) to the program,

(B) in the case of a change in beneficiaries described in subsection (c)(3)(C), the individual who is the new beneficiary, and

(C) in the case of an interest in a qualified tuition program purchased by a State or local government (or agency or instrumentality thereof) or an organization described in section 501(c)(3) and exempt from taxation under section 501(a) as part of a scholarship program operated by such government or organization, the individual receiving such interest as a scholarship.

(2) Member of family

The term ''member of the family'' means, with respect to any designated beneficiary—

[1] So in original. Probably should be ''a''.

(A) the spouse of such beneficiary;

(B) an individual who bears a relationship to such beneficiary which is described in subparagraphs (A) through (G) of section 152(d)(2);

(C) the spouse of any individual described in subparagraph (B); and

(D) any first cousin of such beneficiary.

(3) Qualified higher education expenses

(A) In general

The term ''qualified higher education expenses'' means—

(i) tuition, fees, books, supplies, and equipment required for the enrollment or attendance of a designated beneficiary at an eligible educational institution;

(ii) expenses for special needs services in the case of a special needs beneficiary which are incurred in connection with such enrollment or attendance[2]

(iii) expenses for the purchase of computer or peripheral equipment (as defined in section 168(i)(2)(B)), computer software (as defined in section 197(e)(3)(B)), or Internet access and related services, if such equipment, software, or services are to be used primarily by the beneficiary during any of the years the beneficiary is enrolled at an eligible educational institution.

Clause (iii) shall not include expenses for computer software designed for sports, games, or hobbies unless the software is predominantly educational in nature. The amount of cash distributions from all qualified tuition programs described in subsection (b)(1)(A)(ii) with respect to a beneficiary during any taxable year shall, in the aggregate, include not more than $10,000 in expenses described in subsection (c)(7) incurred during the taxable year.

(B) Room and board included for students who are at least half-time

(i) In general

In the case of an individual who is an eligible student (as defined in section 25A(b)(3)) for any academic period, such term shall also include reasonable costs for such period (as determined under the qualified tuition program) incurred by the designated beneficiary for room and board while attending such institution. For purposes of subsection (b)(6), a designated beneficiary shall be treated as meeting the requirements of this clause.

(ii) Limitation

The amount treated as qualified higher education expenses by reason of clause (i) shall not exceed—

(I) the allowance (applicable to the student) for room and board included in the cost of attendance (as defined in section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087*ll*), as in effect on the date of the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001) as determined by the eligible educational institution for such period, or

(II) if greater, the actual invoice amount the student residing in housing owned or operated by the eligible educational institution is charged by such institution for room and board costs for such period.

(4) Application of section 514

An interest in a qualified tuition program shall not be treated as debt for purposes of section 514.

(5) Eligible educational institution

The term ''eligible educational institution'' means an institution—

(A) which is described in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088), as in effect on the date of the enactment of this paragraph, and

(B) which is eligible to participate in a program under title IV of such Act.

(f) Regulations

Notwithstanding any other provision of this section, the Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section and to prevent abuse of such purposes, including regulations under chapters 11, 12, and 13 of this title.

(Added Pub. L. 104–188, title I, § 1806(a), Aug. 20, 1996, 110 Stat. 1895; amended Pub. L. 105–34, title II, § 211(a), (b), (d), (e)(2)(A), title XVI, § 1601(h)(1)(A), (B), Aug. 5, 1997, 111 Stat. 810, 812, 1092; Pub. L. 105–206, title VI, § 6004(c)(2), (3), July 22, 1998, 112 Stat. 793; Pub. L. 106–554, § 1(a)(7) [title III, § 319(5)], Dec. 21, 2000, 114 Stat. 2763, 2763A–646; Pub. L. 107–16, title IV, § 402(a)(1)–(3), (4)(A), (C), (D), (b)(1), (c)–(g), June 7, 2001, 115 Stat. 60–63; Pub. L. 107–22, § 1(b)(3)(C), July 26, 2001, 115 Stat. 197; Pub. L. 107–147, title IV, § 417(11), Mar. 9, 2002, 116 Stat. 56; Pub. L. 108–311, title II, § 207(21), title IV, § 406(a), Oct. 4, 2004, 118 Stat. 1178, 1189; Pub. L. 109–135, title IV, § 412(ee)(3), Dec. 21, 2005, 119 Stat. 2639; Pub. L. 109–280, title XIII, § 1304(b), Aug. 17, 2006, 120 Stat. 1110; Pub. L. 111–5, div. B, title I, § 1005(a), Feb. 17, 2009, 123 Stat. 316; Pub. L. 113–295, div. B, title I, § 105(a), Dec. 19, 2014, 128 Stat. 4064; Pub. L. 114–113, div. Q, title III, § 302(a)(1), (b)(1), (c)(1), Dec. 18, 2015, 129 Stat. 3086; Pub. L. 115–97, title I, §§ 11025(a), 11032(a), Dec. 22, 2017, 131 Stat. 2076, 2081.)

REFERENCES IN TEXT

The date of the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001, referred to in subsec. (e)(3)(B)(ii)(I), is the date of enactment of Pub. L. 107–16, which was approved June 7, 2001.

The date of the enactment of this paragraph, referred to in subsec. (e)(5)(A), probably means the date of enactment of Pub. L. 105–34, which enacted subsec. (e)(5) and which was approved Aug. 5, 1997.

The Higher Education Act of 1965, referred to in subsec. (e)(5), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219. Title IV of the Act is classified generally to subchapter IV (§ 1070 et seq.) of chapter 28 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

AMENDMENTS

2017—Subsec. (c)(3)(C)(i). Pub. L. 115–97, § 11025(a), added subcl. (III) and inserted concluding provisions.

[2] So in original. Probably should be followed by ''; and''.

Subsec. (c)(7). Pub. L. 115–97, §11032(a)(1), added par. (7).

Subsec. (e)(3)(A). Pub. L. 115–97, §11032(a)(2), inserted at end of concluding provisions ''The amount of cash distributions from all qualified tuition programs described in subsection (b)(1)(A)(ii) with respect to a beneficiary during any taxable year shall, in the aggregate, include not more than $10,000 in expenses described in subsection (c)(7) incurred during the taxable year.''

2015—Subsec. (c)(3)(D). Pub. L. 114–113, §302(c)(1), added subpar. (D).

Pub. L. 114–113, §302(b)(1), struck out subpar. (D). Text read as follows: ''For purposes of applying section 72—

''(i) to the extent provided by the Secretary, all qualified tuition programs of which an individual is a designated beneficiary shall be treated as one program,

''(ii) except to the extent provided by the Secretary, all distributions during a taxable year shall be treated as one distribution, and

''(iii) except to the extent provided by the Secretary, the value of the contract, income on the contract, and investment in the contract shall be computed as of the close of the calendar year in which the taxable year begins.''

Subsec. (e)(3)(A)(iii). Pub. L. 114–113, §302(a)(1), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''expenses paid or incurred in 2009 or 2010 for the purchase of any computer technology or equipment (as defined in section 170(e)(6)(F)(i)) or Internet access and related services, if such technology, equipment, or services are to be used by the beneficiary and the beneficiary's family during any of the years the beneficiary is enrolled at an eligible educational institution.''

2014—Subsec. (b)(4). Pub. L. 113–295 substituted ''Limited'' for ''No'' in heading and ''may, directly or indirectly, direct the investment of any contributions to the program (or any earnings thereon) no more than 2 times in any calendar year.'' for ''may not directly or indirectly direct the investment of any contributions to the program (or any earnings thereon).'' in text.

2009—Subsec. (e)(3)(A). Pub. L. 111–5 added cl. (iii) and concluding provisions.

2006—Subsec. (f). Pub. L. 109–280, which directed the addition of subsec. (f) to section 529, without specifying the act to be amended, was executed by making the addition to this section, which is section 529 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

2005—Subsec. (c)(6). Pub. L. 109–135 substituted ''Coverdell education savings account'' for ''education individual retirement account''.

2004—Subsec. (c)(5)(B). Pub. L. 108–311, §406(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The taxes imposed by chapters 12 and 13 shall apply to a transfer by reason of a change in the designated beneficiary under the program (or a rollover to the account of a new beneficiary) only if the new beneficiary is a generation below the generation of the old beneficiary (determined in accordance with section 2651).''

Subsec. (e)(2)(B). Pub. L. 108–311, §207(21), substituted ''subparagraphs (A) through (G) of section 152(d)(2)'' for ''paragraphs (1) through (8) of section 152(a)''.

2002—Subsec. (e)(3)(B)(i). Pub. L. 107–147 substituted ''subsection (b)(6)'' for ''subsection (b)(7)''.

2001—Pub. L. 107–16, §402(a)(4)(D), struck out ''State'' before ''tuition'' in section catchline.

Subsec. (a). Pub. L. 107–16, §402(a)(4)(A), substituted ''qualified tuition'' for ''qualified State tuition''.

Subsec. (b). Pub. L. 107–16, §402(a)(4)(C), substituted ''Qualified tuition'' for ''Qualified State tuition'' in heading.

Subsec. (b)(1). Pub. L. 107–16, §402(a)(1), (4)(A), in introductory provisions, substituted ''qualified tuition'' for ''qualified State tuition'' and inserted ''or by 1 or more eligible educational institutions'' after ''thereof'', and added concluding provisions.

Subsec. (b)(1)(A)(ii). Pub. L. 107–16, §402(a)(2), inserted ''in the case of a program established and maintained by a State or agency or instrumentality thereof,'' before ''may make''.

Subsec. (b)(2). Pub. L. 107–16, §402(a)(4)(A), substituted ''qualified tuition'' for ''qualified State tuition''.

Subsec. (b)(3) to (7). Pub. L. 107–16, §402(a)(3)(A), (4)(A), redesignated pars. (4) to (7) as (3) to (6), respectively, substituted ''qualified tuition'' for ''qualified State tuition'' wherever appearing, and struck out heading and text of former par. (3). Text read as follows: ''A program shall not be treated as a qualified State tuition program unless it imposes a more than de minimis penalty on any refund of earnings from the account which are not—

''(A) used for qualified higher education expenses of the designated beneficiary,

''(B) made on account of the death or disability of the designated beneficiary, or

''(C) made on account of a scholarship (or allowance or payment described in section 135(d)(1)(B) or (C)) received by the designated beneficiary to the extent the amount of the refund does not exceed the amount of the scholarship, allowance, or payment.''

Subsec. (c)(1)(A), (3)(A). Pub. L. 107–16, §402(a)(4)(A), substituted ''qualified tuition'' for ''qualified State tuition''.

Subsec. (c)(3)(B). Pub. L. 107–16, §402(b)(1), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: ''Any benefit furnished to a designated beneficiary under a qualified tuition program shall be treated as a distribution to the beneficiary.''

Pub. L. 107–16, §402(a)(4)(A), substituted ''qualified tuition'' for ''qualified State tuition''.

Subsec. (c)(3)(B)(vi). Pub. L. 107–22 substituted ''Coverdell education savings'' for ''education individual retirement'' in heading.

Subsec. (c)(3)(C). Pub. L. 107–16, §402(c)(3), inserted ''or programs'' after ''beneficiaries'' in heading.

Subsec. (c)(3)(C)(i). Pub. L. 107–16, §402(c)(1), substituted ''transferred—'' for ''transferred'', added subcl. (I), and designated existing provisions ''to the credit'' as subcl. (II).

Pub. L. 107–16, §402(a)(4)(A), substituted ''qualified tuition'' for ''qualified State tuition''.

Subsec. (c)(3)(C)(ii). Pub. L. 107–16, §402(a)(4)(A), substituted ''qualified tuition'' for ''qualified State tuition''.

Subsec. (c)(3)(C)(iii). Pub. L. 107–16, §402(c)(2), added cl. (iii).

Subsec. (c)(3)(D)(i). Pub. L. 107–16, §402(a)(4)(A), substituted ''qualified tuition'' for ''qualified State tuition''.

Subsec. (c)(3)(D)(ii). Pub. L. 107–16, §402(g)(1), inserted ''except to the extent provided by the Secretary,'' before ''all distributions''.

Subsec. (c)(3)(D)(iii). Pub. L. 107–16, §402(g)(2), inserted ''except to the extent provided by the Secretary,'' before ''the value''.

Subsec. (c)(6). Pub. L. 107–16, §402(a)(3)(B), added par. (6).

Subsecs. (d), (e)(1)(A), (C). Pub. L. 107–16, §402(a)(4)(A), substituted ''qualified tuition'' for ''qualified State tuition''.

Subsec. (e)(2)(D). Pub. L. 107–16, §402(d), added subpar. (D).

Subsec. (e)(3)(A). Pub. L. 107–16, §402(f), reenacted heading without change and amended text of subpar. (A) generally. Prior to amendment, text read as follows: ''The term 'qualified higher education expenses' means tuition, fees, books, supplies, and equipment required for the enrollment or attendance of a designated beneficiary at an eligible educational institution.''

Subsec. (e)(3)(B)(i). Pub. L. 107–16, §402(a)(4)(A), substituted ''qualified tuition'' for ''qualified State tuition''.

Subsec. (e)(3)(B)(ii). Pub. L. 107–16, §402(e), reenacted heading without change and amended text of cl. (ii)

generally. Prior to amendment, text read as follows: ''The amount treated as qualified higher education expenses by reason of the preceding sentence shall not exceed the minimum amount (applicable to the student) included for room and board for such period in the cost of attendance (as defined in section 472 of the Higher Education Act of 1965, 20 U.S.C. 1087*ll*, as in effect on the date of the enactment of this paragraph) for the eligible educational institution for such period.''

Subsec. (e)(4). Pub. L. 107–16, § 402(a)(4)(A), substituted ''qualified tuition'' for ''qualified State tuition''.

2000—Subsec. (e)(3)(B). Pub. L. 106–554 struck out ''under guaranteed plans'' after ''students'' in heading.

1998—Subsec. (c)(3)(A). Pub. L. 105–206, § 6004(c)(2), substituted ''section 72'' for ''section 72(b)''.

Subsec. (e)(2). Pub. L. 105–206, § 6004(c)(3), reenacted heading without change and amended text of par. (2) generally. Prior to amendment, text read as follows: ''The term 'member of the family' means—

''(A) an individual who bears a relationship to another individual which is a relationship described in paragraphs (1) through (8) of section 152(a), and

''(B) the spouse of any individual described in subparagraph (A).''

1997—Subsec. (b)(5). Pub. L. 105–34, § 211(b)(4), inserted ''directly or indirectly'' after ''may not''.

Subsec. (c)(2). Pub. L. 105–34, § 211(b)(3)(A)(i), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''In no event shall a contribution to a qualified State tuition program on behalf of a designated beneficiary be treated as a taxable gift for purposes of chapter 12.''

Subsec. (c)(3)(A). Pub. L. 105–34, § 211(d), substituted ''section 72(b)'' for ''section 72''.

Subsec. (c)(4). Pub. L. 105–34, § 211(b)(3)(B), amended heading and text of par. (4) generally. Prior to amendment, text read as follows: ''The value of any interest in any qualified State tuition program which is attributable to contributions made by an individual to such program on behalf of any designated beneficiary shall be includible in the gross estate of the contributor for purposes of chapter 11.''

Subsec. (c)(5). Pub. L. 105–34, § 211(b)(3)(A)(ii), amended heading and text of par. (5) generally. Prior to amendment, text read as follows: ''For purposes of section 2503(e), the waiver (or payment to an educational institution) of qualified higher education expenses of a designated beneficiary under a qualified State tuition program shall be treated as a qualified transfer.''

Subsec. (d). Pub. L. 105–34, § 211(e)(2)(A), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows:

''(d) REPORTING REQUIREMENTS.—

''(1) IN GENERAL.—If there is a distribution to any individual with respect to an interest in a qualified State tuition program during any calendar year, each officer or employee having control of the qualified State tuition program or their designee shall make such reports as the Secretary may require regarding such distribution to the Secretary and to the designated beneficiary or the individual to whom the distribution was made. Any such report shall include such information as the Secretary may prescribe.

''(2) Timing of reports.—Any report required by this subsection—

''(A) shall be filed at such time and in such matter as the Secretary prescribes, and

''(B) shall be furnished to individuals not later than January 31 of the calendar year following the calendar year to which such report relates.''

Subsec. (e)(1)(B). Pub. L. 105–34, § 1601(h)(1)(A), substituted ''subsection (c)(3)(C)'' for ''subsection (c)(2)(C)''.

Subsec. (e)(1)(C). Pub. L. 105–34, § 1601(h)(1)(B), inserted ''(or agency or instrumentality thereof)'' after ''local government''.

Subsec. (e)(2). Pub. L. 105–34, § 211(b)(1), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''The term 'member of the family' has the same meaning given such term as section 2032A(e)(2).''

Subsec. (e)(3). Pub. L. 105–34, § 211(a), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: ''The term 'qualified higher education expenses' means tuition, fees, books, supplies, and equipment required for the enrollment or attendance of a designated beneficiary at an eligible educational institution (as defined in section 135(c)(3)).''

Subsec. (e)(5). Pub. L. 105–34, § 211(b)(2), added par. (5).

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–97, title I, § 11025(b), Dec. 22, 2017, 131 Stat. 2076, provided that: ''The amendments made by this section [amending this section] shall apply to distributions after the date of the enactment of this Act [Dec. 22, 2017].''

Pub. L. 115–97, title I, § 11032(b), Dec. 22, 2017, 131 Stat. 2082, provided that: ''The amendments made by this section [amending this section] shall apply to distributions made after December 31, 2017.''

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114–113, div. Q, title III, § 302(a)(2), Dec. 18, 2015, 129 Stat. 3086, provided that: ''The amendment made by this subsection [amending this section] shall apply to taxable years beginning after December 31, 2014.''

Pub. L. 114–113, div. Q, title III, § 302(b)(2), Dec. 18, 2015, 129 Stat. 3086, provided that: ''The amendment made by this subsection [amending this section] shall apply to distributions after December 31, 2014.''

Pub. L. 114–113, div. Q, title III, § 302(c)(2), Dec. 18, 2015, 129 Stat. 3087, provided that:

''(A) IN GENERAL.—The amendment made by this subsection [amending this section] shall apply with respect to refunds of qualified higher education expenses after December 31, 2014.

''(B) TRANSITION RULE.—In the case of a refund of qualified higher education expenses received after December 31, 2014, and before the date of the enactment of this Act [Dec. 18, 2015], section 529(c)(3)(D) of the Internal Revenue Code of 1986 (as added by this subsection) shall be applied by substituting 'not later than 60 days after the date of the enactment of this subparagraph [Dec. 18, 2015]' for 'not later than 60 days after the date of such refund'.''

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113–295, div. B, title I, § 105(b), Dec. 19, 2014, 128 Stat. 4064, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2014.''

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, § 1005(b), Feb. 17, 2009, 123 Stat. 316, provided that: ''The amendments made by this section [amending this section] shall apply to expenses paid or incurred after December 31, 2008.''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 207(21) of Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

Amendment by section 406(a) of Pub. L. 108–311 effective as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 406(h) of Pub. L. 108–311, set out as a note under section 55 of this title.

EFFECTIVE DATE OF 2001 AMENDMENTS

Amendment by Pub. L. 107–22 effective July 26, 2001, see section 1(c) of Pub. L. 107–22, set out as a note under section 26 of this title.

Amendment by Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 402(h) of Pub. L. 107–16, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of

the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title II, § 211(f), Aug. 5, 1997, 111 Stat. 812, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 135 and 6693 of this title] shall take effect on January 1, 1998.

''(2) EXPENSES TO INCLUDE ROOM AND BOARD.—The amendment made by subsection (a) shall take effect as if included in the amendments made by section 1806 of the Small Business Job Protection Act of 1996 [Pub. L. 104–188].

''(3) ELIGIBLE EDUCATIONAL INSTITUTION.—The amendment made by subsection (b)(2) [amending this section] shall apply to distributions after December 31, 1997, with respect to expenses paid after such date (in taxable years ending after such date), for education furnished in academic periods beginning after such date.

''(4) COORDINATION WITH EDUCATION SAVINGS BONDS.—The amendment made by subsection (c) [amending section 135 of this title] shall apply to taxable years beginning after December 31, 1997.

''(5) ESTATE AND GIFT TAX CHANGES.—

''(A) GIFT TAX CHANGES.—Paragraphs (2) and (5) of section 529(c) of the Internal Revenue Code of 1986, as amended by this section, shall apply to transfers (including designations of new beneficiaries) made after the date of the enactment of this Act [Aug. 5, 1997].

''(B) ESTATE TAX CHANGES.—Paragraph (4) of such section 529(c) shall apply to estates of decedents dying after June 8, 1997.

''(6) TRANSITION RULE FOR PRE-AUGUST 20, 1996 CONTRACTS.—In the case of any contract issued prior to August 20, 1996, section 529(c)(3)(C) of the Internal Revenue Code of 1986 shall be applied for taxable years ending after August 20, 1996, without regard to the requirement that a distribution be transferred to a member of the family or the requirement that a change in beneficiaries may be made only to a member of the family.''

Amendment by section 1601(h)(1)(A), (B) of Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 23 of this title.

EFFECTIVE DATE

Pub. L. 104–188, title I, § 1806(c), Aug. 20, 1996, 110 Stat. 1898, as amended by Pub. L. 105–34, title XVI, § 1601(h)(1)(C), Aug. 5, 1997, 111 Stat. 1092, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section and amending section 135 of this title] shall apply to taxable years ending after the date of the enactment of this Act [Aug. 20, 1996].

''(2) TRANSITION RULE.—If—

''(A) a State or agency or instrumentality thereof maintains, on the date of the enactment of this Act, a program under which persons may purchase tuition credits or certificates on behalf of, or make contributions for education expenses of, a designated beneficiary, and

''(B) such program meets the requirements of a qualified State tuition program before the later of—

''(i) the date which is 1 year after such date of enactment, or

''(ii) the first day of the first calendar quarter after the close of the first regular session of the State legislature that begins after such date of enactment,

then such program (as in effect on August 20, 1996) shall be treated as a qualified State tuition program with respect to contributions (and earnings allocable thereto) pursuant to contracts entered into under such program before the first date on which such program meets such requirements (determined without regard to this paragraph) and the provisions of such program (as so in effect) shall apply in lieu of section 529(b) of the Internal Revenue Code of 1986 with respect to such contributions and earnings.

For purposes of subparagraph (B)(ii), if a State has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.''

§ 529A. Qualified ABLE programs

(a) General rule

A qualified ABLE program shall be exempt from taxation under this subtitle. Notwithstanding the preceding sentence, such program shall be subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable organizations).

(b) Qualified ABLE program

For purposes of this section—

(1) In general

The term ''qualified ABLE program'' means a program established and maintained by a State, or agency or instrumentality thereof—

(A) under which a person may make contributions for a taxable year, for the benefit of an individual who is an eligible individual for such taxable year, to an ABLE account which is established for the purpose of meeting the qualified disability expenses of the designated beneficiary of the account,

(B) which limits a designated beneficiary to 1 ABLE account for purposes of this section, and

(C) which meets the other requirements of this section.

(2) Cash contributions

A program shall not be treated as a qualified ABLE program unless it provides that no contribution will be accepted—

(A) unless it is in cash, or

(B) except in the case of contributions under subsection (c)(1)(C), if such contribution to an ABLE account would result in aggregate contributions from all contributors to the ABLE account for the taxable year exceeding the sum of—

(i) the amount in effect under section 2503(b) for the calendar year in which the taxable year begins, plus

(ii) in the case of any contribution by a designated beneficiary described in paragraph (7) before January 1, 2026, the lesser of—

(I) compensation (as defined by section 219(f)(1)) includible in the designated beneficiary's gross income for the taxable year, or

(II) an amount equal to the poverty line for a one-person household, as determined for the calendar year preceding the calendar year in which the taxable year begins.

For purposes of this paragraph, rules similar to the rules of section 408(d)(4) (determined without regard to subparagraph (B) thereof) shall apply. A designated beneficiary (or a person acting on behalf of such beneficiary) shall maintain adequate records for purposes of ensuring, and shall be responsible for ensuring, that the requirements of subparagraph (B)(ii) are met.

(3) Separate accounting

A program shall not be treated as a qualified ABLE program unless it provides separate accounting for each designated beneficiary.

(4) Limited investment direction

A program shall not be treated as a qualified ABLE program unless it provides that any designated beneficiary under such program may, directly or indirectly, direct the investment of any contributions to the program (or any earnings thereon) no more than 2 times in any calendar year.

(5) No pledging of interest as security

A program shall not be treated as a qualified ABLE program if it allows any interest in the program or any portion thereof to be used as security for a loan.

(6) Prohibition on excess contributions

A program shall not be treated as a qualified ABLE program unless it provides adequate safeguards to prevent aggregate contributions on behalf of a designated beneficiary in excess of the limit established by the State under section 529(b)(6). For purposes of the preceding sentence, aggregate contributions include contributions under any prior qualified ABLE program of any State or agency or instrumentality thereof.

(7) Special rules related to contribution limit

For purposes of paragraph (2)(B)(ii)—

(A) Designated beneficiary

A designated beneficiary described in this paragraph is an employee (including an employee within the meaning of section 401(c)) with respect to whom—

(i) no contribution is made for the taxable year to a defined contribution plan (within the meaning of section 414(i)) with respect to which the requirements of section 401(a) or 403(a) are met,

(ii) no contribution is made for the taxable year to an annuity contract described in section 403(b), and

(iii) no contribution is made for the taxable year to an eligible deferred compensation plan described in section 457(b).

(B) Poverty line

The term ''poverty line'' has the meaning given such term by section 673 of the Community Services Block Grant Act (42 U.S.C. 9902).

(c) Tax treatment

(1) Distributions

(A) In general

Any distribution under a qualified ABLE program shall be includible in the gross income of the distributee in the manner as provided under section 72 to the extent not excluded from gross income under any other provision of this chapter.

(B) Distributions for qualified disability expenses

For purposes of this paragraph, if distributions from a qualified ABLE program—

(i) do not exceed the qualified disability expenses of the designated beneficiary, no amount shall be includible in gross income, and

(ii) in any other case, the amount otherwise includible in gross income shall be reduced by an amount which bears the same ratio to such amount as such expenses bear to such distributions.

(C) Change in designated beneficiaries or programs

(i) Rollovers from ABLE accounts

Subparagraph (A) shall not apply to any amount paid or distributed from an ABLE account to the extent that the amount received is paid, not later than the 60th day after the date of such payment or distribution, into another ABLE account for the benefit of the same designated beneficiary or an eligible individual who is a member of the family of the designated beneficiary.

(ii) Change in designated beneficiaries

Any change in the designated beneficiary of an interest in a qualified ABLE program during a taxable year shall not be treated as a distribution for purposes of subparagraph (A) if the new beneficiary is an eligible individual for such taxable year and a member of the family of the former beneficiary.

(iii) Limitation on certain rollovers

Clause (i) shall not apply to any transfer if such transfer occurs within 12 months from the date of a previous transfer to any qualified ABLE program for the benefit of the designated beneficiary.

(D) Operating rules

For purposes of applying section 72—

(i) except to the extent provided by the Secretary, all distributions during a taxable year shall be treated as one distribution, and

(ii) except to the extent provided by the Secretary, the value of the contract, income on the contract, and investment in the contract shall be computed as of the close of the calendar year in which the taxable year begins.

(2) Gift tax rules

For purposes of chapters 12 and 13—

(A) Contributions

Any contribution to a qualified ABLE program on behalf of any designated beneficiary—

(i) shall be treated as a completed gift to such designated beneficiary which is not a future interest in property, and

(ii) shall not be treated as a qualified transfer under section 2503(e).

(B) Treatment of distributions

In no event shall a distribution from an ABLE account to such account's designated beneficiary be treated as a taxable gift.

(C) Treatment of transfer to new designated beneficiary

The taxes imposed by chapters 12 and 13 shall not apply to a transfer by reason of a

change in the designated beneficiary under subsection (c)(1)(C).

(3) Additional tax for distributions not used for disability expenses

(A) In general

The tax imposed by this chapter for any taxable year on any taxpayer who receives a distribution from a qualified ABLE program which is includible in gross income shall be increased by 10 percent of the amount which is so includible.

(B) Exception

Subparagraph (A) shall not apply if the payment or distribution is made to a beneficiary (or to the estate of the designated beneficiary) on or after the death of the designated beneficiary.

(C) Contributions returned before certain date

Subparagraph (A) shall not apply to the distribution of any contribution made during a taxable year on behalf of the designated beneficiary if—

(i) such distribution is received on or before the day prescribed by law (including extensions of time) for filing such designated beneficiary's return for such taxable year, and

(ii) such distribution is accompanied by the amount of net income attributable to such excess contribution.

Any net income described in clause (ii) shall be included in gross income for the taxable year in which such excess contribution was made.

(4) Loss of ABLE account treatment

If an ABLE account is established for a designated beneficiary, no account subsequently established for such beneficiary shall be treated as an ABLE account. The preceding sentence shall not apply in the case of an account established for purposes of a rollover described in paragraph (1)(C)(i) of this section if the transferor account is closed as of the end of the 60th day referred to in paragraph (1)(C)(i).

(d) Reports

(1) In general

Each officer or employee having control of the qualified ABLE program or their designee shall make such reports regarding such program to the Secretary and to designated beneficiaries with respect to contributions, distributions, the return of excess contributions, and such other matters as the Secretary may require.

(2) Certain aggregated information

For research purposes, the Secretary shall make available to the public reports containing aggregate information, by diagnosis and other relevant characteristics, on contributions and distributions from the qualified ABLE program. In carrying out the preceding sentence an item may not be made available to the public if such item can be associated with, or otherwise identify, directly or indirectly, a particular individual.

(3) Notice of establishment of ABLE account

A qualified ABLE program shall submit a notice to the Secretary upon the establishment of an ABLE account. Such notice shall contain the name of the designated beneficiary and such other information as the Secretary may require.

(4) Electronic distribution statements

For purposes of section 103 of the Achieving a Better Life Experience Act of 2014,[1] States shall submit electronically on a monthly basis to the Commissioner of Social Security, in the manner specified by the Commissioner, statements on relevant distributions and account balances from all ABLE accounts.

(5) Requirements

The reports and notices required by paragraphs (1), (2), and (3) shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required by the Secretary.

(e) Other definitions and special rules

For purposes of this section—

(1) Eligible individual

An individual is an eligible individual for a taxable year if during such taxable year—

(A) the individual is entitled to benefits based on blindness or disability under title II or XVI of the Social Security Act, and such blindness or disability occurred before the date on which the individual attained age 26, or

(B) a disability certification with respect to such individual is filed with the Secretary for such taxable year.

(2) Disability certification

(A) In general

The term ''disability certification'' means, with respect to an individual, a certification to the satisfaction of the Secretary by the individual or the parent or guardian of the individual that—

(i) certifies that—

(I) the individual has a medically determinable physical or mental impairment, which results in marked and severe functional limitations, and which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months, or is blind (within the meaning of section 1614(a)(2) of the Social Security Act), and

(II) such blindness or disability occurred before the date on which the individual attained age 26, and

(ii) includes a copy of the individual's diagnosis relating to the individual's relevant impairment or impairments, signed by a physician meeting the criteria of section 1861(r)(1) of the Social Security Act.

(B) Restriction on use of certification

No inference may be drawn from a disability certification for purposes of establishing

[1] See References in Text note below.

eligibility for benefits under title II, XVI, or XIX of the Social Security Act.

(3) Designated beneficiary

The term ''designated beneficiary'' in connection with an ABLE account established under a qualified ABLE program means the eligible individual who established an ABLE account and is the owner of such account.

(4) Member of family

The term ''member of the family'' means, with respect to any designated beneficiary, an individual who bears a relationship to such beneficiary which is described in subparagraph[2] section 152(d)(2)(B). For purposes of the preceding sentence, a rule similar to the rule of section 152(f)(1)(B) shall apply.

(5) Qualified disability expenses

The term ''qualified disability expenses'' means any expenses related to the eligible individual's blindness or disability which are made for the benefit of an eligible individual who is the designated beneficiary, including the following expenses: education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring, funeral and burial expenses, and other expenses, which are approved by the Secretary under regulations and consistent with the purposes of this section.

(6) ABLE account

The term ''ABLE account'' means an account established by an eligible individual, owned by such eligible individual, and maintained under a qualified ABLE program.

(f) Transfer to State

Subject to any outstanding payments due for qualified disability expenses, upon the death of the designated beneficiary, all amounts remaining in the qualified ABLE account not in excess of the amount equal to the total medical assistance paid for the designated beneficiary after the establishment of the account, net of any premiums paid from the account or paid by or on behalf of the beneficiary to a Medicaid Buy-In program under any State Medicaid plan established under title XIX of the Social Security Act, shall be distributed to such State upon filing of a claim for payment by such State. For purposes of this paragraph, the State shall be a creditor of an ABLE account and not a beneficiary. Subsection (c)(3) shall not apply to a distribution under the preceding sentence.

(g) Regulations

The Secretary shall prescribe such regulations or other guidance as the Secretary determines necessary or appropriate to carry out the purposes of this section, including regulations—

(1) to enforce the 1 ABLE account per eligible individual limit,

(2) providing for the information required to be presented to open an ABLE account,

(3) to generally define qualified disability expenses,

(4) developed in consultation with the Commissioner of Social Security, relating to disability certifications and determinations of disability, including those conditions deemed to meet the requirements of subsection (e)(1)(B),

(5) to prevent fraud and abuse with respect to amounts claimed as qualified disability expenses,

(6) under chapters 11, 12, and 13 of this title, and

(7) to allow for transfers from one ABLE account to another ABLE account.

(Added Pub. L. 113–295, div. B, title I, § 102(a), Dec. 19, 2014, 128 Stat. 4056; amended Pub. L. 114–113, div. Q, title III, § 303(a)–(c), Dec. 18, 2015, 129 Stat. 3087; Pub. L. 115–97, title I, § 11024(a), Dec. 22, 2017, 131 Stat. 2075.)

REFERENCES IN TEXT

The Achieving a Better Life Experience Act of 2014, referred to in subsec. (d)(4), probably means div. B of Pub. L. 113–295, Dec. 19, 2014, 128 Stat. 4056, known as the ''Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014'' and also as the ''Stephen Beck, Jr., ABLE Act of 2014''. Section 103 of div. B of Pub. L. 113–295 is set out as a note under this section.

The Social Security Act, referred to in subsecs. (e)(1)(A), (2) and (f), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Titles II, XVI, and XIX of the Act are classified generally to subchapters II (§ 401 et seq.), XVI (§ 1381 et seq.), and XIX (§ 1396 et seq.) respectively, of chapter 7 of Title 42, The Public Health and Welfare. Sections 1614 and 1861 of the Act are classified to sections 1382c and 1395x, respectively, of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2017—Subsec. (b)(2). Pub. L. 115–97, § 11024(a)(2), inserted at end of concluding provisions ''A designated beneficiary (or a person acting on behalf of such beneficiary) shall maintain adequate records for purposes of ensuring, and shall be responsible for ensuring, that the requirements of subparagraph (B)(ii) are met.''

Subsec. (b)(2)(B). Pub. L. 115–97, § 11024(a)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''except in the case of contributions under subsection (c)(1)(C), if such contribution to an ABLE account would result in aggregate contributions from all contributors to the ABLE account for the taxable year exceeding the amount in effect under section 2503(b) for the calendar year in which the taxable year begins.''

Subsec. (b)(7). Pub. L. 115–97, § 11024(a)(3), added par. (7).

2015—Subsec. (b)(1)(B) to (D). Pub. L. 114–113, § 303(a), inserted ''and'' at end of subpar. (B), redesignated subpar. (D) as (C), and struck out former subpar. (C) which read as follows: ''which allows for the establishment of an ABLE account only for a designated beneficiary who is a resident of such State or a resident of a contracting State, and''.

Subsec. (c)(1)(C)(i). Pub. L. 114–113, § 303(c)(2), substituted ''member of the family'' for ''family member''.

Subsec. (d)(3). Pub. L. 114–113, § 303(b)(1), struck out ''and State of residence'' after ''the name''.

Subsec. (d)(4). Pub. L. 114–113, § 303(c)(1), substituted ''section 103'' for ''section 4''.

Subsec. (e)(7). Pub. L. 114–113, § 303(b)(2), struck out par. (7). Text read as follows: ''The term 'contracting State' means a State without a qualified ABLE program which has entered into a contract with a State with a qualified ABLE program to provide residents of

[2] So in original. The word ''subparagraph'' probably should not appear.

the contracting State access to a qualified ABLE program.''

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–97 applicable to taxable years beginning after Dec. 22, 2017, see section 11024(c) of Pub. L. 115–97, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114–113, div. Q, title III, §303(d), Dec. 18, 2015, 129 Stat. 3087, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2014.''

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 2014, see section 102(f)(1) of Pub. L. 113–295, set out as an Effective Date of 2014 Amendment note under section 552a of Title 5, Government Organization and Employees.

REGULATIONS

Pub. L. 113–295, div. B, title I, §102(f)(2), Dec. 19, 2014, 128 Stat. 4062, provided that: ''The Secretary of the Treasury (or the Secretary's designee) shall promulgate the regulations or other guidance required under section 529A(g) of the Internal Revenue Code of 1986, as added by subsection (a), not later than 6 months after the date of the enactment of this Act [Dec. 19, 2014].''

PURPOSES

Pub. L. 113–295, div. B, title I, §101, Dec. 19, 2014, 128 Stat. 4056, provided that: ''The purposes of this title [title I of div. B of Pub. L. 113–295, enacting this section, amending sections 26, 529, 877A, 4965, 4973, and 6693, of this title, section 552a of Title 5, Government Organization and Employees, sections 521, 541, and 707 of Title 11, Bankruptcy, and section 5517 of Title 12, Banks and Banking, and enacting provisions set out as notes under this section, section 529 of this title, section 552a of Title 5, and section 521 of Title 11] are as follows:

''(1) To encourage and assist individuals and families in saving private funds for the purpose of supporting individuals with disabilities to maintain health, independence, and quality of life.

''(2) To provide secure funding for disability-related expenses on behalf of designated beneficiaries with disabilities that will supplement, but not supplant, benefits provided through private insurance, the Medicaid program under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], the supplemental security income program under title XVI of such Act [42 U.S.C. 1381 et seq.], the beneficiary's employment, and other sources.''

TREATMENT OF ABLE ACCOUNTS UNDER CERTAIN FEDERAL PROGRAMS

Pub. L. 113–295, div. B, title I, §103, Dec. 19, 2014, 128 Stat. 4063, provided that:

''(a) ACCOUNT FUNDS DISREGARDED FOR PURPOSES OF CERTAIN OTHER MEANS-TESTED FEDERAL PROGRAMS.—Notwithstanding any other provision of Federal law that requires consideration of 1 or more financial circumstances of an individual, for the purpose of determining eligibility to receive, or the amount of, any assistance or benefit authorized by such provision to be provided to or for the benefit of such individual, any amount (including earnings thereon) in the ABLE account (within the meaning of section 529A of the Internal Revenue Code of 1986) of such individual, any contributions to the ABLE account of the individual, and any distribution for qualified disability expenses (as defined in subsection (e)(5) of such section) shall be disregarded for such purpose with respect to any period during which such individual maintains, makes contributions to, or receives distributions from such ABLE account, except that, in the case of the supplemental security income program under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.]—

''(1) a distribution for housing expenses (within the meaning of such subsection) shall not be so disregarded, and

''(2) in the case of such program, any amount (including such earnings) in such ABLE account shall be considered a resource of the designated beneficiary to the extent that such amount exceeds $100,000.

''(b) SUSPENSION OF SSI BENEFITS DURING PERIODS OF EXCESSIVE ACCOUNT FUNDS.—

''(1) IN GENERAL.—The benefits of an individual under the supplemental security income program under title XVI of the Social Security Act shall not be terminated, but shall be suspended, by reason of excess resources of the individual attributable to an amount in the ABLE account (within the meaning of section 529A of the Internal Revenue Code of 1986) of the individual not disregarded under subsection (a) of this section.

''(2) NO IMPACT ON MEDICAID ELIGIBILITY.—An individual who would be receiving payment of such supplemental security income benefits but for the application of paragraph (1) shall be treated for purposes of title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] as if the individual continued to be receiving payment of such benefits.

''(c) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this Act [Dec. 19, 2014].''

§ 530. Coverdell education savings accounts

(a) General rule

A Coverdell education savings account shall be exempt from taxation under this subtitle. Notwithstanding the preceding sentence, the Coverdell education savings account shall be subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable organizations).

(b) Definitions and special rules

For purposes of this section—

(1) Coverdell education savings account

The term ''Coverdell education savings account'' means a trust created or organized in the United States exclusively for the purpose of paying the qualified education expenses of an individual who is the designated beneficiary of the trust (and designated as a Coverdell education savings account at the time created or organized), but only if the written governing instrument creating the trust meets the following requirements:

(A) No contribution will be accepted—

(i) unless it is in cash,

(ii) after the date on which such beneficiary attains age 18, or

(iii) except in the case of rollover contributions, if such contribution would result in aggregate contributions for the taxable year exceeding $2,000.

(B) The trustee is a bank (as defined in section 408(n)) or another person who demonstrates to the satisfaction of the Secretary that the manner in which that person will administer the trust will be consistent with the requirements of this section or who has so demonstrated with respect to any individual retirement plan.

(C) No part of the trust assets will be invested in life insurance contracts.

(D) The assets of the trust shall not be commingled with other property except in a common trust fund or common investment fund.

(E) Except as provided in subsection (d)(7), any balance to the credit of the designated beneficiary on the date on which the beneficiary attains age 30 shall be distributed within 30 days after such date to the beneficiary or, if the beneficiary dies before attaining age 30, shall be distributed within 30 days after the date of death of such beneficiary.

The age limitations in subparagraphs (A)(ii) and (E), and paragraphs (5) and (6) of subsection (d), shall not apply to any designated beneficiary with special needs (as determined under regulations prescribed by the Secretary).

(2) Qualified education expenses

(A) In general

The term ''qualified education expenses'' means—

(i) qualified higher education expenses (as defined in section 529(e)(3)), and

(ii) qualified elementary and secondary education expenses (as defined in paragraph (3)).

(B) Qualified tuition programs

Such term shall include any contribution to a qualified tuition program (as defined in section 529(b)) on behalf of the designated beneficiary (as defined in section 529(e)(1)); but there shall be no increase in the investment in the contract for purposes of applying section 72 by reason of any portion of such contribution which is not includible in gross income by reason of subsection (d)(2).

(3) Qualified elementary and secondary education expenses

(A) In general

The term ''qualified elementary and secondary education expenses'' means—

(i) expenses for tuition, fees, academic tutoring, special needs services in the case of a special needs beneficiary, books, supplies, and other equipment which are incurred in connection with the enrollment or attendance of the designated beneficiary of the trust as an elementary or secondary school student at a public, private, or religious school,

(ii) expenses for room and board, uniforms, transportation, and supplementary items and services (including extended day programs) which are required or provided by a public, private, or religious school in connection with such enrollment or attendance, and

(iii) expenses for the purchase of any computer technology or equipment (as defined in section 170(e)(6)(F)(i))[1] or Internet access and related services, if such technology, equipment, or services are to be used by the beneficiary and the beneficiary's family during any of the years the beneficiary is in school.

Clause (iii) shall not include expenses for computer software designed for sports, games, or hobbies unless the software is predominantly educational in nature.

(B) School

The term ''school'' means any school which provides elementary education or secondary education (kindergarten through grade 12), as determined under State law.

(4) Time when contributions deemed made

An individual shall be deemed to have made a contribution to an education individual retirement account on the last day of the preceding taxable year if the contribution is made on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (not including extensions thereof).

(c) Reduction in permitted contributions based on adjusted gross income

(1) In general

In the case of a contributor who is an individual, the maximum amount the contributor could otherwise make to an account under this section shall be reduced by an amount which bears the same ratio to such maximum amount as—

(A) the excess of—

(i) the contributor's modified adjusted gross income for such taxable year, over

(ii) $95,000 ($190,000 in the case of a joint return), bears to

(B) $15,000 ($30,000 in the case of a joint return).

(2) Modified adjusted gross income

For purposes of paragraph (1), the term ''modified adjusted gross income'' means the adjusted gross income of the taxpayer for the taxable year increased by any amount excluded from gross income under section 911, 931, or 933.

(d) Tax treatment of distributions

(1) In general

Any distribution shall be includible in the gross income of the distributee in the manner as provided in section 72.

(2) Distributions for qualified education expenses

(A) In general

No amount shall be includible in gross income under paragraph (1) if the qualified education expenses of the designated beneficiary during the taxable year are not less than the aggregate distributions during the taxable year.

(B) Distributions in excess of expenses

If such aggregate distributions exceed such expenses during the taxable year, the amount otherwise includible in gross income under paragraph (1) shall be reduced by the amount which bears the same ratio to the amount which would be includible in gross

[1] See References in Text note below.

income under paragraph (1) (without regard to this subparagraph) as the qualified education expenses bear to such aggregate distributions.

(C) Coordination with Hope and Lifetime Learning credits and qualified tuition programs

For purposes of subparagraph (A)—

(i) Credit coordination

The total amount of qualified education expenses with respect to an individual for the taxable year shall be reduced—

(I) as provided in section 25A(g)(2), and

(II) by the amount of such expenses which were taken into account in determining the credit allowed to the taxpayer or any other person under section 25A.

(ii) Coordination with qualified tuition programs

If, with respect to an individual for any taxable year—

(I) the aggregate distributions during such year to which subparagraph (A) and section 529(c)(3)(B) apply, exceed

(II) the total amount of qualified education expenses (after the application of clause (i)) for such year,

the taxpayer shall allocate such expenses among such distributions for purposes of determining the amount of the exclusion under subparagraph (A) and section 529(c)(3)(B).

(D) Disallowance of excluded amounts as deduction, credit, or exclusion

No deduction, credit, or exclusion shall be allowed to the taxpayer under any other section of this chapter for any qualified education expenses to the extent taken into account in determining the amount of the exclusion under this paragraph.

(3) Special rules for applying estate and gift taxes with respect to account

Rules similar to the rules of paragraphs (2), (4), and (5) of section 529(c) shall apply for purposes of this section.

(4) Additional tax for distributions not used for educational expenses

(A) In general

The tax imposed by this chapter for any taxable year on any taxpayer who receives a payment or distribution from a Coverdell education savings account which is includible in gross income shall be increased by 10 percent of the amount which is so includible.

(B) Exceptions

Subparagraph (A) shall not apply if the payment or distribution is—

(i) made to a beneficiary (or to the estate of the designated beneficiary) on or after the death of the designated beneficiary,

(ii) attributable to the designated beneficiary's being disabled (within the meaning of section 72(m)(7)),

(iii) made on account of a scholarship, allowance, or payment described in section 25A(g)(2) received by the designated beneficiary to the extent the amount of the payment or distribution does not exceed the amount of the scholarship, allowance, or payment,

(iv) made on account of the attendance of the designated beneficiary at the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, the United States Coast Guard Academy, or the United States Merchant Marine Academy, to the extent that the amount of the payment or distribution does not exceed the costs of advanced education (as defined by section 2005(e)(3) of title 10, United States Code, as in effect on the date of the enactment of this section) attributable to such attendance, or

(v) an amount which is includible in gross income solely by application of paragraph (2)(C)(i)(II) for the taxable year.

(C) Contributions returned before certain date

Subparagraph (A) shall not apply to the distribution of any contribution made during a taxable year on behalf of the designated beneficiary if—

(i) such distribution is made before the first day of the sixth month of the taxable year following the taxable year, and

(ii) such distribution is accompanied by the amount of net income attributable to such excess contribution.

Any net income described in clause (ii) shall be included in gross income for the taxable year in which such excess contribution was made.

(5) Rollover contributions

Paragraph (1) shall not apply to any amount paid or distributed from a Coverdell education savings account to the extent that the amount received is paid, not later than the 60th day after the date of such payment or distribution, into another Coverdell education savings account for the benefit of the same beneficiary or a member of the family (within the meaning of section 529(e)(2)) of such beneficiary who has not attained age 30 as of such date. The preceding sentence shall not apply to any payment or distribution if it applied to any prior payment or distribution during the 12-month period ending on the date of the payment or distribution.

(6) Change in beneficiary

Any change in the beneficiary of a Coverdell education savings account shall not be treated as a distribution for purposes of paragraph (1) if the new beneficiary is a member of the family (as so defined) of the old beneficiary and has not attained age 30 as of the date of such change.

(7) Special rules for death and divorce

Rules similar to the rules of paragraphs (7) and (8) of section 220(f) shall apply. In applying the preceding sentence, members of the family (as so defined) of the designated beneficiary shall be treated in the same manner as the spouse under such paragraph (8).

(8) Deemed distribution on required distribution date

In any case in which a distribution is required under subsection (b)(1)(E), any balance to the credit of a designated beneficiary as of the close of the 30-day period referred to in such subsection for making such distribution shall be deemed distributed at the close of such period.

(9) Military death gratuity

(A) In general

For purposes of this section, the term ''rollover contribution'' includes a contribution to a Coverdell education savings account made before the end of the 1-year period beginning on the date on which the contributor receives an amount under section 1477 of title 10, United States Code, or section 1967 of title 38 of such Code, with respect to a person, to the extent that such contribution does not exceed—

(i) the sum of the amounts received during such period by such contributor under such sections with respect to such person, reduced by

(ii) the amounts so received which were contributed to a Roth IRA under section 408A(e)(2) or to another Coverdell education savings account.

(B) Annual limit on number of rollovers not to apply

The last sentence of paragraph (5) shall not apply with respect to amounts treated as a rollover by the[1] subparagraph (A).

(C) Application of section 72

For purposes of applying section 72 in the case of a distribution which is includible in gross income under paragraph (1), the amount treated as a rollover by reason of subparagraph (A) shall be treated as investment in the contract.

(e) Tax treatment of accounts

Rules similar to the rules of paragraphs (2) and (4) of section 408(e) shall apply to any Coverdell education savings account.

(f) Community property laws

This section shall be applied without regard to any community property laws.

(g) Custodial accounts

For purposes of this section, a custodial account shall be treated as a trust if the assets of such account are held by a bank (as defined in section 408(n)) or another person who demonstrates, to the satisfaction of the Secretary, that the manner in which he will administer the account will be consistent with the requirements of this section, and if the custodial account would, except for the fact that it is not a trust, constitute an account described in subsection (b)(1). For purposes of this title, in the case of a custodial account treated as a trust by reason of the preceding sentence, the custodian of such account shall be treated as the trustee thereof.

[1] So in original. The word ''the'' probably should not appear.

(h) Reports

The trustee of a Coverdell education savings account shall make such reports regarding such account to the Secretary and to the beneficiary of the account with respect to contributions, distributions, and such other matters as the Secretary may require. The reports required by this subsection shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required.

(Added Pub. L. 105–34, title II, § 213(a), Aug. 5, 1997, 111 Stat. 813; amended Pub. L. 105–206, title VI, § 6004(d)(1)–(3)(A), (5)–(8), July 22, 1998, 112 Stat. 793, 794; Pub. L. 106–554, § 1(a)(7) [title III, § 319(6)], Dec. 21, 2000, 114 Stat. 2763, 2763A–646; Pub. L. 107–16, title IV, §§ 401(a)(1), (b)–(g)(1), (2)(C), 402(a)(4)(A), (C), June 7, 2001, 115 Stat. 57–61; Pub. L. 107–22, § 1(a)(1)–(5), July 26, 2001, 115 Stat. 196; Pub. L. 107–147, title IV, § 411(f), Mar. 9, 2002, 116 Stat. 46; Pub. L. 108–121, title I, § 107(a), Nov. 11, 2003, 117 Stat. 1339; Pub. L. 108–311, title IV, §§ 404(a), 406(b), Oct. 4, 2004, 118 Stat. 1188, 1189; Pub. L. 109–135, title IV, § 412(ff), Dec. 21, 2005, 119 Stat. 2639; Pub. L. 110–245, title I, § 109(c), June 17, 2008, 122 Stat. 1632.)

REFERENCES IN TEXT

Section 170(e)(6)(F)(i), referred to in subsec. (b)(3)(A)(iii), was repealed by Pub. L. 113–295, div. A, title II, § 221(a)(28)(B), Dec. 19, 2014, 128 Stat. 4041.

The date of the enactment of this section, referred to in subsec. (d)(4)(B)(iv), is the date of enactment of Pub. L. 105–34, which enacted this section and was approved Aug. 5, 1997.

AMENDMENTS

2008—Subsec. (d)(9). Pub. L. 110–245 added par. (9).

2005—Subsec. (b)(2)(A)(ii). Pub. L. 109–135, § 412(ff)(2), substituted ''paragraph (3)'' for ''paragraph (4)''.

Subsec. (b)(3) to (5). Pub. L. 109–135, § 412(ff)(1), redesignated pars. (4) and (5) as (3) and (4), respectively, and struck out former par. (3) which read as follows: ''The term 'eligible educational institution' has the meaning given such term by section 529(e)(5).''

2004—Subsec. (d)(2)(C)(i). Pub. L. 108–311, § 404(a), struck out ''higher'' after ''qualified'' in introductory provisions.

Subsec. (d)(4)(B)(iii). Pub. L. 108–311, § 406(b), substituted ''designated beneficiary'' for ''account holder''.

2003—Subsec. (d)(4)(B)(iv), (v). Pub. L. 108–121 added cl. (iv) and redesignated former cl. (iv) as (v).

2002—Subsec. (d)(4)(B)(iv). Pub. L. 107–147 substituted ''by application of paragraph (2)(C)(i)(II)'' for ''because the taxpayer elected under paragraph (2)(C) to waive the application of paragraph (2)''.

2001—Pub. L. 107–22, § 1(a)(5), amended section catchline generally, substituting ''Coverdell education savings'' for ''Education individual retirement''.

Subsec. (a). Pub. L. 107–22, § 1(a)(2), substituted ''A Coverdell education savings account'' for ''An education individual retirement account'' and ''the Coverdell education savings account'' for ''the education individual retirement account''.

Subsec. (b)(1). Pub. L. 107–22, § 1(a)(1), (3), in heading, substituted ''Coverdell education savings account'' for ''Education individual retirement account'' and, in introductory provisions, substituted '' 'Coverdell education savings account' '' for '' 'education individual retirement account' '' and ''designated as a Coverdell education savings account'' for ''designated as an education individual retirement account''.

Pub. L. 107–16, § 401(d), inserted concluding provisions.

Pub. L. 107–16, § 401(c)(3)(A), struck out ''higher'' before ''education expenses'' in introductory provisions.

Subsec. (b)(1)(A)(iii). Pub. L. 107–16, §401(a)(1), substituted ''$2,000'' for ''$500''.

Subsec. (b)(2). Pub. L. 107–16, §401(c)(1), amended heading and text of par. (2) generally, substituting present provisions for provisions which defined ''qualified higher education expenses'' as having the meaning given such term by section 529(e)(3), reduced as provided in section 25A(g)(2), and including amounts paid or incurred to purchase tuition credits or certificates, or to make contributions to an account, under a qualified State tuition program for the benefit of the beneficiary of the account.

Subsec. (b)(2)(B). Pub. L. 107–16, §402(a)(4)(A), (C), in heading, substituted ''Qualified tuition'' for ''Qualified State tuition'' and in text, substituted ''qualified tuition'' for ''qualified State tuition''.

Subsec. (b)(4). Pub. L. 107–16, §401(c)(2), added par. (4).

Subsec. (b)(5). Pub. L. 107–16, §401(f)(1), added par. (5).

Subsec. (c)(1). Pub. L. 107–16, §401(e), substituted ''In the case of a contributor who is an individual, the maximum amount the contributor'' for ''The maximum amount which a contributor'' in introductory provisions.

Subsec. (c)(1)(A)(ii). Pub. L. 107–16, §401(b)(1), substituted ''$190,000'' for ''$150,000''.

Subsec. (c)(1)(B). Pub. L. 107–16, §401(b)(2), substituted ''$30,000'' for ''$10,000''.

Subsec. (d)(2). Pub. L. 107–16, §401(c)(3)(B), struck out ''higher'' before ''education'' in heading.

Subsec. (d)(2)(A), (B). Pub. L. 107–16, §401(c)(3)(A), struck out ''higher'' before ''education''.

Subsec. (d)(2)(C). Pub. L. 107–16, §401(g)(1), amended heading and text of subpar. (C) generally. Prior to amendment, text read as follows: ''A taxpayer may elect to waive the application of this paragraph for any taxable year.''

Subsec. (d)(2)(D). Pub. L. 107–16, §401(g)(2)(C), in heading, substituted ''deduction, credit, or exclusion'' for ''credit or deduction'' and in text, substituted '', credit, or exclusion'' for ''or credit''.

Subsec. (d)(4)(A). Pub. L. 107–22, §1(a)(1), substituted ''a Coverdell education savings account'' for ''an education individual retirement account''.

Subsec. (d)(4)(C). Pub. L. 107–16, §401(f)(2)(B), substituted ''certain date'' for ''due date of return'' in heading.

Subsec. (d)(4)(C)(i). Pub. L. 107–16, §401(f)(2)(A), added cl. (i) and struck out former cl. (i) which read as follows: ''such distribution is made on or before the day prescribed by law (including extensions of time) for filing the beneficiary's return of tax for the taxable year or, if the beneficiary is not required to file such a return, the 15th day of the 4th month of the taxable year following the taxable year; and''.

Subsec. (d)(5). Pub. L. 107–22, §1(a)(1), (4), substituted ''distributed from a Coverdell education savings account'' for ''distributed from an education individual retirement account'' and ''another Coverdell education savings account'' for ''another education individual retirement account''.

Subsec. (d)(6). Pub. L. 107–22, §1(a)(1), substituted ''a Coverdell education savings account'' for ''an education individual retirement account''.

Subsec. (e). Pub. L. 107–22, §1(a)(4), substituted ''Coverdell education savings account'' for ''education individual retirement account''.

Subsec. (h). Pub. L. 107–22, §1(a)(1), substituted ''a Coverdell education savings account'' for ''an education individual retirement account''.

2000—Subsec. (d)(4)(B)(iii). Pub. L. 106–554 substituted a comma for a semicolon before ''or'' at end.

1998—Subsec. (b)(1). Pub. L. 105–206, §6004(d)(1), inserted ''an individual who is'' before ''the designated beneficiary'' in introductory provisions.

Subsec. (b)(1)(E). Pub. L. 105–206, §6004(d)(2)(A), amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: ''Upon the death of the designated beneficiary, any balance to the credit of the beneficiary shall be distributed within 30 days after the date of death to the estate of such beneficiary.''

Subsec. (d)(1). Pub. L. 105–206, §6004(d)(3)(A), substituted ''section 72'' for ''section 72(b)''.

Subsec. (d)(2)(D). Pub. L. 105–206, §6004(d)(5), added subpar. (D).

Subsec. (d)(4)(B)(iv). Pub. L. 105–206, §6004(d)(6), added cl. (iv).

Subsec. (d)(4)(C). Pub. L. 105–206, §6004(d)(7), substituted ''Contributions'' for ''Excess contributions'' in heading and amended text of introductory provisions and cl. (i) generally. Prior to amendment, text read as follows: ''Subparagraph (A) shall not apply to the distribution of any contribution made during a taxable year on behalf of a designated beneficiary to the extent that such contribution exceeds $500 if—

''(i) such distribution is received on or before the day prescribed by law (including extensions of time) for filing such contributor's return for such taxable year, and''.

Subsec. (d)(5). Pub. L. 105–206, §6004(d)(8)(A), added first sentence and struck out former first sentence which read as follows: ''Paragraph (1) shall not apply to any amount paid or distributed from an education individual retirement account to the extent that the amount received is paid into another education individual retirement account for the benefit of the same beneficiary or a member of the family (within the meaning of section 529(e)(2)) of such beneficiary not later than the 60th day after the date of such payment or distribution.''

Subsec. (d)(6). Pub. L. 105–206, §6004(d)(8)(B), inserted before period at end ''and has not attained age 30 as of the date of such change''.

Subsec. (d)(7). Pub. L. 105–206, §6004(d)(2)(B), inserted at end ''In applying the preceding sentence, members of the family (as so defined) of the designated beneficiary shall be treated in the same manner as the spouse under such paragraph (8).''

Subsec. (d)(8). Pub. L. 105–206, §6004(d)(2)(C), added par. (8).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–245 applicable with respect to deaths from injuries occurring on or after June 17, 2008, with provision for application of amendment to deaths from injuries occurring on or after Oct. 7, 2001, and before June 17, 2008, see section 109(d)(1), (2) of Pub. L. 110–245, set out as a note under section 408A of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 404(a) of Pub. L. 108–311 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 404(f) of Pub. L. 108–311, set out as a note under section 45A of this title.

Amendment by section 406(b) of Pub. L. 108–311 effective as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 406(h) of Pub. L. 108–311, set out as a note under section 55 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–121, title I, §107(b), Nov. 11, 2003, 117 Stat. 1339, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2002.''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–22 effective July 26, 2001, see section 1(c) of Pub. L. 107–22, set out as a note under section 26 of this title.

Amendment by section 401(a)(1), (b)–(g)(1), (2)(C) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 401(h) of Pub. L. 107–16, set out as a note under section 25A of this title.

Amendment by section 402(a)(4)(A), (C) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 402(h) of Pub. L. 107–16, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1997, see section 213(f) of Pub. L. 105–34, set out as an Effective Date of 1997 Amendment note under section 26 of this title.

Subchapter G—Corporations Used to Avoid Income Tax on Shareholders

AMENDMENTS

2004—Pub. L. 108–357, title IV, § 413(c)(31), Oct. 22, 2004, 118 Stat. 1509, struck out item for part III ''Foreign personal holding companies''.

PART I—CORPORATIONS IMPROPERLY ACCUMULATING SURPLUS

§ 531. Imposition of accumulated earnings tax

In addition to other taxes imposed by this chapter, there is hereby imposed for each taxable year on the accumulated taxable income (as defined in section 535) of each corporation described in section 532, an accumulated earnings tax equal to 20 percent of the accumulated taxable income.

(Aug. 16, 1954, ch. 736, 68A Stat. 179; Pub. L. 100–647, title I, § 1001(a)(2)(A), Nov. 10, 1988, 102 Stat. 3349; Pub. L. 103–66, title XIII, §§ 13201(b)(1), 13202(b), Aug. 10, 1993, 107 Stat. 459, 461; Pub. L. 107–16, title I, § 101(c)(4), June 7, 2001, 115 Stat. 43; Pub. L. 108–27, title III, § 302(e)(5), May 28, 2003, 117 Stat. 764; Pub. L. 112–240, title I, § 102(c)(1)(A), Jan. 2, 2013, 126 Stat. 2319.)

AMENDMENTS

2013—Pub. L. 112–240 substituted ''20 percent'' for ''15 percent''.

2003—Pub. L. 108–27 substituted ''equal to 15 percent of the accumulated taxable income.'' for ''equal to the product of the highest rate of tax under section 1(c) and the accumulated taxable income.'' for ''equal to 39.6 percent of the accumulated taxable income.''

2001—Pub. L. 107–16 substituted ''equal to the product of the highest rate of tax under section 1(c) and the accumulated taxable income.'' for ''equal to 39.6 percent of the accumulated taxable income.''

1993—Pub. L. 103–66, § 13202(b), substituted ''39.6 percent'' for ''36 percent''.

Pub. L. 103–66, § 13201(b)(1), substituted ''36 percent'' for ''28 percent''.

1988—Pub. L. 100–647 amended section generally. Prior to amendment, section read as follows: ''In addition to other taxes imposed by this chapter, there is hereby imposed for each taxable year on the accumulated taxable income (as defined in section 535) of every corporation described in section 532, an accumulated earnings tax equal to the sum of—

''(1) 27½ percent of the accumulated taxable income not in excess of $100,000, plus

''(2) 38½ percent of the accumulated taxable income in excess of $100,000.''

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112–240 applicable to taxable years beginning after Dec. 31, 2012, see section 102(d)(1) of Pub. L. 112–240, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–27 applicable, except as otherwise provided, to taxable years beginning after Dec. 31, 2002, see section 302(f) of Pub. L. 108–27, set out as an Effective and Termination Dates of 2003 Amendment note under section 1 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2000, see section 101(d)(1) of Pub. L. 107–16, set out as an Effective and Termination Dates of 2001 Amendment note under section 1 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1992, see sections 13201(c) and 13202(c) of Pub. L. 103–66, set out as notes under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, § 1001(a)(2)(B), Nov. 10, 1988, 102 Stat. 3349, provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to taxable years beginning after December 31, 1987. Such amendment shall not be treated as a change in a rate of tax for purposes of section 15 of the 1986 Code.''

§ 532. Corporations subject to accumulated earnings tax

(a) General rule

The accumulated earnings tax imposed by section 531 shall apply to every corporation (other than those described in subsection (b)) formed or availed of for the purpose of avoiding the income tax with respect to its shareholders or the shareholders of any other corporation, by permitting earnings and profits to accumulate instead of being divided or distributed.

(b) Exceptions

The accumulated earnings tax imposed by section 531 shall not apply to—

(1) a personal holding company (as defined in section 542),

(2) a corporation exempt from tax under subchapter F (section 501 and following), or

(3) a passive foreign investment company (as defined in section 1297).

(c) Application determined without regard to number of shareholders

The application of this part to a corporation shall be determined without regard to the number of shareholders of such corporation.

(Aug. 16, 1954, ch. 736, 68A Stat. 179; Pub. L. 98–369, div. A, title I, § 58(a), July 18, 1984, 98 Stat. 574; Pub. L. 99–514, title XII, § 1235(f)(1), Oct. 22, 1986, 100 Stat. 2575; Pub. L. 105–34, title XI, § 1122(d)(1), Aug. 5, 1997, 111 Stat. 977; Pub. L. 109–135, title IV, § 403(n)(1), Dec. 21, 2005, 119 Stat. 2626.)

AMENDMENTS

2005—Subsec. (b)(2) to (4). Pub. L. 109–135 redesignated pars. (3) and (4) as (2) and (3), respectively, and struck out former par. (2) which read as follow: ''a foreign personal holding company (as defined in section 552),''.

1997—Subsec. (b)(4). Pub. L. 105–34 substituted ''section 1297'' for ''section 1296''.

1986—Subsec. (b)(4). Pub. L. 99–514 added par. (4).

1984—Subsec. (c). Pub. L. 98–369 added subsec. (c).

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XI, § 1124, Aug. 5, 1997, 111 Stat. 978, provided that: ''The amendments made by this subtitle [subtitle C (§§ 1121–1124) of title XI of Pub. L. 105–34, enacting section 1296 of this title, amending this section and sections 542, 551, 852, 1291, 1293, 1296 to 1298, and 4982 of this title, redesignating subpart C of part VI of subchapter P of this chapter as subpart D of part VI of subchapter P of this chapter, and renumbering sections 1296 and 1297 of this title as sections 1297 and 1298, respectively, of this title] shall apply to—

''(1) taxable years of United States persons beginning after December 31, 1997, and

''(2) taxable years of foreign corporations ending with or within such taxable years of United States persons.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, see section 1235(h) of Pub. L. 99–514, set out as an Effective Date note under section 1291 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, § 58(c), July 18, 1984, 98 Stat. 576, provided that: ''The amendments made by this section [amending this section and section 535 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [July 18, 1984].''

§ 533. Evidence of purpose to avoid income tax

(a) Unreasonable accumulation determinative of purpose

For purposes of section 532, the fact that the earnings and profits of a corporation are permitted to accumulate beyond the reasonable needs of the business shall be determinative of the purpose to avoid the income tax with respect to shareholders, unless the corporation by the preponderance of the evidence shall prove to the contrary.

(b) Holding or investment company

The fact that any corporation is a mere holding or investment company shall be prima facie evidence of the purpose to avoid the income tax with respect to shareholders.

(Aug. 16, 1954, ch. 736, 68A Stat. 179.)

§ 534. Burden of proof

(a) General rule

In any proceeding before the Tax Court involving a notice of deficiency based in whole or in part on the allegation that all or any part of the earnings and profits have been permitted to accumulate beyond the reasonable needs of the business, the burden of proof with respect to such allegation shall—

(1) if notification has not been sent in accordance with subsection (b), be on the Secretary, or

(2) if the taxpayer has submitted the statement described in subsection (c), be on the Secretary with respect to the grounds set forth in such statement in accordance with the provisions of such subsection.

(b) Notification by Secretary

Before mailing the notice of deficiency referred to in subsection (a), the Secretary may send by certified mail or registered mail a notification informing the taxpayer that the proposed notice of deficiency includes an amount with respect to the accumulated earnings tax imposed by section 531.

(c) Statement by taxpayer

Within such time (but not less than 30 days) after the mailing of the notification described in subsection (b) as the Secretary may prescribe by regulations, the taxpayer may submit a statement of the grounds (together with facts sufficient to show the basis thereof) on which the taxpayer relies to establish that all or any part of the earnings and profits have not been permitted to accumulate beyond the reasonable needs of the business.

(d) Jeopardy assessment

If pursuant to section 6861(a) a jeopardy assessment is made before the mailing of the notice of deficiency referred to in subsection (a), for purposes of this section such notice of deficiency shall, to the extent that it informs the taxpayer that such deficiency includes the accumulated earnings tax imposed by section 531, constitute the notification described in subsection (b), and in that event the statement described in subsection (c) may be included in the taxpayer's petition to the Tax Court.

(Aug. 16, 1954, ch. 736, 68A Stat. 180; Aug. 11, 1955, ch. 805, §§ 4, 5, 69 Stat. 690, 691; Pub. L. 85–866, title I, § 89(b), Sept. 2, 1958, 72 Stat. 1665; Pub. L. 94–455, title XIX, §§ 1901(a)(73), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1776, 1834.)

AMENDMENTS

1976—Subsec. (a)(1), (2). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (b). Pub. L. 94–455, §§ 1901(a)(73)(A), 1906(b)(13)(A), struck out ''In the case of a notice of deficiency to which subsection (e)(2) applies and which is mailed on or before the 30th day after the date of enactment of this sentence, the notification referred to in the preceding sentence may be mailed at any time on or before such 30th day'' after ''section 531'', and ''or his delegate'' after ''Secretary''.

Subsec. (c). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (e). Pub. L. 94–455, § 1901(a)(73)(B), struck out subsec. (e) relating to application of provisions of section.

1958—Subsec. (b). Pub. L. 85–866 inserted ''certified mail or'' before ''registered mail''.

1955—Subsec. (b). Act Aug. 11, 1955, § 5, inserted second sentence relating to notice of deficiency to which subsec. (e)(2) applies.

Subsec. (e). Act Aug. 11, 1955, § 4, permitted, in certain instances, application of this section to cases involving taxable years to which prior revenue laws apply.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(73) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable only if mailing occurred after Sept. 2, 1958, see section 89(d) of Pub. L. 85–866, set out as a note under section 7502 of this title.

§ 535. Accumulated taxable income

(a) Definition

For purposes of this subtitle, the term ''accumulated taxable income'' means the taxable income, adjusted in the manner provided in subsection (b), minus the sum of the dividends paid deduction (as defined in section 561) and the accumulated earnings credit (as defined in subsection (c)).

(b) Adjustments to taxable income

For purposes of subsection (a), taxable income shall be adjusted as follows:

(1) Taxes

There shall be allowed as a deduction Federal income and excess profits taxes and income, war profits, and excess profits taxes of foreign countries and possessions of the United States (to the extent not allowable as a deduction under section 275(a)(4)), accrued during the taxable year or deemed to be paid by a domestic corporation under section 960 for the taxable year, but not including the accumulated earnings tax imposed by section 531 or the personal holding company tax imposed by section 541.

(2) Charitable contributions

The deduction for charitable contributions provided under section 170 shall be allowed without regard to section 170(b)(2).

(3) Special deductions disallowed

The special deductions for corporations provided in part VIII (except section 248) of subchapter B (section 241 and following, relating to the deduction for dividends received by corporations, etc.) shall not be allowed.

(4) Net operating loss

The net operating loss deduction provided in section 172 shall not be allowed.

(5) Capital losses

(A) In general

Except as provided in subparagraph (B), there shall be allowed as a deduction an amount equal to the net capital loss for the taxable year (determined without regard to paragraph (7)(A)).

(B) Recapture of previous deductions for capital gains

The aggregate amount allowable as a deduction under subparagraph (A) for any taxable year shall be reduced by the lesser of—

(i) the nonrecaptured capital gains deductions, or

(ii) the amount of the accumulated earnings and profits of the corporation as of the close of the preceding taxable year.

(C) Nonrecaptured capital gains deductions

For purposes of subparagraph (B), the term ''nonrecaptured capital gains deductions'' means the excess of—

(i) the aggregate amount allowable as a deduction under paragraph (6) for preceding taxable years beginning after July 18, 1984, over

(ii) the aggregate of the reductions under subparagraph (B) for preceding taxable years.

(6) Net capital gains

(A) In general

There shall be allowed as a deduction—

(i) the net capital gain for the taxable year (determined with the application of paragraph (7)), reduced by

(ii) the taxes attributable to such net capital gain.

(B) Attributable taxes

For purposes of subparagraph (A), the taxes attributable to the net capital gain shall be an amount equal to the difference between—

(i) the taxes imposed by this subtitle (except the tax imposed by this part) for the taxable year, and

(ii) such taxes computed for such year without including in taxable income the net capital gain for the taxable year (determined without the application of paragraph (7)).

(7) Capital loss carryovers

(A) Unlimited carryforward

The net capital loss for any taxable year shall be treated as a short-term capital loss in the next taxable year.

(B) Section 1212 inapplicable

No allowance shall be made for the capital loss carryback or carryforward provided in section 1212.

(8) Special rules for mere holding or investment companies

In the case of a mere holding or investment company—

(A) Capital loss deduction, etc., not allowed

Paragraphs (5) and (7)(A) shall not apply.

(B) Deduction for certain offsets

There shall be allowed as a deduction the net short-term capital gain for the taxable year to the extent such gain does not exceed the amount of any capital loss carryover to such taxable year under section 1212 (determined without regard to paragraph (7)(B)).

(C) Earnings and profits

For purposes of subchapter C, the accumulated earnings and profits at any time shall

not be less than they would be if this subsection had applied to the computation of earnings and profits for all taxable years beginning after July 18, 1984.

(9) Special rule for capital gains and losses of foreign corporations

In the case of a foreign corporation, paragraph (6) shall be applied by taking into account only gains and losses which are effectively connected with the conduct of a trade or business within the United States and are not exempt from tax under treaty.

(10) Controlled foreign corporations

There shall be allowed as a deduction the amount of the corporation's income for the taxable year which is included in the gross income of a United States shareholder under section 951(a). In the case of any corporation the accumulated taxable income of which would (but for this sentence) be determined without allowance of any deductions, the deduction under this paragraph shall be allowed and shall be appropriately adjusted to take into account any deductions which reduced such inclusion.

(c) Accumulated earnings credit

(1) General rule

For purposes of subsection (a), in the case of a corporation other than a mere holding or investment company the accumulated earnings credit is (A) an amount equal to such part of the earnings and profits for the taxable year as are retained for the reasonable needs of the business, minus (B) the deduction allowed by subsection (b)(6). For purposes of this paragraph, the amount of the earnings and profits for the taxable year which are retained is the amount by which the earnings and profits for the taxable year exceed the dividends paid deduction (as defined in section 561) for such year.

(2) Minimum credit

(A) In general

The credit allowable under paragraph (1) shall in no case be less than the amount by which $250,000 exceeds the accumulated earnings and profits of the corporation at the close of the preceding taxable year.

(B) Certain service corporations

In the case of a corporation the principal function of which is the performance of services in the field of health, law, engineering, architecture, accounting, actuarial science, performing arts, or consulting, subparagraph (A) shall be applied by substituting ''$150,000'' for ''$250,000''.

(3) Holding and investment companies

In the case of a corporation which is a mere holding or investment company, the accumulated earnings credit is the amount (if any) by which $250,000 exceeds the accumulated earnings and profits of the corporation at the close of the preceding taxable year.

(4) Accumulated earnings and profits

For purposes of paragraphs (2) and (3), the accumulated earnings and profits at the close of the preceding taxable year shall be reduced by the dividends which under section 563(a) (relating to dividends paid after the close of the taxable year) are considered as paid during such taxable year.

(5) Cross reference

For limitation on credit provided in paragraph (2) or (3) in the case of certain controlled corporations, see section 1561.

(d) Income distributed to United States-owned foreign corporation retains United States connection

(1) In general

For purposes of this part, if 10 percent or more of the earnings and profits of any foreign corporation for any taxable year—

(A) is derived from sources within the United States, or

(B) is effectively connected with the conduct of a trade or business within the United States,

any distribution out of such earnings and profits (and any interest payment) received (directly or through 1 or more other entities) by a United States-owned foreign corporation shall be treated as derived by such corporation from sources within the United States.

(2) United States-owned foreign corporation

The term ''United States-owned foreign corporation'' has the meaning given to such term by section 904(h)(6).

(Aug. 16, 1954, ch. 736, 68A Stat. 180; Pub. L. 85–866, title I, §31, title II, §205(a), Sept. 2, 1958, 72 Stat. 1631, 1680; Pub. L. 87–403, §3(b), Feb. 2, 1962, 76 Stat. 6; Pub. L. 87–834, §9(d)(2), Oct. 16, 1962, 76 Stat. 1001; Pub. L. 88–272, title II, §207(b)(4), Feb. 26, 1964, 78 Stat. 42; Pub. L. 91–172, title IV, §401(b)(2)(C), title V, §512(f)(5), (6), Dec. 30, 1969, 83 Stat. 602, 641; Pub. L. 94–12, title III, §304(a), Mar. 29, 1975, 89 Stat. 45; Pub. L. 94–455, title X, §1033(b)(3), title XIX, §§1901(a)(74), (b)(20)(A), (32)(C), (33)(D), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1628, 1777, 1797, 1800, 1801, 1834; Pub. L. 97–34, title II, §232(a), (b)(1), Aug. 13, 1981, 95 Stat. 250; Pub. L. 98–369, div. A, title I, §§58(b), 125(a), July 18, 1984, 98 Stat. 575, 647; Pub. L. 99–514, title XII, §1225(a), title XVIII, §1899A(17), Oct. 22, 1986, 100 Stat. 2558, 2959; Pub. L. 101–508, title XI, §11801(c)(18), Nov. 5, 1990, 104 Stat. 1388–528; Pub. L. 108–357, title IV, §402(b)(1), Oct. 22, 2004, 118 Stat. 1492; Pub. L. 109–135, title IV, §403(n)(2), Dec. 21, 2005, 119 Stat. 2626; Pub. L. 113–295, div. A, title II, §221(a)(64), Dec. 19, 2014, 128 Stat. 4048; Pub. L. 115–97, title I, §§13001(b)(5)(B), 14301(c)(4), Dec. 22, 2017, 131 Stat. 2098, 2222.)

AMENDMENTS

2017—Subsec. (b)(1). Pub. L. 115–97, §14301(c)(4), substituted ''section 960'' for ''section 902(a) or 960(a)(1)''.

Subsec. (c)(5). Pub. L. 115–97, §13001(b)(5)(B), amended par. (5) generally. Prior to amendment, text read as follows: ''For denial of credit provided in paragraph (2) or (3) where multiple corporations are formed to avoid tax, see section 1551, and for limitation on such credit in the case of certain controlled corporations, see section 1561.''

2014—Subsec. (b)(1). Pub. L. 113–295 substituted ''section 531 or the personal holding company tax imposed

by section 541.'' for ''section 531, the personal holding company tax imposed by section 541, or the taxes imposed by corresponding sections of a prior income tax law.''

2005—Subsec. (b)(10). Pub. L. 109–135 added par. (10).

2004—Subsec. (d)(2). Pub. L. 108–357 substituted ''section 904(h)(6)'' for ''section 904(g)(6)''.

1990—Subsec. (c)(5). Pub. L. 101–508 substituted ''section 1561'' for ''sections 1561 and 1564''.

1986—Subsec. (b)(5)(C)(i), (8)(C). Pub. L. 99–514, § 1899A(17), substituted ''July 18, 1984'' for ''the date of the enactment of the Tax Reform Act of 1984''.

Subsec. (b)(9). Pub. L. 99–514, § 1225(a), added par. (9).

1984—Subsec. (b)(5). Pub. L. 98–369, § 58(b), designated existing provisions as subpar. (A), substituted ''Except as provided in subparagraph (B), there shall be allowed as a deduction an amount equal to the net capital loss for the taxable year (determined without regard to paragraph (7)(A)'' for ''There shall be allowed as deductions losses from sales or exchanges of capital assets during the taxable year which are disallowed as deductions under section 1211(a) in subpar. (A) as so redesignated, and added subpars. (B) and (C).

Subsec. (b)(6). Pub. L. 98–369, § 58(b), divided existing par. (6) into subpars. (A) and (B) and substituted references to the application of paragraph (7) for references to capital loss carryback and carryover provided in section 1212.

Subsec. (b)(7). Pub. L. 98–369, § 58(b), substituted ''Capital loss carryovers'' for ''Capital loss'' in heading, redesignated existing provisions as subpar. (B), and added subpar. (A).

Subsec. (b)(8). Pub. L. 98–369, § 58(b), added par. (8).

Subsec. (d). Pub. L. 98–369, § 125(a), added subsec. (d).

1981—Subsec. (c)(2). Pub. L. 97–34, § 232(a), designated existing provisions as subpar. (A), substituted ''$250,000'' for ''$150,000'', and added subpar. (B).

Subsec. (c)(3). Pub. L. 97–34, § 232(b)(1), substituted ''$250,000'' for ''$150,000''.

1976—Subsec. (b)(1). Pub. L. 94–455, §§ 1033(b)(3), 1901(a)(74), struck out ''(other than the excess profits tax imposed by subchapter E of chapter 2 of the Internal Revenue Code of 1939 for taxable years beginning after December 31, 1940)'' after ''income and excess profits taxes'', and substituted ''section 902(a) or 960(a)(1)'' for ''section 902(a)(1) or 960(a)(1)(C)'' after ''domestic corporation under''.

Subsec. (b)(6). Pub. L. 94–455, § 1901(b)(33)(D), substituted ''Net'' for ''Long-term'' after ''(6)''.

Subsec. (b)(8). Pub. L. 94–455, § 1901(b)(20)(A), struck out par. (8) relating to allowance of deduction by bank affiliates.

Subsec. (b)(9), (10). Pub. L. 94–455, § 1901(b)(32)(C), struck out par. (9) relating to allowance of deduction for distributions of divested stock, and struck out par. (10) relating to special adjustment on disposition of antitrust stock received as a dividend.

1975—Subsec. (c)(2), (3). Pub. L. 94–12 substituted ''$150,000'' for ''$100,000''.

1969—Subsec. (b)(6). Pub. L. 91–172, § 512(f)(5), substituted ''capital loss carryback or carryover'' for ''capital loss carryover'' and ''capital loss carryback and carryover'' for ''capital loss carryover'' in subpar. (B).

Subsec. (b)(7). Pub. L. 91–172, § 512(f)(6), substituted ''Capital loss'' for ''Capital loss carryover'' in heading and ''capital loss carryback or carryover'' for ''capital loss carryover'' in text.

Subsec. (c)(5). Pub. L. 91–172, § 401(b)(2)(C), substituted ''section 1551, and for limitation on such credit in the case of certain controlled corporations, see sections 1561 and 1564'' for ''section 1551''.

1964—Subsec. (b)(1). Pub. L. 88–272 substituted ''section 275(a)(4)'' for ''section 164(b)(6)''.

1962—Subsec. (b)(1). Pub. L. 87–834 substituted ''accrued during the taxable year or deemed to be paid by a domestic corporation under section 902(a)(1) or 960(a)(1)(C) for the taxable year'' for ''accrued during the taxable year''.

Subsec. (b)(9), (10). Pub. L. 87–403 added pars. (9) and (10).

1958—Subsec. (b)(2). Pub. L. 85–866, § 31(a), struck out ''the limitation in'' after ''without regard to''.

Subsec. (b)(6)(B). Pub. L. 85–866, § 31(a), substituted ''in taxable income the excess of the net long-term capital gain for the taxable year over the net short-term capital loss for such year (determined without regard to the capital loss carryover provided in section 1212)'' for ''such excess in taxable income''.

Subsec. (c)(2), (3). Pub. L. 85–866, § 205(a), substituted ''$100,000'' for ''$60,000''.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 13001(b)(5)(B) of Pub. L. 115–97 applicable to taxable years beginning after Dec. 31, 2017, see section 13001(c)(1) of Pub. L. 115–97, set out as a note under section 11 of this title.

Amendment by section 14301(c)(4) of Pub. L. 115–97 applicable to taxable years of foreign corporations beginning after Dec. 31, 2017, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, see section 14301(d) of Pub. L. 115–97, set out as a note under section 78 of this title.

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113–295, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title IV, § 402(c), Oct. 22, 2004, 118 Stat. 1492, provided that: ''The amendments made by this section [amending this section and sections 904 and 936 of this title] shall apply to losses for taxable years beginning after December 31, 2006.''

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XII, § 1225(c), Oct. 22, 1986, 100 Stat. 2559, as amended by Pub. L. 100–647, title I, § 1012(k), Nov. 10, 1988, 102 Stat. 3513, provided that: ''The amendments made by this section [amending this section and section 545 of this title] shall apply to gains and losses realized on or after January 1, 1986.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 58(b) of Pub. L. 98–369 applicable to taxable years beginning after July 18, 1984, see section 58(c) of Pub. L. 98–369, set out as a note under section 532 of this title.

Pub. L. 98–369, div. A, title I, § 125(b), July 18, 1984, 98 Stat. 647, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to distributions and interest payments received by a United States-owned foreign corporation (within the meaning of section 535(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) on or after May 23, 1983, in taxable years ending on or after such date.

''(2) CORPORATIONS IN EXISTENCE ON MAY 23, 1983.—In the case of a United States-owned foreign corporation (as so defined) in existence on May 23, 1983, the amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1984.''

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title II, § 232(c), Aug. 13, 1981, 95 Stat. 250, provided that: ''The amendments made by this section [amending this section and sections 243, 1551, and 1561 of this title] shall apply to taxable years beginning after December 31, 1981.''

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment by section 1033(b)(3) of Pub. L. 94–455, see section 1033(c) of Pub. L. 94–455, set out as a note under section 960 of this title.

Amendment by section 1901(a)(74), (b)(20)(A), (32)(C), (33)(D) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 94–12, title III, § 305(c), Mar. 29, 1975, 89 Stat. 45, provided that: ''The amendments made by section 304 [amending this section and sections 243, 1551, and 1561 of this title] apply to taxable years beginning after December 31, 1974.''

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 401(b)(2)(C) of Pub. L. 91–172 applicable with respect to taxable years beginning after Dec. 31, 1969, see section 401(h)(2) of Pub. L. 91–172, set out as a note under section 1561 of this title.

Amendment by section 512(f)(5), (6) of Pub. L. 91–172 applicable with respect to net capital losses sustained in taxable years beginning after Dec. 31, 1969, see section 512(g) of Pub. L. 91–172, set out as a note under section 1212 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 207(c) of Pub. L. 88–272, set out as a note under section 164 of this title.

EFFECTIVE DATE OF 1962 AMENDMENTS

Amendment by Pub. L. 87–834 applicable in respect of any distribution received by a domestic corporation after Dec. 31, 1964, and in respect of any distribution received by a domestic corporation before Jan. 1, 1965, in a taxable year of such corporation beginning after Dec. 31, 1962, but only to the extent that such distribution is made out of the accumulated profits of a foreign corporation for a taxable year (of such foreign corporation) beginning after Dec. 31, 1962, see section 9(e) of Pub. L. 87–834, set out as an Effective Date note under section 78 of this title.

Amendment by Pub. L. 87–403 applicable only with respect to distributions made after Feb. 2, 1962, see section 3(g) of Pub. L. 87–403, set out as a note under section 312 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 31 of Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

Pub. L. 85–866, title II, § 205(b), Sept. 2, 1958, 72 Stat. 1680, provided that: ''The amendments made by subsection (a) [amending this section and section 1551 of this title] shall apply with respect to taxable years beginning after December 31, 1957.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 536. Income not placed on annual basis

Section 443(b) (relating to computation of tax on change of annual accounting period) shall not apply in the computation of the accumulated earnings tax imposed by section 531.

(Aug. 16, 1954, ch. 736, 68A Stat. 182.)

§ 537. Reasonable needs of the business

(a) General rule

For purposes of this part, the term ''reasonable needs of the business'' includes—

(1) the reasonably anticipated needs of the business,

(2) the section 303 redemption needs of the business, and

(3) the excess business holdings redemption needs of the business.

(b) Special rules

For purposes of subsection (a)—

(1) Section 303 redemption needs

The term ''section 303 redemption needs'' means, with respect to the taxable year of the corporation in which a shareholder of the corporation died or any taxable year thereafter, the amount needed (or reasonably anticipated to be needed) to make a redemption of stock included in the gross estate of the decedent (but not in excess of the maximum amount of stock to which section 303(a) may apply).

(2) Excess business holdings redemption needs

The term ''excess business holdings redemption needs'' means the amount needed (or reasonably anticipated to be needed) to redeem from a private foundation stock which—

(A) such foundation held on May 26, 1969 (or which was received by such foundation pursuant to a will or irrevocable trust to which section 4943(c)(5) applies), and

(B) constituted excess business holdings on May 26, 1969, or would have constituted excess business holdings as of such date if there were taken into account (i) stock received pursuant to a will or trust described in subparagraph (A), and (ii) the reduction in the total outstanding stock of the corporation which would have resulted solely from the redemption of stock held by the private foundation.

(3) Obligations incurred to make redemptions

In applying paragraphs (1) and (2), the discharge of any obligation incurred to make a redemption described in such paragraphs shall be treated as the making of such redemption.

(4) Product liability loss reserves

The accumulation of reasonable amounts for the payment of reasonably anticipated product liability losses (as defined in section 172(f) (as in effect before the date of enactment of the Tax Cuts and Jobs Act)), as determined under regulations prescribed by the Secretary, shall be treated as accumulated for the reasonably anticipated needs of the business.

(5) No inference as to prior taxable years

The application of this part to any taxable year before the first taxable year specified in paragraph (1) shall be made without regard to the fact that distributions in redemption coming within the terms of such paragraphs were subsequently made.

(Aug. 16, 1954, ch. 736, 68A Stat. 182; Pub. L. 91–172, title IX, § 906(a), Dec. 30, 1969, 83 Stat. 714; Pub. L. 94–455, title XIX, § 1901(a)(75), Oct. 4, 1976, 90 Stat. 1777; Pub. L. 95–600, title III, § 371(c), Nov. 6, 1978, 92 Stat. 2859; Pub. L. 104–188, title I, § 1704(t)(33), Aug. 20, 1996, 110 Stat. 1889; Pub. L. 115–97, title I, § 13302(c)(2)(B), Dec. 22, 2017, 131 Stat. 2123.)

REFERENCES IN TEXT

Section 172(f), referred to in subsec. (b)(4), was repealed by Pub. L. 115–97, title I, § 13302(c)(2)(A), Dec. 22, 2017, 131 Stat. 2122.

The date of the enactment of the Tax Cuts and Jobs Act, referred to in subsec. (b)(4), probably means the date of enactment of title I of Pub. L. 115–97, which was approved Dec. 22, 2017. Prior versions of the bill that was enacted into law as Pub. L. 115–97 included such Short Title, but it was not enacted as part of title I of Pub. L. 115–97.

AMENDMENTS

2017—Subsec. (b)(4). Pub. L. 115–97 inserted ''(as in effect before the date of enactment of the Tax Cuts and Jobs Act)'' after ''as defined in section 172(f)''.

1996—Subsec. (b)(4). Pub. L. 104–188 substituted ''section 172(f)'' for ''section 172(i)''.

1978—Subsec. (b)(4), (5). Pub. L. 95–600 added par. (4) and redesignated former par. (4) as (5).

1976—Subsec. (b)(2). Pub. L. 94–455, § 1901(a)(75)(A), struck out ''with respect to taxable years of the corporation ending after May 26, 1969'' after '' 'redemption needs' means''.

Subsec. (b)(4). Pub. L. 94–455, § 1901(a)(75)(B), struck out ''or (2)'' after ''paragraph (1)''.

1969—Pub. L. 91–172 designated existing provisions as subsec. (a)(1) and added subsecs. (a)(2), (3) and (b).

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–97 applicable to net operating losses arising in taxable years ending after Dec. 31, 2017, see section 13302(e) of Pub. L. 115–97, set out as a note under section 172 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable with respect to taxable years beginning after Sept. 30, 1979, see section 371(d) of Pub. L. 95–600, set out as a note under section 172 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title IX, § 906(b), Dec. 30, 1969, 83 Stat. 715, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to the tax imposed under section 531 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] with respect to taxable years ending after May 26, 1969.''

PART II—PERSONAL HOLDING COMPANIES

Sec.

§ 541. Imposition of personal holding company tax

In addition to other taxes imposed by this chapter, there is hereby imposed for each taxable year on the undistributed personal holding company income (as defined in section 545) of every personal holding company (as defined in section 542) a personal holding company tax equal to 20 percent of the undistributed personal holding company income.

(Aug. 16, 1954, ch. 736, 68A Stat. 182; Pub. L. 88–272, title II, § 225(a), Feb. 26, 1964, 78 Stat. 79; Pub. L. 97–34, title I, § 101(d)(2), Aug. 13, 1981, 95 Stat. 184; Pub. L. 99–514, title I, § 104(b)(8), Oct. 22, 1986, 100 Stat. 2105; Pub. L. 101–508, title XI, § 11802(f)(1), Nov. 5, 1990, 104 Stat. 1388–530; Pub. L. 103–66, title XIII, §§ 13201(b)(2), 13202(b), Aug. 10, 1993, 107 Stat. 459, 461; Pub. L. 107–16, title I, § 101(c)(5), June 7, 2001, 115 Stat. 43; Pub. L. 108–27, title III, § 302(e)(6), May 28, 2003, 117 Stat. 764; Pub. L. 112–240, title I, § 102(c)(1)(B), Jan. 2, 2013, 126 Stat. 2319.)

AMENDMENTS

2013—Pub. L. 112–240 substituted ''20 percent'' for ''15 percent''.

2003—Pub. L. 108–27 substituted ''equal to 15 percent of the undistributed personal holding company income.'' for ''equal to the product of the highest rate of tax under section 1(c) and the undistributed personal holding company income.''

2001—Pub. L. 107–16 substituted ''equal to the product of the highest rate of tax under section 1(c) and the undistributed personal holding company income.'' for ''equal to 39.6 percent of the undistributed personal holding company income.''

1993—Pub. L. 103–66, § 13202(b), substituted ''39.6 percent'' for ''36 percent''.

Pub. L. 103–66, § 13201(b)(2), substituted ''36 percent'' for ''28 percent''.

1990—Pub. L. 101–508 struck out ''(38.5 percent in the case of taxable years beginning in 1987)'' after ''28 percent''.

1986—Pub. L. 99–514 substituted ''28 percent (38.5 percent in the case of taxable years beginning in 1987)'' for ''50 percent''.

1981—Pub. L. 97–34 substituted ''50 percent'' for ''70 percent''.

1964—Pub. L. 88–272 reduced the tax from 75 percent of undistributed income not in excess of $2,000, and 85 percent when in excess of $2,000, to 70 percent.

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112–240 applicable to taxable years beginning after Dec. 31, 2012, see section 102(d)(1) of Pub. L. 112–240, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–27 applicable, except as otherwise provided, to taxable years beginning after Dec. 31, 2002, see section 302(f) of Pub. L. 108–27, set out as an Effective and Termination Dates of 2003 Amendment note under section 1 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2000, see section 101(d) of

Pub. L. 107–16, set out as an Effective and Termination Dates of 2001 Amendment note under section 1 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1992, see sections 13201(c) and 13202(c) of Pub. L. 103–66, set out as notes under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 101(f)(1) of Pub. L. 97–34, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 225(*l*) of Pub. L. 88–272 set out as a note under section 316 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§ 542. Definition of personal holding company

(a) General rule

For purposes of this subtitle, the term ''personal holding company'' means any corporation (other than a corporation described in subsection (c)) if—

(1) Adjusted ordinary gross income requirement

At least 60 percent of its adjusted ordinary gross income (as defined in section 543(b)(2)) for the taxable year is personal holding company income (as defined in section 543(a)), and

(2) Stock ownership requirement

At any time during the last half of the taxable year more than 50 percent in value of its outstanding stock is owned, directly or indirectly, by or for not more than 5 individuals. For purposes of this paragraph, an organization described in section 401(a), 501(c)(17), or 509(a) or a portion of a trust permanently set aside or to be used exclusively for the purposes described in section 642(c) or a corresponding provision of a prior income tax law shall be considered an individual.

(b) Corporations filing consolidated returns

(1) General rule

In the case of an affiliated group of corporations filing or required to file a consolidated return under section 1501 for any taxable year, the adjusted ordinary gross income requirement of subsection (a)(1) of this section shall, except as provided in paragraphs (2) and (3), be applied for such year with respect to the consolidated adjusted ordinary gross income and the consolidated personal holding company income of the affiliated group. No member of such an affiliated group shall be considered to meet such adjusted ordinary gross income requirement unless the affiliated group meets such requirement.

(2) Ineligible affiliated group

Paragraph (1) shall not apply to an affiliated group of corporations if—

(A) any member of the affiliated group of corporations (including the common parent corporation) derived 10 percent or more of its adjusted ordinary gross income for the taxable year from sources outside the affiliated group, and

(B) 80 percent or more of the amount described in subparagraph (A) consists of personal holding company income (as defined in section 543).

For purposes of this paragraph, section 543 shall be applied as if the amount described in subparagraph (A) were the adjusted ordinary gross income of the corporation.

(3) Excluded corporations

Paragraph (1) shall not apply to an affiliated group of corporations if any member of the affiliated group (including the common parent corporation) is a corporation excluded from the definition of personal holding company under subsection (c).

(4) Certain dividend income received by a common parent

In applying paragraph (2) (A) and (B), personal holding company income and adjusted ordinary gross income shall not include dividends received by a common parent corporation from another corporation if—

(A) the common parent corporation owns, directly or indirectly, more than 50 percent of the outstanding voting stock of such other corporation, and

(B) such other corporation is not a personal holding company for the taxable year in which the dividends are paid.

(5) Certain dividend income received from a nonincludible life insurance company

In the case of an affiliated group of corporations filing or required to file a consolidated return under section 1501 for any taxable year, there shall be excluded from consolidated personal holding company income and consolidated adjusted ordinary gross income for purposes of this part dividends received by a member of the affiliated group from a life insurance company taxable under section 801 that is not a member of the affiliated group solely by reason of the application of paragraph (2) of subsection (b) of section 1504.

(c) Exceptions

The term ''personal holding company'' as defined in subsection (a) does not include—

(1) a corporation exempt from tax under subchapter F (sec. 501 and following);

(2) a bank as defined in section 581, or a domestic building and loan association within the meaning of section 7701(a)(19);

(3) a life insurance company;
(4) a surety company;
(5) a foreign corporation,[1]
(6) a lending or finance company if—

(A) 60 percent or more of its ordinary gross income (as defined in section 543(b)(1)) is derived directly from the active and regular conduct of a lending or finance business;

(B) the personal holding company income for the taxable year (computed without regard to income described in subsection (d)(3) and income derived directly from the active and regular conduct of a lending or finance business, and computed by including as personal holding company income the entire amount of the gross income from rents, royalties, produced film rents, and compensation for use of corporate property by shareholders) is not more than 20 percent of the ordinary gross income;

(C) the sum of the deductions which are directly allocable to the active and regular conduct of its lending or finance business equals or exceeds the sum of—

(i) 15 percent of so much of the ordinary gross income derived therefrom as does not exceed $500,000, plus

(ii) 5 percent of so much of the ordinary gross income derived therefrom as exceeds $500,000; and

(D) the loans to a person who is a shareholder in such company during the taxable year by or for whom 10 percent or more in value of its outstanding stock is owned directly or indirectly (including, in the case of an individual, stock owned by members of his family as defined in section 544(a)(2)), outstanding at any time during such year do not exceed $5,000 in principal amount;

(7) A[2] small business investment company which is licensed by the Small Business Administration and operating under the Small Business Investment Act of 1958 (15 U.S.C. 661 and following) and which is actively engaged in the business of providing funds to small business concerns under that Act. This paragraph shall not apply if any shareholder of the small business investment company owns at any time during the taxable year directly or indirectly (including, in the case of an individual, ownership by the members of his family as defined in section 544(a)(2)) a 5 per centum or more proprietary interest in a small business concern to which funds are provided by the investment company or 5 per centum or more in value of the outstanding stock of such concern; and

(8) a corporation which is subject to the jurisdiction of the court in a title 11 or similar case (within the meaning of section 368(a)(3)(A)) unless a major purpose of instituting or continuing such case is the avoidance of the tax imposed by section 541.

(d) Special rules for applying subsection (c)(6)

(1) Lending or finance business defined

(A) In general

Except as provided in subparagraph (B), for purposes of subsection (c)(6), the term ''lending or finance business'' means a business of—

(i) making loans,

(ii) purchasing or discounting accounts receivable, notes, or installment obligations,

(iii) rendering services or making facilities available in connection with activities described in clauses (i) and (ii) carried on by the corporation rendering services or making facilities available, or

(iv) rendering services or making facilities available to another corporation which is engaged in the lending or finance business (within the meaning of this paragraph), if such services or facilities are related to the lending or finance business (within such meaning) of such other corporation and such other corporation and the corporation rendering services or making facilities available are members of the same affiliated group (as defined in section 1504).

(B) Exceptions

For purposes of subparagraph (A), the term ''lending or finance business'' does not include the business of—

(i) making loans, or purchasing or discounting accounts receivable, notes, or installment obligations, if (at the time of the loan, purchase, or discount) the remaining maturity exceeds 144 months; unless—

(I) the loans, notes, or installment obligations are evidenced or secured by contracts of conditional sale, chattel mortgages, or chattel lease agreements arising out of the sale of goods or services in the course of the borrower's or transferor's trade or business, or

(II) the loans, notes, or installment obligations are made or acquired by the taxpayer and meet the requirements of subparagraph (C), or

(ii) making loans evidenced by, or purchasing, certificates of indebtedness issued in a series, under a trust indenture, and in registered form or with interest coupons attached.

For purposes of clause (i), the remaining maturity shall be treated as including any period for which there may be a renewal or extension under the terms of an option exercisable by the borrower.

(C) Indefinite maturity credit transactions

For purposes of subparagraph (B)(i), a loan, note, or installment obligation meets the requirements of this subparagraph if it is made under an agreement—

(i) under which the creditor agrees to make loans or advances (not in excess of an agreed upon maximum amount) from time to time to or for the account of the debtor upon request, and

(ii) under which the debtor may repay the loan or advance in full or in installments.

[1] So in original. The comma probably should be a semicolon.
[2] So in original. Probably should not be capitalized.

(2) Business deductions

For purposes of subsection (c)(6)(C), the deductions which may be taken into account shall include only—

(A) deductions which are allowable only by reason of section 162 or section 404, except there shall not be included any such deduction in respect of compensation for personal services rendered by shareholders (including members of the shareholder's family as described in section 544(a)(2)), and

(B) deductions allowable under section 167, and deductions allowable under section 164 for real property taxes, but in either case only to the extent that the property with respect to which such deductions are allowable is used directly in the active and regular conduct of the lending or finance business.

(3) Income received from certain affiliated corporations

For purposes of subsection (c)(6)(B), in the case of a lending or finance company which meets the requirements of subsection (c)(6)(A), there shall not be treated as personal holding company income the lawful income received from a corporation which meets the requirements of subsection (c)(6) and which is a member of the same affiliated group (as defined in section 1504) of which such company is a member.

(Aug. 16, 1954, ch. 736, 68A Stat. 182; ch. 871, §3, Aug. 12, 1955, 69 Stat. 718; Pub. L. 86–376, §3(a), Sept. 23, 1959, 73 Stat. 700; Pub. L. 87–768, §1, Oct. 9, 1962, 76 Stat. 766; Pub. L. 88–272, title II, §225(b), (c), (k)(1), Feb. 26, 1964, 78 Stat. 79, 93; Pub. L. 89–809, title I, §104(h)(1), Nov. 13, 1966, 80 Stat. 1559; Pub. L. 91–172, title I, §101(j)(16), Dec. 30, 1969, 83 Stat. 528; Pub. L. 93–480, §3(a), Oct. 26, 1974, 88 Stat. 1454; Pub. L. 94–455, title XIX, §1901(a)(76), Oct. 4, 1976, 90 Stat. 1777; Pub. L. 96–589, §5(a), Dec. 24, 1980, 94 Stat. 3405; Pub. L. 97–248, title II, §293(a)–(c), Sept. 3, 1982, 96 Stat. 575; Pub. L. 98–369, div. A, title II, §211(b)(7), July 18, 1984, 98 Stat. 755; Pub. L. 99–514, title XII, §1235(f)(2), Oct. 22, 1986, 100 Stat. 2575; Pub. L. 105–34, title XI, §1122(d)(1), Aug. 5, 1997, 111 Stat. 977; Pub. L. 108–357, title IV, §413(b)(1), Oct. 22, 2004, 118 Stat. 1506.)

REFERENCES IN TEXT

The Small Business Investment Act of 1958, referred to in subsec. (c)(7), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689, as amended, which is classified principally to chapter 14B (§661 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to this Code, see Short Title note set out under section 661 of Title 15 and Tables.

AMENDMENTS

2004—Subsec. (c)(5). Pub. L. 108–357, §413(b)(1)(A), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''a foreign personal holding company as defined in section 552;''.

Subsec. (c)(7) to (10). Pub. L. 108–357, §413(b)(1)(B)–(D), redesignated pars. (8) and (9) as (7) and (8), respectively, inserted ''and'' at end of par. (7), substituted period for ''; and'' at end of par. (8), and struck out former pars. (7) and (10) relating to foreign corporations whose outstanding stock during the last half of the taxable year is owned, directly or indirectly, by nonresident aliens and passive foreign investment companies, respectively.

1997—Subsec. (c)(10). Pub. L. 105–34 substituted ''section 1297'' for ''section 1296''.

1986—Subsec. (c)(10). Pub. L. 99–514 added par. (10).

1984—Subsec. (b)(5). Pub. L. 98–369 substituted ''section 801'' for ''section 802''.

1982—Subsec. (c)(6)(C)(ii). Pub. L. 97–248, §293(a), struck out ''but not $1,000,000'' after ''exceeds $500,000''.

Subsec. (d)(1)(B)(i). Pub. L. 97–248, §293(b), substituted ''144 months'' for ''60 months'' after ''remaining maturity exceeds'', designated existing provisions from ''the loans'' through ''transferor's trade or business, or'' as subcl. (I), and added subcl. (II).

Subsec. (d)(1)(C). Pub. L. 97–248, §293(c), added subpar. (C).

1980—Subsec. (c)(9). Pub. L. 96–589, added par. (9).

1976—Subsec. (a)(2). Pub. L. 94–455, §1901(a)(76)(A), struck out last sentence providing that the preceding sentence shall not apply in the case of an organization or trust organized or created before July 1, 1950, if at all times on or after July 1, 1950, and before the close of the taxable year such organization or trust has owned all of the common stock and at least 80 percent of the total number of shares of all other classes of stock of the corporation.

Subsec. (b)(2). Pub. L. 94–455, §1901(a)(76)(B), struck out ''other than an affiliated group of railroad corporations the common parent of which would be eligible to file a consolidated return under section 141 of the Internal Revenue Act of 1942'' after ''group of corporations''.

Subsec. (c)(2). Pub. L. 94–455, §1901(a)(76)(C), struck out ''without regard to subparagraphs (D) and (E) thereof'' after ''meaning of section 7701(a)(19)''.

Subsec. (c)(8). Pub. L. 94–455, §1901(a)(76)(D), inserted ''(15 U.S.C. 661 and following)'' after ''Small Business Investment Act of 1958''.

1974—Subsec. (b)(5). Pub. L. 93–480 added par. (5).

1969—Subsec. (a)(2). Pub. L. 91–172 substituted ''section 401(a), 501(c)(17), or 509(a)'' for ''section 503(b)'' in the list of sections that contain the description of organizations that may be considered as individuals for the purpose of establishing stock ownership, and struck out provisions which would have kept an organization or trust created before July 1, 1950, from being so designated if it had been denied exemption under section 504 or an unlimited charitable deduction under section 681(c) of this title.

1966—Subsec. (c)(7). Pub. L. 89–809 substituted requirement that the foreign corporation be other than a corporation which has income to which section 543(a)(7) applies for the taxable year for requirement that the foreign corporation's gross income from sources within the United States for the period specified in section 861(a)(2)(B) be less than 50 percent of its total gross income from all sources, and expanded the devices included in methods of indirect ownership to encompass foreign estates, foreign trusts, and foreign partnerships.

1964—Subsec. (a)(1). Pub. L. 88–272, §225(b), substituted ''60 percent of its adjusted ordinary gross income (as defined in section 543(b)(2)) for the taxable year is personal holding company income (as defined in section 543(a))'' for ''80 percent of its gross income for the taxable year is personal holding company income as defined in section 543''.

Subsec. (b). Pub. L. 88–272, §225(k)(1), substituted ''adjusted ordinary gross income'' for ''gross income'', wherever appearing.

Subsec. (c)(2), (6) to (11). Pub. L. 88–272, §225(c)(1), (2), inserted among the exceptions, domestic building and loan associations within section 7701(a)(19) without regard to subpars. (D) and (E) thereof, added par. (6), redesignated former pars. (10) and (11) as (7) and (8), respectively, and omitted former pars. (6) to (9) which related to licensed personal finance companies, lending companies, loan or investment corporations, and finance companies, respectively.

Subsec. (d). Pub. L. 88–272, §225(c)(3), added subsec. (d).

1962—Subsec. (c)(7). Pub. L. 87–768 substituted ''authorized to engage in and actively and regularly en-

gaged in the small loan business (consumer finance business)'' for ''authorized to engage in the small loan business'', inserted provisions excepting from the definition of ''personal holding company'' a lending company that received 80 percent or more of its gross income from lawful income from domestic subsidiary corporations (of which stock possessing at least 80 percent of the voting power of all classes of stock and of which at least 80 percent of each class of the nonvoting stock is owned directly by such lending company), which are themselves excepted under pars. (6), (7), (8), or (9) of this subsection, increased the maximum amount of the loan where no limit is prescribed from $500 to $1,500, and eliminated provisions which required loans to mature in not more than 36 months, and which limited interest, discount and other charges to not more than an amount equal to simple interest at 3 percent per month payable in advance and computed only on unpaid balances.

1959—Subsec. (c)(11). Pub. L. 86–376 added par. (11).

1955—Subsec. (a)(2). Act Aug. 12, 1955, § 3, inserted sentence at end excepting from consideration as ''individuals'' certain charitable foundations created before July 1, 1950.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to taxable years of United States persons beginning after Dec. 31, 1997, and to taxable years of foreign corporations ending with or within such taxable years of United States persons, see section 1124 of Pub. L. 105–34, set out as a note under section 532 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, see section 1235(h) of Pub. L. 99–514, set out as an Effective Date note under section 1291 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title II, § 293(d), Sept. 3, 1982, 96 Stat. 575, provided that:

''(1) SUBSECTION (a).—The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1981.

''(2) SUBSECTIONS (b) AND (c).—The amendments made by subsections (b) and (c) [amending this section] shall apply to taxable years beginning after December 31, 1980.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–589 applicable to bankruptcy cases or similar judicial proceedings commenced after Dec. 31, 1980, with exception permitting the debtor to make the amendment applicable to such cases or judicial proceedings commenced after Sept. 30, 1979, see section 7(d)(1), (f) of Pub. L. 96–589, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93–480, § 3(b), Oct. 26, 1974, 88 Stat. 1454, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1973.''

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 101(k)(2)(B) of Pub. L. 91–172, set out as a note under section 4940 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by section 225(b), (c)(2), (3), (k)(1) of Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, and amendment by section 225(c)(1) of Pub. L. 88–272 applicable to taxable years beginning after Oct. 16, 1962, see section 225(*l*) of Pub. L. 88–272, set out as a note under section 316 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87–768, § 2, Oct. 9, 1962, 76 Stat. 766, provided that: ''The amendment made by the first section of this Act [amending this section] shall apply with respect to taxable years beginning after December 31, 1961.''

EFFECTIVE DATE OF 1959 AMENDMENT

Pub. L. 86–376, § 3(b), Sept. 23, 1959, 73 Stat. 700, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1958.''

EFFECTIVE DATE OF 1955 AMENDMENT

Act Aug. 12, 1955, ch. 871, § 4, 69 Stat. 718, provided that: ''The amendment made by section 3 of this Act [amending this section] shall apply only with respect to taxable years beginning after December 31, 1954.''

STOCK OWNERSHIP REQUIREMENT; ORGANIZATION OR TRUST ORGANIZED OR CREATED BEFORE JULY 1, 1950

Pub. L. 95–600, title VII, § 701(*o*), Nov. 6, 1978, 92 Stat. 2907, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—The last sentence of section 542(a)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to stock ownership requirement) shall not apply in the case of an organization or trust organized or created before July 1, 1950, if at all times on or after July 1, 1950, and before the close of the taxable year such organization or trust has owned all of the common stock and at least 80 percent of the total number of shares of all other classes of stock of the corporation.

''(2) EFFECTIVE DATE.—The provisions of paragraph (1) shall apply with respect to taxable years beginning after December 31, 1976.''

§ 543. Personal holding company income

(a) General rule

For purposes of this subtitle, the term ''personal holding company income'' means the portion of the adjusted ordinary gross income which consists of:

(1) Dividends, etc.

Dividends, interest, royalties (other than mineral, oil, or gas royalties or copyright royalties), and annuities. This paragraph shall not apply to—

(A) interest constituting rent (as defined in subsection (b)(3)),

(B) interest on amounts set aside in a reserve fund under chapter 533 or 535 of title 46, United States Code,

(C) dividends received by a United States shareholder (as defined in section 951(b)) from a controlled foreign corporation (as defined in section 957(a)),

(D) active business computer software royalties (within the meaning of subsection (d)), and

(E) interest received by a broker or dealer (within the meaning of section 3(a)(4) or (5) of the Securities and Exchange Act of 1934) in connection with—

(i) any securities or money market instruments held as property described in section 1221(a)(1),

(ii) margin accounts, or

(iii) any financing for a customer secured by securities or money market instruments.

(2) Rents

The adjusted income from rents; except that such adjusted income shall not be included if—

(A) such adjusted income constitutes 50 percent or more of the adjusted ordinary gross income, and

(B) the sum of—

(i) the dividends paid during the taxable year (determined under section 562),

(ii) the dividends considered as paid on the last day of the taxable year under section 563(d)[1] (as limited by the second sentence of section 563(b)), and

(iii) the consent dividends for the taxable year (determined under section 565),

equals or exceeds the amount, if any, by which the personal holding company income for the taxable year (computed without regard to this paragraph and paragraph (6), and computed by including as personal holding company income copyright royalties and the adjusted income from mineral, oil, and gas royalties) exceeds 10 percent of the ordinary gross income.

(3) Mineral, oil, and gas royalties

The adjusted income from mineral, oil, and gas royalties; except that such adjusted income shall not be included if—

(A) such adjusted income constitutes 50 percent or more of the adjusted ordinary gross income,

(B) the personal holding company income for the taxable year (computed without regard to this paragraph, and computed by including as personal holding company income copyright royalties and the adjusted income from rents) is not more than 10 percent of the ordinary gross income, and

(C) the sum of the deductions which are allowable under section 162 (relating to trade or business expenses) other than—

(i) deductions for compensation for personal services rendered by the shareholders, and

(ii) deductions which are specifically allowable under sections other than section 162,

equals or exceeds 15 percent of the adjusted ordinary gross income.

(4) Copyright royalties

Copyright royalties; except that copyright royalties shall not be included if—

(A) such royalties (exclusive of royalties received for the use of, or right to use, copyrights or interests in copyrights on works created in whole, or in part, by any shareholder) constitute 50 percent or more of the ordinary gross income,

(B) the personal holding company income for the taxable year computed—

(i) without regard to copyright royalties, other than royalties received for the use of, or right to use, copyrights or interests in copyrights in works created in whole, or in part, by any shareholder owning more than 10 percent of the total outstanding capital stock of the corporation,

(ii) without regard to dividends from any corporation in which the taxpayer owns at least 50 percent of all classes of stock entitled to vote and at least 50 percent of the total value of all classes of stock and which corporation meets the requirements of this subparagraph and subparagraphs (A) and (C), and

(iii) by including as personal holding company income the adjusted income from rents and the adjusted income from mineral, oil, and gas royalties,

is not more than 10 percent of the ordinary gross income, and

(C) the sum of the deductions which are properly allocable to such royalties and which are allowable under section 162, other than—

(i) deductions for compensation for personal services rendered by the shareholders,

(ii) deductions for royalties paid or accrued, and

(iii) deductions which are specifically allowable under sections other than section 162,

equals or exceeds 25 percent of the amount by which the ordinary gross income exceeds the sum of the royalties paid or accrued and the amounts allowable as deductions under section 167 (relating to depreciation) with respect to copyright royalties.

For purposes of this subsection, the term ''copyright royalties'' means compensation, however designated, for the use of, or the right to use, copyrights in works protected by copyright issued under title 17 of the United States Code and to which copyright protection is also extended by the laws of any country other than the United States of America by virtue of any international treaty, convention, or agreement, or interests in any such copyrighted works, and includes payments from any person for performing rights in any such copyrighted work and payments (other than produced film rents as defined in paragraph (5)(B)) received for the use of, or right to use, films. For purposes of this paragraph, the term ''shareholder'' shall include any person who

[1] See References in Text note below.

owns stock within the meaning of section 544. This paragraph shall not apply to active business computer software royalties.

(5) Produced film rents

(A) Produced film rents; except that such rents shall not be included if such rents constitute 50 percent or more of the ordinary gross income.

(B) For purposes of this section, the term ''produced film rents'' means payments received with respect to an interest in a film for the use of, or right to use, such film, but only to the extent that such interest was acquired before substantial completion of production of such film. In the case of a producer who actively participates in the production of the film, such term includes an interest in the proceeds or profits from the film, but only to the extent such interest is attributable to such active participation.

(6) Use of corporate property by shareholder

(A) Amounts received as compensation (however designated and from whomever received) for the use of, or the right to use, tangible property of the corporation in any case where, at any time during the taxable year, 25 percent or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for an individual entitled to the use of the property (whether such right is obtained directly from the corporation or by means of a sublease or other arrangement).

(B) Subparagraph (A) shall apply only to a corporation which has personal holding company income in excess of 10 percent of its ordinary gross income.

(C) For purposes of the limitation in subparagraph (B), personal holding company income shall be computed—

(i) without regard to subparagraph (A) or paragraph (2),

(ii) by excluding amounts received as compensation for the use of (or right to use) intangible property (other than mineral, oil, or gas royalties or copyright royalties) if a substantial part of the tangible property used in connection with such intangible property is owned by the corporation and all such tangible and intangible property is used in the active conduct of a trade or business by an individual or individuals described in subparagraph (A), and

(iii) by including copyright royalties and adjusted income from mineral, oil, and gas royalties.

(7) Personal service contracts

(A) Amounts received under a contract under which the corporation is to furnish personal services; if some person other than the corporation has the right to designate (by name or by description) the individual who is to perform the services, or if the individual who is to perform the services is designated (by name or by description) in the contract; and

(B) amounts received from the sale or other disposition of such a contract.

This paragraph shall apply with respect to amounts received for services under a particular contract only if at some time during the taxable year 25 percent or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for the individual who has performed, is to perform, or may be designated (by name or by description) as the one to perform, such services.

(8) Estates and trusts

Amounts includible in computing the taxable income of the corporation under part I of subchapter J (sec. 641 and following, relating to estates, trusts, and beneficiaries).

(b) Definitions

For purposes of this part—

(1) Ordinary gross income

The term ''ordinary gross income'' means the gross income determined by excluding—

(A) all gains from the sale or other disposition of capital assets, and

(B) all gains (other than those referred to in subparagraph (A)) from the sale or other disposition of property described in section 1231(b).

(2) Adjusted ordinary gross income

The term ''adjusted ordinary gross income'' means the ordinary gross income adjusted as follows:

(A) Rents

From the gross income from rents (as defined in the second sentence of paragraph (3) of this subsection) subtract the amount allowable as deductions for—

(i) exhaustion, wear and tear, obsolescence, and amortization of property other than tangible personal property which is not customarily retained by any one lessee for more than three years,

(ii) property taxes,

(iii) interest, and

(iv) rent,

to the extent allocable, under regulations prescribed by the Secretary, to such gross income from rents. The amount subtracted under this subparagraph shall not exceed such gross income from rents.

(B) Mineral royalties, etc.

From the gross income from mineral, oil, and gas royalties described in paragraph (4), and from the gross income from working interests in an oil or gas well, subtract the amount allowable as deductions for—

(i) exhaustion, wear and tear, obsolescence, amortization, and depletion,

(ii) property and severance taxes,

(iii) interest, and

(iv) rent,

to the extent allocable, under regulations prescribed by the Secretary, to such gross income from royalties or such gross income from working interests in oil or gas wells. The amount subtracted under this subparagraph with respect to royalties shall not exceed the gross income from such royalties, and the amount subtracted under this subparagraph with respect to working interests shall not exceed the gross income from such working interests.

(C) Interest

There shall be excluded—

(i) interest received on a direct obligation of the United States held for sale to customers in the ordinary course of trade or business by a regular dealer who is making a primary market in such obligations, and

(ii) interest on a condemnation award, a judgment, and a tax refund.

(D) Certain excluded rents

From the gross income consisting of compensation described in subparagraph (D) of paragraph (3) subtract the amount allowable as deductions for the items described in clauses (i), (ii), (iii), and (iv) of subparagraph (A) to the extent allocable, under regulations prescribed by the Secretary, to such gross income. The amount subtracted under this subparagraph shall not exceed such gross income.

(3) Adjusted income from rents

The term ''adjusted income from rents'' means the gross income from rents, reduced by the amount subtracted under paragraph (2)(A) of this subsection. For purposes of the preceding sentence, the term ''rents'' means compensation, however designated, for the use of, or right to use, property, and the interest on debts owed to the corporation, to the extent such debts represent the price for which real property held primarily for sale to customers in the ordinary course of its trade or business was sold or exchanged by the corporation; but such term does not include—

(A) amounts constituting personal holding company income under subsection (a)(6),

(B) copyright royalties (as defined in subsection (a)(4)),

(C) produced film rents (as defined in subsection (a)(5)(B)),

(D) compensation, however designated, for the use of, or the right to use, any tangible personal property manufactured or produced by the taxpayer, if during the taxable year the taxpayer is engaged in substantial manufacturing or production of tangible personal property of the same type, or

(E) active business computer software royalties (as defined in subsection (d)).

(4) Adjusted income from mineral, oil, and gas royalties

The term ''adjusted income from mineral, oil, and gas royalties'' means the gross income from mineral, oil, and gas royalties (including production payments and overriding royalties), reduced by the amount subtracted under paragraph (2)(B) of this subsection in respect of such royalties.

(c) Gross income of insurance companies other than life insurance companies

In the case of an insurance company other than a life insurance company, the term ''gross income'' as used in this part means the gross income, as defined in section 832(b)(1), increased by the amount of losses incurred, as defined in section 832(b)(5), and the amount of expenses incurred, as defined in section 832(b)(6), and decreased by the amount deductible under section 832(c)(7) (relating to tax-free interest).

(d) Active business computer software royalties

(1) In general

For purposes of this section, the term ''active business computer software royalties'' means any royalties—

(A) received by any corporation during the taxable year in connection with the licensing of computer software, and

(B) with respect to which the requirements of paragraphs (2), (3), (4), and (5) are met.

(2) Royalties must be received by corporation actively engaged in computer software business

The requirements of this paragraph are met if the royalties described in paragraph (1)—

(A) are received by a corporation engaged in the active conduct of the trade or business of developing, manufacturing, or producing computer software, and

(B) are attributable to computer software which—

(i) is developed, manufactured, or produced by such corporation (or its predecessor) in connection with the trade or business described in subparagraph (A), or

(ii) is directly related to such trade or business.

(3) Royalties must constitute at least 50 percent of income

The requirements of this paragraph are met if the royalties described in paragraph (1) constitute at least 50 percent of the ordinary gross income of the corporation for the taxable year.

(4) Deductions under sections 162 and 174 relating to royalties must equal or exceed 25 percent of ordinary gross income

(A) In general

The requirements of this paragraph are met if—

(i) the sum of the deductions allowable to the corporation under sections 162, 174, and 195 for the taxable year which are properly allocable to the trade or business described in paragraph (2) equals or exceeds 25 percent of the ordinary gross income of such corporation for such taxable year, or

(ii) the average of such deductions for the 5-taxable year period ending with such taxable year equals or exceeds 25 percent of the average ordinary gross income of such corporation for such period.

If a corporation has not been in existence during the 5-taxable year period described in clause (ii), then the period of existence of such corporation shall be substituted for such 5-taxable year period.

(B) Deductions allowable under section 162

For purposes of subparagraph (A), a deduction shall not be treated as allowable under section 162 if it is specifically allowable under another section.

(C) Limitation on allowable deductions

For purposes of subparagraph (A), no deduction shall be taken into account with re-

spect to compensation for personal services rendered by the 5 individual shareholders holding the largest percentage (by value) of the outstanding stock of the corporation. For purposes of the preceding sentence—

(i) individuals holding less than 5 percent (by value) of the stock of such corporation shall not be taken into account, and

(ii) stock deemed to be owned by a shareholder solely by attribution from a partner under section 544(a)(2) shall be disregarded.

(5) Dividends must equal or exceed excess of personal holding company income over 10 percent of ordinary gross income

(A) In general

The requirements of this paragraph are met if the sum of—

(i) the dividends paid during the taxable year (determined under section 562),

(ii) the dividends considered as paid on the last day of the taxable year under section 563(d)[1] (as limited by the second sentence of section 563(b)), and

(iii) the consent dividends for the taxable year (determined under section 565),

equals or exceeds the amount, if any, by which the personal holding company income for the taxable year exceeds 10 percent of the ordinary gross income of such corporation for such taxable year.

(B) Computation of personal holding company income

For purposes of this paragraph, personal holding company income shall be computed—

(i) without regard to amounts described in subsection (a)(1)(C),

(ii) without regard to interest income during any taxable year—

(I) which is in the 5-taxable year period beginning with the later of the 1st taxable year of the corporation or the 1st taxable year in which the corporation conducted the trade or business described in paragraph (2)(A), and

(II) during which the corporation meets the requirements of paragraphs (2), (3), and (4), and

(iii) by including adjusted income from rents and adjusted income from mineral, oil, and gas royalties (within the meaning of paragraphs (2) and (3) of subsection (a)).

(6) Special rules for affiliated group members

(A) In general

In any case in which—

(i) the taxpayer receives royalties in connection with the licensing of computer software, and

(ii) another corporation which is a member of the same affiliated group as the taxpayer meets the requirements of paragraphs (2), (3), (4), and (5) with respect to such computer software,

the taxpayer shall be treated as having met such requirements.

(B) Affiliated group

For purposes of this paragraph, the term ''affiliated group'' has the meaning given such term by section 1504(a).

(Aug. 16, 1954, ch. 736, 68A Stat. 186; Pub. L. 86–435, §1(a), (b), Apr. 22, 1960, 74 Stat. 77; Pub. L. 87–403, §3(c), Feb. 2, 1962, 76 Stat. 6; Pub. L. 88–272, title II, §225(d), (k)(2), Feb. 26, 1964, 78 Stat. 81, 93; Pub. L. 88–484, §3(a), Aug. 22, 1964, 78 Stat. 598; Pub. L. 89–809, title I, §104(h)(2), title II, §206(a), (b), Nov. 13, 1966, 80 Stat. 1559, 1578, 1579; Pub. L. 94–455, title II, §211(a), title XIX, §§1901(b)(32)(D), 1906(b)(13)(A), title XXI, §2106(a), Oct. 4, 1976, 90 Stat. 1544, 1800, 1834, 1902; Pub. L. 94–553, §105(d), Oct. 19, 1976, 90 Stat. 2599; Pub. L. 97–248, title II, §222(e)(6), Sept. 3, 1982, 96 Stat. 480; Pub. L. 98–369, div. A, title VII, §712(i)(3), July 18, 1984, 98 Stat. 948; Pub. L. 99–514, title VI, §645(a)(1), (2), (4), title XVIII, §1899A(18), Oct. 22, 1986, 100 Stat. 2289, 2291, 2959; Pub. L. 100–647, title I, §1010(f)(5), title VI, §6279(a), Nov. 10, 1988, 102 Stat. 3454, 3754; Pub. L. 104–188, title I, §1704(t)(6), Aug. 20, 1996, 110 Stat. 1887; Pub. L. 105–206, title VI, §6023(9), July 22, 1998, 112 Stat. 825; Pub. L. 106–170, title V, §532(c)(2)(E), Dec. 17, 1999, 113 Stat. 1930; Pub. L. 108–357, title IV, §413(c)(8), Oct. 22, 2004, 118 Stat. 1507; Pub. L. 109–304, §17(e)(3), Oct. 6, 2006, 120 Stat. 1708; Pub. L. 113–295, div. B, title II, §207(a), Dec. 19, 2014, 128 Stat. 4072.)

REFERENCES IN TEXT

Section 3(a)(4) and (5) of the Securities and Exchange Act of 1934, referred to in subsec. (a)(1)(E), is classified to section 78c(a)(4) and (5) of Title 15, Commerce and Trade.

Section 563(d), referred to in subsecs. (a)(2)(B)(ii) and (d)(5)(A)(ii), was redesignated section 563(c) by Pub. L. 108–357, title IV, §413(c)(10)(B), Oct. 22, 2004, 118 Stat. 1507.

AMENDMENTS

2014—Subsec. (a)(1)(C) to (E). Pub. L. 113–295 added subpar. (C) and redesignated former subpars. (C) and (D) as (D) and (E), respectively.

2006—Subsec. (a)(1)(B). Pub. L. 109–304 substituted ''chapter 533 or 535 of title 46, United States Code'' for ''section 511 or 607 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1161 or 1177)''.

2004—Subsec. (b)(1). Pub. L. 108–357 inserted ''and'' at end of subpar. (A), substituted a period for '', and'' at end of subpar. (B), and struck out subpar. (C) which read as follows: ''in the case of a foreign corporation all of the outstanding stock of which during the last half of the taxable year is owned by nonresident alien individuals (whether directly or indirectly through foreign estates, foreign trusts, foreign partnerships, or other foreign corporations), all items of income which would, but for this subparagraph, constitute personal holding company income under any paragraph of subsection (a) other than paragraph (7) thereof:''.

1999—Subsec. (a)(1)(D)(i). Pub. L. 106–170 substituted ''1221(a)(1)'' for ''1221(1)''.

1998—Subsec. (d)(5)(A)(ii). Pub. L. 105–206 substituted ''section 563(d)'' for ''section 563(c)''.

1996—Subsec. (a)(2)(B)(ii). Pub. L. 104–188 substituted ''563(d)'' for ''563(c)''.

1988—Subsec. (a)(1)(D). Pub. L. 100–647, §6279(a), added subpar. (D).

Subsec. (c). Pub. L. 100–647, §1010(f)(5), substituted ''other than life insurance companies'' for ''other than life or mutual'' in heading and ''other than a life insurance company'' for ''other than life or mutual'' in text.

1986—Subsec. (a)(1)(B). Pub. L. 99–514, §1899A(18), substituted ''46 U.S.C. App.'' for ''46 U.S.C.''.

Subsec. (a)(1)(C). Pub. L. 99–514, § 645(a)(1), added subpar. (C).

Subsec. (a)(4). Pub. L. 99–514, § 645(a)(4)(A), inserted ''This paragraph shall not apply to active business computer software royalties.''

Subsec. (b)(3)(E). Pub. L. 99–514, § 645(a)(4)(B), added subpar. (E).

Subsec. (d). Pub. L. 99–514, § 645(a)(2), added subsec. (d).

1984—Subsec. (a)(1)(C). Pub. L. 98–369 struck out subpar. (C) providing for nonapplication of par. (1) to dividends to which section 302(b)(4) would apply if the corporation were an individual.

1982—(a)(1)(C). Pub. L. 97–248 added subpar. (C).

1976—Subsec. (a)(1). Pub. L. 94–455, § 1901(b)(32)(D), inserted in subpar. (B) ''(46 U.S.C. 1161 or 1177)'' after ''Merchant Marine Act, 1936'', and struck out subpar. (C) relating to a dividend distribution of divested stock.

Subsec. (a)(4). Pub. L. 94–553 struck out ''(other than by reason of section 2 or 6 thereof)'' after ''title 17 of the United States Code''.

Subsec. (a)(5)(B). Pub. L. 94–455, § 211(a), inserted ''In the case of a producer who actually participates in the production of the film, such term includes an interest in the proceeds or profits from the film, but only to the extent such interest is attributable to such active participation''.

Subsec. (a)(6). Pub. L. 94–455, § 2106(a), redesignated existing provisions as subpars. (A), (B), and (C) and, as redesignated, inserted in subpar. (A) ''tangible'' after ''right to use'' and in subpar. (C) inserted exclusions from income embodied in cl. (ii).

Subsec. (b)(2)(A), (B), (D). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

1966—Subsec. (a)(2). Pub. L. 89–809, § 206(b)(1), struck out provision that royalties received for the use of, or for the privilege of using, a patent, invention, model, or design, secret formula, process, or other similar property right be treated as rent if such property right is also used by the corporation receiving such royalties in the manufacture or production of tangible personal property held for lease to customers and if the amount constituting rent from such leases to customers meets the requirement of subparagraph (A).

Subsec. (b)(1)(C). Pub. L. 89–809, § 104(h)(2), added subpar. (C).

Subsec. (b)(2)(D). Pub. L. 89–809, § 206(b)(2), added subpar. (D).

Subsec. (b)(3). Pub. L. 89–809, § 206(a), struck out ''amounts constituting personal holding company income under subsection (a)(6), nor copyright royalties (as defined in subsection (a)(4)), nor produced film rents (as defined in subsection (a)(5)(B)).'' after ''but does not include'', and added subpars. (A) to (D).

1964—Subsec. (a). Pub. L. 88–272, § 225(d), amended subsec. (a) generally, and among other changes, substituted ''adjusted ordinary gross income'' for ''gross income'', provided, relative to rental income, that in addition to the 50-percent test of par. (2)(A), now applied on the basis of adjusted income from rents and adjusted ordinary gross income, a second test for exclusion shall be whether the sum on the dividends paid during the taxable year, the dividends paid on the last day of the year, and the consent dividends for the taxable year, equals or exceeds the amount by which the personal holding company income for the year exceeds 10 percent of the ordinary gross income, relative to mineral, oil, and gas royalties, that in addition to the 50-percent test of par. (3)(A), now applied on the basis of adjusted ordinary gross income, and the 15-percent test of par. (3)(C), from which test have been excluded deductions ''specifically allowable under sections other than section 162'' and is also now applied on the basis of adjusted gross income, the royalties shall be excluded if the personal holding company income for the taxable year is not more than 10 percent of the ordinary gross income, relative to copyright royalties, retained the 50-percent test as in par. (4)(A), making it applicable to ordinary gross income, included in the computation of the income for the taxable year the adjusted income from rents and the adjusted income from mineral, oil, and gas royalties, excluded from the sum of deductions allocable to royalties, deductions specifically allowable under sections other than 162, and changed the requirement that deductions constitute 50 percent or more of gross income to provide that they must equal 25 percent of ordinary gross income reduced by royalties paid and by depreciation deductions with respect to copyrights, relative to produced film rents, that they be treated on their own basis and not as rentals, and defined ''produced film rents'', relative to use of corporation property by shareholders, that personal holding company income includes copyright royalties and the adjusted income from mineral, oil, and gas royalties, eliminated gains from the sale or other disposition of any interest in an estate or trust, from the sale or exchange of stock or securities, and from futures transactions in any commodity, and also definition of ''rents''. See subsec. (b)(3).

Subsec. (a)(2). Pub. L. 88–484 inserted sentence requiring royalties received for the use of, or for the privilege of using, a patent, invention, model, or design (whether or not patented), secret formula or process, or any other similar property right to be treated as rent, if such property right is also used by the corporation receiving such royalties in the manufacture or production of tangible personal property held for lease to customers, and if the amount (computed without regard to this sentence) constituting rent from such leases to customers meets the requirements of subparagraph (A).

Subsec. (b). Pub. L. 88–272, § 225(d), added subsec. (b). Former subsec. (b), which provided that gross income and personal holding company income determined with respect to transactions relating to gains from stock and security transactions, and with respect to transactions relating to gains from commodity transactions, should include only the excess of gains over losses from such transactions, was struck out.

Subsec. (d). Pub. L. 88–272, § 225(k)(2), struck out subsec. (d) which related to special adjustment on disposition of antitrust stock received as a dividend.

1962—Subsec. (a)(1). Pub. L. 87–403 prescribed conditions making inapplicable the provisions of the paragraph to dividend distribution of divested stock.

Subsec. (d). Pub. L. 87–403 added subsec. (d).

1960—Subsec. (a)(1). Pub. L. 86–435, § 1(b)(1), excluded copyright royalties.

Subsec. (a)(6). Pub. L. 86–435, § 1(b)(2), inserted sentence providing that copyright royalties constitute personal holding company income.

Subsec. (a)(9). Pub. L. 86–435, § 1(a), added par. (9).

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113–295, div. B, title II, § 207(b), Dec. 19, 2014, 128 Stat. 4072, provided that: ''The amendments made by this Act [probably means this section, section 207 of title II of div. B of Pub. L. 113–295, which amended this section] shall apply to taxable years ending on or after the date of the enactment of this Act [Dec. 19, 2014].''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1010(f)(5) of Pub. L. 100–647 effective, except as otherwise provided, as if included in

the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title VI, § 6279(b), Nov. 10, 1988, 102 Stat. 3754, provided that: ''The amendments made by this section [amending this section] shall apply to interest received after the date of the enactment of this Act [Nov. 10, 1988], in taxable years ending after such date.''

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title VI, § 645(e), Oct. 22, 1986, 100 Stat. 2292, provided that: ''The amendments made by subsection (a) [amending this section and section 553 of this title] shall apply to royalties received before, on, and after December 31, 1986.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to distributions after Aug. 31, 1982, with exceptions for certain partial liquidations, see section 222(f) of Pub. L. 97–248, set out as a note under section 302 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–553 effective Jan. 1, 1978, see section 102 of Pub. L. 94–553, set out as an Effective Date note preceding section 101 of Title 17, Copyrights.

Pub. L. 94–455, title II, § 211(b), Oct. 4, 1976, 90 Stat. 1545, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years ending on or after December 31, 1975.''

Amendment by section 1901(b)(32)(D) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Pub. L. 94–455, title XXI, § 2106(b), Oct. 4, 1976, 90 Stat. 1903, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1976.''

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by section 104(h)(2) of Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

Pub. L. 89–809, title II, § 206(c), Nov. 13, 1966, 80 Stat. 1579, provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Nov. 13, 1966]. Such amendments shall also apply, at the election of the taxpayer (made at such time and in such manner as the Secretary or his delegate may prescribe), to taxable years beginning on or before such date and ending after December 31, 1965.''

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–484, § 3(b), Aug. 22, 1964, 78 Stat. 598, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1963.''

Amendment by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 225(*l*) of Pub. L. 88–272, set out as a note under section 316 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–403 applicable only with respect to distributions made after Feb. 2, 1962, see section 3(g) of Pub. L. 87–403, set out as a note under section 312 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Pub. L. 86–435, § 2, Apr. 22, 1960, 74 Stat. 78, provided that: ''The amendments made by the first section of this Act [amending this section and sections 544 and 553 of this title] shall apply only with respect to taxable years beginning after December 31, 1959.''

TREATMENT OF CERTAIN BANK HOLDING COMPANIES

Pub. L. 100–647, title VI, § 6280, Nov. 10, 1988, 102 Stat. 3754, provided that:

''(a) GENERAL RULE.—For purposes of subtitle A of the 1986 Code, the term 'personal holding company income' shall not include any dividend received by a qualified bank holding company from a 25-percent owned bank during any taxable year ending in 1989 or 1990.

''(b) $3,000,000 LIMITATION.—The aggregate amount excluded from the personal holding company income of any qualified bank holding company under subsection (a) for the taxable year shall not exceed $3,000,000.

''(c) QUALIFIED BANK HOLDING COMPANY.—For purposes of this section, the term 'qualified bank holding company' means any bank holding company (as defined in section 2(a) of the Bank Holding Company Act of 1956 [12 U.S.C. 1841(a)]) if 80 percent or more (by value) of the assets of such company at all times during the taxable year consist of stock in 1 or more 25-percent owned banks.

''(d) 25-PERCENT OWNED BANK.—For purposes of this section, the term '25-percent owned bank' means any bank (as defined in section 581 of the 1986 Code) if at least 25 percent of the stock of such bank (by vote and value) is owned by the bank holding company.''

SPECIAL RULES FOR BROKER-DEALERS, ROYALTIES RECEIVED BY QUALIFIED TAXPAYER, AND TREATMENT OF ACTIVE BUSINESS COMPUTER ROYALTIES FOR S CORPORATION PURPOSES

Pub. L. 99–514, title VI, § 645(b)–(d), Oct. 22, 1986, 100 Stat. 2292, provided that:

''(b) SPECIAL RULES FOR BROKER-DEALERS.—In the case of a broker-dealer which is part of an affiliated group which files a consolidated Federal income tax return, the common parent of which was incorporated in Nevada on January 27, 1972, the personal holding company income (within the meaning of section 543 of the Internal Revenue Code of 1986) of such broker-dealer, shall not include any interest received after the date of the enactment of this Act [Oct. 22, 1986] with respect to—

''(1) any securities or money market instruments held as inventory,

''(2) margin accounts, or

''(3) any financing for a customer secured by securities or money market instruments.

''(c) SPECIAL RULE FOR ROYALTIES RECEIVED BY QUALIFIED TAXPAYER.—

''(1) IN GENERAL.—Any qualified royalty received or accrued in taxable years beginning after December 31, 1981, by a qualified taxpayer shall be treated in the same manner as a royalty with respect to software is treated under the amendments made by this section [amending this section and section 553 of this title].

''(2) QUALIFIED TAXPAYER.—For purposes of this subsection, a qualified taxpayer is any taxpayer incorporated on September 7, 1978, which is engaged in the trade or business of manufacturing dolls and accessories.

''(3) QUALIFIED ROYALTY.—For purposes of this subsection, the term 'qualified royalty' means any royalty arising from an agreement entered into in 1982 which permits the licensee to manufacture and sell dolls and accessories.

''(d) SPECIAL RULE FOR TREATMENT OF ACTIVE BUSINESS COMPUTER ROYALTIES FOR S CORPORATION PURPOSES.—In the case of a taxpayer which was incorporated on May 3, 1977, in California and which elected to be taxed as an S corporation for its taxable year ending on December 31, 1985, any active business computer

royalties (within the meaning of section 543(d) of the Internal Revenue Code of 1986 as added by this Act) which are received by the taxpayer in taxable years beginning after December 31, 1984, shall not be treated as passive investment income (within the meaning of section 1362(d)(3)(D) [now section 1362(d)(3)(C)]) for purposes of subchapter S of chapter 1 of such Code.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 544. Rules for determining stock ownership

(a) Constructive ownership

For purposes of determining whether a corporation is a personal holding company, insofar as such determination is based on stock ownership under section 542(a)(2), section 543(a)(7), section 543(a)(6), or section 543(a)(4)—

(1) Stock not owned by individual

Stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by its shareholders, partners, or beneficiaries.

(2) Family and partnership ownership

An individual shall be considered as owning the stock owned, directly or indirectly, by or for his family or by or for his partner. For purposes of this paragraph, the family of an individual includes only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

(3) Options

If any person has an option to acquire stock, such stock shall be considered as owned by such person. For purposes of this paragraph, an option to acquire such an option, and each one of a series of such options, shall be considered as an option to acquire such stock.

(4) Application of family-partnership and option rules

Paragraphs (2) and (3) shall be applied—

(A) for purposes of the stock ownership requirement provided in section 542(a)(2), if, but only if, the effect is to make the corporation a personal holding company;

(B) for purposes of section 543(a)(7) (relating to personal service contracts), of section 543(a)(6) (relating to use of property by shareholders), or of section 543(a)(4) (relating to copyright royalties), if, but only if, the effect is to make the amounts therein referred to includible under such paragraph as personal holding company income.

(5) Constructive ownership as actual ownership

Stock constructively owned by a person by reason of the application of paragraph (1) or (3), shall, for purposes of applying paragraph (1) or (2), be treated as actually owned by such person; but stock constructively owned by an individual by reason of the application of paragraph (2) shall not be treated as owned by him for purposes of again applying such paragraph in order to make another the constructive owner of such stock.

(6) Option rule in lieu of family and partnership rule

If stock may be considered as owned by an individual under either paragraph (2) or (3) it shall be considered as owned by him under paragraph (3).

(b) Convertible securities

Outstanding securities convertible into stock (whether or not convertible during the taxable year) shall be considered as outstanding stock—

(1) for purposes of the stock ownership requirement provided in section 542(a)(2), but only if the effect of the inclusion of all such securities is to make the corporation a personal holding company;

(2) for purposes of section 543(a)(7) (relating to personal service contracts), but only if the effect of the inclusion of all such securities is to make the amounts therein referred to includible under such paragraph as personal holding company income;

(3) for purposes of section 543(a)(6) (relating to the use of property by shareholders), but only if the effect of the inclusion of all such securities is to make the amounts therein referred to includible under such paragraph as personal holding company income; and

(4) for purposes of section 543(a)(4) (relating to copyright royalties), but only if the effect of the inclusion of all such securities is to make the amounts therein referred to includible under such paragraph as personal holding company income.

The requirement in paragraphs (1), (2), (3), and (4) that all convertible securities must be included if any are to be included shall be subject to the exception that, where some of the outstanding securities are convertible only after a later date than in the case of others, the class having the earlier conversion date may be included although the others are not included, but no convertible securities shall be included unless all outstanding securities having a prior conversion date are also included.

(Aug. 16, 1954, ch. 736, 68A Stat. 188; Pub. L. 86–435, § 1(c), (d), Apr. 22, 1960, 74 Stat. 78; Pub. L. 88–272, title II, § 225(k)(3), Feb. 26, 1964, 78 Stat. 93.)

AMENDMENTS

1964—Pub. L. 88–272 substituted ''section 543(a)(7)'' for ''section 543(a)(5)'', and ''section 543(a)(4)'' for ''section 543(a)(9),'' wherever appearing.

1960—Subsec. (a). Pub. L. 86–435, § 1(c)(1), inserted reference to section 543(a)(9) in introductory provisions.

Subsec. (a)(4)(B). Pub. L. 86–435, § 1(c)(2), included reference to section 543(a)(9).

Subsec. (b). Pub. L. 86–435, § 1(d), added par. (4), and inserted reference to par. (4) in last sentence.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 225(*l*)(1) of Pub. L. 88–272 set out as a note under section 316 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–435 applicable only with respect to taxable years beginning after Dec. 31, 1959, see section 2 of Pub. L. 86–435, set out as a note under section 543 of this title.

§ 545. Undistributed personal holding company income

(a) Definition

For purposes of this part, the term ''undistributed personal holding company income'' means the taxable income of a personal holding company adjusted in the manner provided in subsections (b), (c), and (d), minus the dividends paid deduction as defined in section 561. In the case of a personal holding company which is a foreign corporation, not more than 10 percent in value of the outstanding stock of which is owned (within the meaning of section 958(a)) during the last half of the taxable year by United States persons, the term ''undistributed personal holding company income'' means the amount determined by multiplying the undistributed personal holding company income (determined without regard to this sentence) by the percentage in value of its outstanding stock which is the greatest percentage in value of its outstanding stock so owned by United States persons on any one day during such period.

(b) Adjustments to taxable income

For the purposes of subsection (a), the taxable income shall be adjusted as follows:

(1) Taxes

There shall be allowed as a deduction Federal income and excess profits taxes and income, war profits and excess profits taxes of foreign countries and possessions of the United States (to the extent not allowable as a deduction under section 275(a)(4)), accrued during the taxable year or deemed to be paid by a domestic corporation under section 960 for the taxable year, but not including the accumulated earnings tax imposed by section 531 or the personal holding company tax imposed by section 541.

(2) Charitable contributions

The deduction for charitable contributions provided under section 170 shall be allowed, but in computing such deduction the limitations in section 170(b)(1)(A), (B), (D), and (E) shall apply, and section 170(b)(2) and (d)(1) shall not apply. For purposes of this paragraph, the term ''contribution base'' when used in section 170(b)(1) means the taxable income computed with the adjustments (other than the 10-percent limitation) provided in section 170(b)(2) and (d)(1) and without deduction of the amount disallowed under paragraph (6) of this subsection.

(3) Special deductions disallowed

The special deductions for corporations provided in part VIII (except section 248) of subchapter B (section 241 and following, relating to the deduction for dividends received by corporations, etc.) shall not be allowed.

(4) Net operating loss

The net operating loss deduction provided in section 172 shall not be allowed, but there shall be allowed as a deduction the amount of the net operating loss (as defined in section 172(c)) for the preceding taxable year computed without the deductions provided in part VIII (except section 248) of subchapter B.

(5) Net capital gains

There shall be allowed as a deduction the net capital gain for the taxable year, minus the taxes imposed by this subtitle attributable to such net capital gain. The taxes attributable to such net capital gain shall be an amount equal to the difference between—

(A) the taxes imposed by this subtitle (except the tax imposed by this part) for such year, and

(B) such taxes computed for such year without including such excess in taxable income.

(6) Expenses and depreciation applicable to property of the taxpayer

The aggregate of the deductions allowed under section 162 (relating to trade or business expenses) and section 167 (relating to depreciation), which are allocable to the operation and maintenance of property owned or operated by the corporation, shall be allowed only in an amount equal to the rent or other compensation received for the use of, or the right to use, the property, unless it is established (under regulations prescribed by the Secretary) to the satisfaction of the Secretary—

(A) that the rent or other compensation received was the highest obtainable, or, if none was received, that none was obtainable;

(B) that the property was held in the course of a business carried on bona fide for profit; and

(C) either that there was reasonable expectation that the operation of the property would result in a profit, or that the property was necessary to the conduct of the business.

(7) Special rule for capital gains and losses of foreign corporations

In the case of a foreign corporation, paragraph (5) shall be applied by taking into account only gains and losses which are effectively connected with the conduct of a trade or business within the United States and are not exempt from tax under treaty.

(c) Certain foreign corporations

In the case of a foreign corporation all of the outstanding stock of which during the last half of the taxable year is owned by nonresident alien individuals (whether directly or indirectly through foreign estates, foreign trusts, foreign partnerships, or other foreign corporations), the taxable income for purposes of subsection (a) shall be the income which constitutes personal holding company income under section 543(a)(7), reduced by the deductions attributable to such income, and adjusted, with respect to such income, in the manner provided in subsection (b).

(Aug. 16, 1954, ch. 736, 68A Stat. 189; Pub. L. 85–866, title I, § 32(a), (b), Sept. 2, 1958, 72 Stat. 1631; Pub. L. 87–403, § 3(d), Feb. 2, 1962, 76 Stat. 7; Pub. L. 87–834, § 9(d)(2), Oct. 16, 1962, 76 Stat. 1001; Pub. L. 88–272, title II, §§ 207(b)(5), 209(c)(2),

225(i)(1), (2), Feb. 26, 1964, 78 Stat. 42, 46, 90; Pub. L. 89–719, title I, §101(b)(2), Nov. 2, 1966, 80 Stat. 1132; Pub. L. 89–809, title I, §104(h)(3), Nov. 13, 1966, 80 Stat. 1560; Pub. L. 91–172, title II, §201(a)(2)(B), Dec. 30, 1969, 83 Stat. 558; Pub. L. 94–455, title X, §1033(b)(4), title XIX, §§1901(a)(77), (b)(20)(B), (32)(E), (33)(D), 1906(b)(13)(A), 1951(b)(9)(A), Oct. 4, 1976, 90 Stat. 1628, 1777, 1797, 1800, 1801, 1834, 1839; Pub. L. 97–448, title I, §102(m)(2), Jan. 12, 1983, 96 Stat. 2374; Pub. L. 99–514, title XII, §1225(b), Oct. 22, 1986, 100 Stat. 2559; Pub. L. 101–508, title XI, §11801(a)(24), (c)(10)(B), Nov. 5, 1990, 104 Stat. 1388–521, 1388–527; Pub. L. 109–280, title XII, §1206(b)(2), Aug. 17, 2006, 120 Stat. 1070; Pub. L. 113–295, div. A, title II, §221(a)(64), Dec. 19, 2014, 128 Stat. 4048; Pub. L. 115–97, title I, §14301(c)(4), Dec. 22, 2017, 131 Stat. 2222.)

AMENDMENTS

2017—Subsec. (b)(1). Pub. L. 115–97 substituted ''section 960'' for ''section 902(a) or 960(a)(1)''.

2014—Subsec. (b)(1). Pub. L. 113–295 substituted ''section 531 or the personal holding company tax imposed by section 541.'' for ''section 531, the personal holding company tax imposed by section 541, or the taxes imposed by corresponding sections of a prior income tax law.''

2006—Subsec. (b)(2). Pub. L. 109–280, which directed the substitution of ''(D), and (E)'' for ''and (D)'' in section 545(b)(2), without specifying the act to be amended, was executed by making the substitution in subsec. (b)(2) of this section, which is section 545 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

1990—Subsecs. (c), (d). Pub. L. 101–508 redesignated subsec. (d) as (c) and struck out former subsec. (c) which related to a special adjustment to taxable income for amounts used or set aside to pay or retire qualified indebtedness.

1986—Subsec. (b)(7). Pub. L. 99–514 added par. (7).

1983—Subsec. (b)(2). Pub. L. 97–448 substituted ''10-percent'' for ''5-percent''.

1976—Subsec. (b)(1). Pub. L. 94–455, §§1033(b)(4), 1901(a)(77)(A), struck out ''(other than excess profits tax imposed by subchapter E of chapter 2 of the Internal Revenue Code of 1939 for taxable years beginning after December 31, 1940)'' after ''Federal income and excess profits taxes''; substituted ''902(a) or 960(a)(1)'' for ''902(a)(1) or 960(a)(1)(C)'' after ''corporation under section''; and struck out provisions after ''prior income tax law'' relating to election by taxpayer who paid Federal income and excess profits taxes to deduct payments, when made, for purposes of computing subchapter A net income or, for a taxable year ending after June 30, 1954, to deduct such taxes when accrued, such election being irrevocable and applied to taxable year for which election was made and to all subsequent taxable years.

Subsec. (b)(2). Pub. L. 94–455, §1901(b)(20)(B)(ii), substituted ''paragraph (6)'' for ''paragraph (8)'' after ''amount disallowed under''.

Subsec. (b)(5). Pub. L. 94–455, §1901(b)(33)(D), substituted ''Net'' for ''Long-term'' after ''(5)''.

Subsec. (b)(6). Pub. L. 94–455, §§1901(b)(20)(B)(i), 1906(b)(13)(A), struck out par. (6) relating to deduction allowed to bank affiliates, redesignated former par. (8) as (6) and, as redesignated, struck out ''or his delegate'' in two places after ''Secretary''.

Subsec. (b)(7). Pub. L. 94–455, §1901(a)(77)(B), struck out par. (7) relating to payment of indebtedness incurred prior to January 1, 1934.

Subsec. (b)(8). Pub. L. 94–455, §1901(b)(20)(B)(i), redesignated par. (8) as (6).

Subsec. (b)(9). Pub. L. 94–455, §1951(b)(9)(A), struck out par. (9) relating to the deduction of the amount of a lien in favor of the United States.

Subsec. (b)(10), (11). Pub. L. 94–455, §1901(b)(32)(E), struck out par. (10) relating to deduction for distributions of divested stock, and struck out par. (11) relating to special adjustment on the disposition of antitrust stock received as a dividend.

Subsec. (c)(2)(A). Pub. L. 94–455, §1901(a)(77)(C), substituted ''February 26, 1964'' for ''the date of enactment of this subsection'' after ''years ending before''.

Subsec. (c)(4). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c)(5). Pub. L. 94–455, §1901(b)(20)(B)(iii), substituted ''subsection (b)(6)'' for ''subsection (b)(8)'' after ''company income under''.

1969—Subsec. (b)(2). Pub. L. 91–172 substituted ''section 170(b)(1)(A), (B), and (D)'', ''section 170(b)(2) and (d)(1)'' for ''section 170(b)(1)(A) and (B)'' and ''section 170(b)(2) and (5)'', respectively, in provisions of first sentence setting out the sections appropriate to the computation of the deduction, and in provisions of second sentence describing applicability of terms for purposes of this paragraph, substituted ''contribution base'' and ''section 170(b)(2) and (d)(1)'' for ''adjusted gross income'' and ''the first sentence of section 170(b)(2) and (5),'' respectively.

1966—Subsec. (a). Pub. L. 89–809, §104(h)(3)(A), substituted ''in the manner provided in subsections (b), (c), and (d)'' for ''in the manner provided in subsection (b) and (c)'' and inserted provisions governing the case of a personal holding company which is a foreign corporation, not more than 10 percent in value of the outstanding stock of which is owned (within the meaning of section 958(a)) during the last half of the taxable year by United States persons.

Subsec. (b)(9). Pub. L. 89–719 substituted ''section 6323(f)'' for ''section 6323(a)(1), (2), or (3)''.

Subsec. (d). Pub. L. 89–809, §104(h)(3)(B), added subsec. (d).

1964—Subsec. (a). Pub. L. 88–272, §225(i)(1), inserted reference to subsection (c).

Subsec. (b)(1), (2). Pub. L. 88–272, §§207(b)(5), 209(c)(2), substituted ''section 275(a)(4)'' for ''section 164(b)(6)'' in par. (1), and inserted reference to section 170(b)(5) in par. (2).

Subsec. (c). Pub. L. 88–272, §225(i)(2), added subsec. (c).

1962—Subsec. (b)(1). Pub. L. 87–834 substituted ''accrued during the taxable year or deemed to be paid by a domestic corporation under section 902(a)(1) or 960(a)(1)(C) for the taxable year'' for ''accrued during the taxable year''.

Subsec. (b)(10), (11). Pub. L. 87–403 added pars. (10) and (11).

1958—Subsec. (b)(2). Pub. L. 85–866, §32(a), substituted in first sentence '', but in computing such deduction the limitations in section 170(b)(1)(A) and (B) shall apply, and section 170(b) shall not apply'' for ''but with the limitations in section 170(b)(1)(A) and (B) (in lieu of the limitation in section 170(b)(2)'', and inserted in second sentence ''(other than the 5-percent limitation)'' and ''the first sentence'' after ''with the adjustments'' and ''provided in'', respectively.

Subsec. (b)(4). Pub. L. 85–866, §32(b), inserted ''computed without the deductions provided in part VIII (except section 248) of subchapter B''.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–97 applicable to taxable years of foreign corporations beginning after Dec. 31, 2017, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, see section 14301(d) of Pub. L. 115–97, set out as a note under section 78 of this title.

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113–295, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 applicable to contributions made in taxable years beginning after Dec. 31,

2005, see section 1206(c) of Pub. L. 109–280, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to gains and losses realized on or after Jan. 1, 1986, see section 1225(c) of Pub. L. 99–514, as amended, set out as a note under section 535 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment by section 1033(b)(4) of Pub. L. 94–455, see section 1033(c) of Pub. L. 94–455, set out as a note under section 960 of this title.

Amendment by section 1901(a)(77), (b)(20)(B), (32)(E), (33)(D) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 1951(b)(9)(A) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1951(d) of Pub. L. 94–455 set out as a note under section 72 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 201(g) of Pub. L. 91–172, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1966 AMENDMENTS

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

Amendment by Pub. L. 89–719 applicable after Nov. 2, 1966, regardless of when the title or lien of the United States arose or when the lien or interest of another person was acquired, except in a case in which a lien or title derived from enforcement of a lien held by the United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before Nov. 2, 1966, or in a case in which the amendment would impair a priority held by any person other than the United States holding a lien or interest prior to Nov. 2, 1966, operate to increase the liability of such person, or shorten the time for bringing suit with respect to transactions occurring before Nov. 2, 1966, see section 114(a)–(e) of Pub. L. 89–719, set out as a note under section 6323 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by section 207(b)(5) of Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 207(c) of Pub. L. 88–272, set out as a note under section 164 of this title.

Amendment by section 209(c)(2) of Pub. L. 88–272 applicable to contributions paid in taxable years beginning after Dec. 31, 1963, see section 209(f)(1) of Pub. L. 88–272, set out as a note under section 170 of this title.

Amendment by section 225(i)(1), (2) of Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 225(*l*)(1) of Pub. L. 88–272 set out as a note under section 316 of this title.

EFFECTIVE DATE OF 1962 AMENDMENTS

Amendment by Pub. L. 87–834 applicable in respect of any distribution received by a domestic corporation after Dec. 31, 1964, and in respect of any distribution received by a domestic corporation before Jan. 1, 1965, in a taxable year of such corporation beginning after Dec. 31, 1962, but only to the extent that such distribution is made out of the accumulated profits of a foreign corporation for a taxable year (of such foreign corporation) beginning after Dec. 31, 1962, see section 9(e) of Pub. L. 87–834, set out as an Effective Date note under section 78 of this title.

Amendment by Pub. L. 87–403 applicable only with respect to distributions made after Feb. 2, 1962, see section 3(g) of Pub. L. 87–403, set out as a note under section 312 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 32(a) of Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

Pub. L. 85–866, title I, § 32(c), Sept. 2, 1958, 72 Stat. 1632, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by subsection (b) of this section [amending this section] shall apply with respect to adjustments under section 545(b)(4) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for taxable years beginning after December 31, 1957.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

Pub. L. 94–455, title XIX, § 1951(b)(9)(B), Oct. 4, 1976, 90 Stat. 1839, provided that: ''Notwithstanding subparagraph (A) [amending this section], if any amount was deducted under paragraph (9) of section 545(b) in a taxable year beginning before January 1, 1977, on account of a lien which is satisfied or released in a taxable year beginning on or after such date, the amount so deducted shall be included in income, for purposes of section 545, as provided in the second sentence of such paragraph. Shareholders of any corporation which has amounts included in its income by reason of the preceding sentence may elect to compute the income tax on dividends attributable to amounts so included as provided in the third sentence of such paragraph.''

§ 546. Income not placed on annual basis

Section 443(b) (relating to computation of tax on change of annual accounting period) shall not apply in the computation of the personal holding company tax imposed by section 541.

(Aug. 16, 1954, ch. 736, 68A Stat. 191.)

§ 547. Deduction for deficiency dividends

(a) General rule

If a determination (as defined in subsection (c)) with respect to a taxpayer establishes liability for personal holding company tax imposed by section 541 (or by a corresponding provision of a prior income tax law) for any taxable year, a deduction shall be allowed to the taxpayer for the amount of deficiency dividends (as defined in subsection (d)) for the purpose of determining the personal holding company tax for such year, but not for the purpose of determining interest, additional amounts, or assessable penalties computed with respect to such personal holding company tax.

(b) Rules for application of section

(1) Allowance of deduction

The deficiency dividend deduction shall be allowed as of the date the claim for the deficiency dividend deduction is filed.

(2) Credit or refund

If the allowance of a deficiency dividend deduction results in an overpayment of personal holding company tax for any taxable year, credit or refund with respect to such overpayment shall be made as if on the date of the determination 2 years remained before the expiration of the period of limitation on the filing of claim for refund for the taxable year to which the overpayment relates. No interest shall be allowed on a credit or refund arising from the application of this section.

(c) Determination

For purposes of this section, the term ''determination'' means—

(1) a decision by the Tax Court or a judgment, decree, or other order by any court of competent jurisdiction, which has become final;

(2) a closing agreement made under section 7121; or

(3) under regulations prescribed by the Secretary, an agreement signed by the Secretary and by, or on behalf of, the taxpayer relating to the liability of such taxpayer for personal holding company tax.

(d) Deficiency dividends

(1) Definition

For purposes of this section, the term ''deficiency dividends'' means the amount of the dividends paid by the corporation on or after the date of the determination and before filing claim under subsection (e), which would have been includible in the computation of the deduction for dividends paid under section 561 for the taxable year with respect to which the liability for personal holding company tax exists, if distributed during such taxable year. No dividends shall be considered as deficiency dividends for purposes of subsection (a) unless distributed within 90 days after the determination.

(2) Effect on dividends paid deduction

(A) For taxable year in which paid

Deficiency dividends paid in any taxable year (to the extent of the portion thereof taken into account under subsection (a) in determining personal holding company tax) shall not be included in the amount of dividends paid for such year for purposes of computing the dividends paid deduction for such year and succeeding years.

(B) For prior taxable year

Deficiency dividends paid in any taxable year (to the extent of the portion thereof taken into account under subsection (a) in determining personal holding company tax) shall not be allowed for purposes of section 563(b) in the computation of the dividends paid deduction for the taxable year preceding the taxable year in which paid.

(e) Claim required

No deficiency dividend deduction shall be allowed under subsection (a) unless (under regulations prescribed by the Secretary) claim therefor is filed within 120 days after the determination.

(f) Suspension of statute of limitations and stay of collection

(1) Suspension of running of statute

If the corporation files a claim, as provided in subsection (e), the running of the statute of limitations provided in section 6501 on the making of assessments, and the bringing of distraint or a proceeding in court for collection, in respect of the deficiency and all interest, additional amounts, or assessable penalties, shall be suspended for a period of 2 years after the date of the determination.

(2) Stay of collection

In the case of any deficiency with respect to the tax imposed by section 541 established by a determination under this section—

(A) the collection of the deficiency and all interest, additional amounts, and assessable penalties shall, except in cases of jeopardy, be stayed until the expiration of 120 days after the date of the determination, and

(B) if claim for deficiency dividend deduction is filed under subsection (e), the collection of such part of the deficiency as is not reduced by the deduction for deficiency dividends provided in subsection (a) shall be stayed until the date the claim is disallowed (in whole or in part) and if disallowed in part collection shall be made only with respect to the part disallowed.

No distraint or proceeding in court shall be begun for the collection of an amount the collection of which is stayed under subparagraph (A) or (B) during the period for which the collection of such amount is stayed.

(g) Deduction denied in case of fraud, etc.

No deficiency dividend deduction shall be allowed under subsection (a) if the determination contains a finding that any part of the deficiency is due to fraud with intent to evade tax, or to wilful failure to file an income tax return within the time prescribed by law or prescribed by the Secretary in pursuance of law.

(Aug. 16, 1954, ch. 736, 68A Stat. 191; Pub. L. 94–455, title XIX, §§ 1901(a)(78), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1777, 1834.)

AMENDMENTS

1976—Subsecs. (c)(3), (e), (g). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' wherever appearing.

Subsec. (h). Pub. L. 94–455, § 1901(a)(78), struck out subsec. (h) relating to the effective date of provisions concerning deduction of deficiency dividends.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(78) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

[PART III—REPEALED]

[§§ 551 to 558. Repealed. Pub. L. 108–357, title IV, § 413(a)(1), Oct. 22, 2004, 118 Stat. 1506]

Section 551, acts Aug. 16, 1954, ch. 736, 68A Stat. 193; Pub. L. 88–272, title II, § 225(f)(4), Feb. 26, 1964, 78 Stat. 88; Pub. L. 94–455, title XIX, § 1901(a)(79), (b)(1)(F)(i), (12)(A), Oct. 4, 1976, 90 Stat. 1777, 1790, 1795; Pub. L.

98–369, div. A, title I, §132(b), July 18, 1984, 98 Stat. 666; Pub. L. 99–514, title XII, §1235(e), title XVIII, §1810(h)(2), Oct. 22, 1986, 100 Stat. 2575, 2829; Pub. L. 100–647, title I, §1012(bb)(1)(A), (B), Nov. 10, 1988, 102 Stat. 3533; Pub. L. 105–34, title XI, §1122(d)(2), Aug. 5, 1997, 111 Stat. 977, provided for taxation of foreign personal holding company income to United States shareholders.

Section 552, acts Aug. 16, 1954, ch. 736, 68A Stat. 195; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title I, §132(c)(2), July 18, 1984, 98 Stat. 666; Pub. L. 99–514, title XII, §1222(b), title XVIII, §1810(h)(1), Oct. 22, 1986, 100 Stat. 2557, 2829; Pub. L. 100–647, title I, §1012(bb)(1)(C), Nov. 10, 1988, 102 Stat. 3533, defined ''foreign personal holding company''.

Section 553, acts Aug. 16, 1954, ch. 736, 68A Stat. 195; Pub. L. 86–435, §1(e), Apr. 22, 1960, 74 Stat. 78; Pub. L. 88–272, title II, §225(e), Feb. 26, 1964, 78 Stat. 85; Pub. L. 94–455, title XIX, §1901(b)(32)(F), Oct. 4, 1976, 90 Stat. 1800; Pub. L. 99–514, title VI, §645(a)(3), Oct. 22, 1986, 100 Stat. 2291, related to determination of foreign personal holding company income.

Section 554, acts Aug. 16, 1954, ch. 736, 68A Stat. 196; Pub. L. 88–272, title II, §225(e), Feb. 26, 1964, 78 Stat. 86; Pub. L. 98–369, div. A, title I, §132(a), July 18, 1984, 98 Stat. 665, related to constructive ownership of stock and treatment of convertible securities as outstanding stock.

Section 555, act Aug. 16, 1954, ch. 736, 68A Stat. 196, related to determination of gross income of foreign personal holding companies.

Section 556, acts Aug. 16, 1954, ch. 736, 68A Stat. 196; Pub. L. 85–866, title I, §33(a), (b)(1), (c)(1), Sept. 2, 1958, 72 Stat. 1632; Pub. L. 87–403, §3(e), Feb. 2, 1962, 76 Stat. 7; Pub. L. 88–272, title II, §§207(b)(6), 209(c)(2), Feb. 26, 1964, 78 Stat. 42, 46; Pub. L. 91–172, title II, §201(a)(2)(B), Dec. 30, 1969, 83 Stat. 558; Pub. L. 94–455, title XIX, §§1901(a)(80), (b)(32)(G), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1778, 1800, 1834; Pub. L. 97–448, title I, §102(m)(2), Jan. 12, 1983, 96 Stat. 2374; Pub. L. 101–508, title XI, §11802(d)(1), Nov. 5, 1990, 104 Stat. 1388–529, related to undistributed foreign personal holding company income.

Section 557, act Aug. 16, 1954, ch. 736, 68A Stat. 198, related to inapplicability of section 443(b) of this title in the computation of income.

Section 558, added Pub. L. 85–866, title I, §33(d)(1), Sept. 2, 1958, 72 Stat. 1632, related to returns of officers, directors, and shareholders of foreign personal holding companies.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

PART IV—DEDUCTION FOR DIVIDENDS PAID

Sec.

§ 561. Definition of deduction for dividends paid

(a) General rule

The deduction for dividends paid shall be the sum of—

(1) the dividends paid during the taxable year,

(2) the consent dividends for the taxable year (determined under section 565), and

(3) in the case of a personal holding company, the dividend carryover described in section 564.

(b) Special rules applicable

In determining the deduction for dividends paid, the rules provided in section 562 (relating to rules applicable in determining dividends eligible for dividends paid deduction) and section 563 (relating to dividends paid after the close of the taxable year) shall be applicable.

(Aug. 16, 1954, ch. 736, 68A Stat. 198; Pub. L. 87–403, §3(f), Feb. 2, 1962, 76 Stat. 8; Pub. L. 94–455, title XIX, §1901(b)(32)(H), Oct. 4, 1976, 90 Stat. 1800.)

AMENDMENTS

1976—Subsec. (b). Pub. L. 94–455 redesignated existing provisions of par. (1) as subsec. (b) and struck out par. (2) relating to special adjustment on disposition of antitrust stock as a dividend.

1962—Subsec. (b). Pub. L. 87–403 designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–403 applicable only with respect to distributions made after Feb. 2, 1962, see section 3(g) of Pub. L. 87–403, set out as a note under section 312 of this title.

§ 562. Rules applicable in determining dividends eligible for dividends paid deduction

(a) General rule

For purposes of this part, the term ''dividend'' shall, except as otherwise provided in this section, include only dividends described in section 316 (relating to definition of dividends for purposes of corporate distributions).

(b) Distributions in liquidation

(1) Except in the case of a personal holding company described in section 542—

(A) in the case of amounts distributed in liquidation, the part of such distribution which is properly chargeable to earnings and profits accumulated after February 28, 1913, shall be treated as a dividend for purposes of computing the dividends paid deduction, and

(B) in the case of a complete liquidation occurring within 24 months after the adoption of a plan of liquidation, any distribution within such period pursuant to such plan shall, to the extent of the earnings and profits (computed without regard to capital losses) of the corporation for the taxable year in which such distribution is made, be treated as a dividend for purposes of computing the dividends paid deduction.

For purposes of subparagraph (A), a liquidation includes a redemption of stock to which section 302 applies. Except to the extent provided in regulations, the preceding sentence shall not apply in the case of any mere holding or investment company which is not a regulated investment company.

(2) In the case of a complete liquidation of a personal holding company, occurring within 24 months after the adoption of a plan of liquidation, the amount of any distribution within such period pursuant to such plan shall be treated as a dividend for purposes of computing the dividends paid deduction, to the extent that such amount is distributed to corporate distributees and represents such corporate distributees' allocable share of the undistributed personal holding company income for the taxable year of such distribution computed without regard to this paragraph and without regard to subparagraph (B) of section 316(b)(2).

(c) Preferential dividends

(1) In general

Except in the case of a publicly offered regulated investment company (as defined in section 67(c)(2)(B)) or a publicly offered REIT, the amount of any distribution shall not be considered as a dividend for purposes of computing the dividends paid deduction, unless such distribution is pro rata, with no preference to any share of stock as compared with other shares of the same class, and with no preference to one class of stock as compared with another class except to the extent that the former is entitled (without reference to waivers of their rights by shareholders) to such preference. In the case of a distribution by a regulated investment company (other than a publicly offered regulated investment company (as so defined)) to a shareholder who made an initial investment of at least $10,000,000 in such company, such distribution shall not be treated as not being pro rata or as being preferential solely by reason of an increase in the distribution by reason of reductions in administrative expenses of the company.

(2) Publicly offered REIT

For purposes of this subsection, the term ''publicly offered REIT'' means a real estate investment trust which is required to file annual and periodic reports with the Securities and Exchange Commission under the Securities Exchange Act of 1934.

(d) Distributions by a member of an affiliated group

In the case where a corporation which is a member of an affiliated group of corporations filing or required to file a consolidated return for a taxable year is required to file a separate personal holding company schedule for such taxable year, a distribution by such corporation to another member of the affiliated group shall be considered as a dividend for purposes of computing the dividends paid deduction if such distribution would constitute a dividend under the other provisions of this section to a recipient which is not a member of an affiliated group.

(e) Special rules for real estate investment trusts

(1) Determination of earnings and profits for purposes of dividends paid deduction

In the case of a real estate investment trust, in determining the amount of dividends under section 316 for purposes of computing the dividends paid deduction—

(A) the earnings and profits of such trust for any taxable year (but not its accumulated earnings) shall be increased by the amount of gain (if any) on the sale or exchange of real property which is taken into account in determining the taxable income of such trust for such taxable year (and not otherwise taken into account in determining such earnings and profits), and

(B) section 857(d)(1) shall be applied without regard to subparagraph (B) thereof.

(2) Authority to provide alternative remedies for certain failures

In the case of a failure of a distribution by a real estate investment trust to comply with the requirements of subsection (c), the Secretary may provide an appropriate remedy to cure such failure in lieu of not considering the distribution to be a dividend for purposes of computing the dividends paid deduction if—

(A) the Secretary determines that such failure is inadvertent or is due to reasonable cause and not due to willful neglect, or

(B) such failure is of a type of failure which the Secretary has identified for purposes of this paragraph as being described in subparagraph (A).

(Aug. 16, 1954, ch. 736, 68A Stat. 198; Pub. L. 88–272, title II, § 225(f)(3), Feb. 26, 1964, 78 Stat. 88; Pub. L. 97–248, title II, § 222(e)(7), Sept. 3, 1982, 96 Stat. 480; Pub. L. 97–448, title I, § 102(c)(2), Jan. 12, 1983, 96 Stat. 2370; Pub. L. 99–514, title VI, § 657(a), title XVIII, § 1804(d)(1), Oct. 22, 1986, 100 Stat. 2299, 2800; Pub. L. 108–357, title IV, § 413(c)(9), Oct. 22, 2004, 118 Stat. 1507; Pub. L. 111–325, title III, § 307(a), (b), Dec. 22, 2010, 124 Stat. 3550; Pub. L. 114–113, div. Q, title III, §§ 314(a), (b), 315(a), 320(b), Dec. 18, 2015, 129 Stat. 3093, 3097.)

REFERENCES IN TEXT

The Securities Exchange Act of 1934, referred to in subsec. (c)(2), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§ 78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

AMENDMENTS

2015—Subsec. (c). Pub. L. 114–113, § 314(a), (b), designated existing provisions as par. (1), inserted heading and ''or a publicly offered REIT'' after ''a publicly offered regulated investment company (as defined in section 67(c)(2)(B))'' in text, and added par. (2).

Subsec. (e). Pub. L. 114–113, § 315(a), designated existing provisions as par. (1), inserted heading, and added par. (2).

Subsec. (e)(1). Pub. L. 114–113, § 320(b), substituted ''deduction—'' for ''deduction, the earnings and profits of such trust for any taxable year beginning after December 31, 1980, shall be increased by the total amount of gain (if any) on the sale or exchange of real property by such trust during such taxable year.'' and added subpars. (A) and (B).

2010—Subsec. (c). Pub. L. 111–325 substituted ''Except in the case of a publicly offered regulated investment company (as defined in section 67(c)(2)(B)), the amount'' for ''The amount'' in first sentence and inserted ''(other than a publicly offered regulated investment company (as so defined))'' after ''regulated investment company'' in second sentence.

2004—Subsec. (b)(1). Pub. L. 108–357 struck out ''or a foreign personal holding company described in section 552'' after ''section 542'' in introductory provisions.

1986—Subsec. (b)(1). Pub. L. 99–514, § 1804(d)(1), inserted at end ''Except to the extent provided in regulations, the preceding sentence shall not apply in the case of any mere holding or investment company which is not a regulated investment company.''

Subsec. (c). Pub. L. 99–514, § 657(a), inserted at end ''In the case of a distribution by a regulated investment company to a shareholder who made an initial investment of at least $10,000,000 in such company, such distribution shall not be treated as not being pro rata or as being preferential solely by reason of an increase in the distribution by reason of reductions in administrative expenses of the company.''

1983—Subsec. (e). Pub. L. 97–448 added subsec. (e).

1982—Subsec. (b)(1). Pub. L. 97–248 inserted sentence at end providing that, for purposes of subpar. (A), a liquidation includes a redemption of stock to which section 302 applies.

1964—Subsec. (b). Pub. L. 88–272 designated existing provisions as subpars. (A) and (B) of par. (1), excepted personal holding companies in section 542, and foreign personal holding companies in section 552 therefrom, and added par. (2).

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114–113, div. Q, title III, § 314(c), Dec. 18, 2015, 129 Stat. 3093, provided that: ''The amendments made by this section [amending this section] shall apply to distributions in taxable years beginning after December 31, 2014.''

Pub. L. 114–113, div. Q, title III, § 315(b), Dec. 18, 2015, 129 Stat. 3093, provided that: ''The amendments made by this section [amending this section] shall apply to distributions in taxable years beginning after December 31, 2015.''

Pub. L. 114–113, div. Q, title III, § 320(c), Dec. 18, 2015, 129 Stat. 3097, provided that: ''The amendments made by this section [amending this section and section 857 of this title] shall apply to taxable years beginning after December 31, 2015.''

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–325, title III, § 307(c), Dec. 22, 2010, 124 Stat. 3550, provided that: ''The amendments made by this section [amending this section] shall apply to distributions in taxable years beginning after the date of the enactment of this Act [Dec. 22, 2010].''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title VI, § 657(b), Oct. 22, 1986, 100 Stat. 2299, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to distributions after the date of the enactment of this Act [Oct. 22, 1986].''

Pub. L. 99–514, title XVIII, § 1804(d)(2), Oct. 22, 1986, 100 Stat. 2800, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to distributions after September 27, 1985.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to distributions after Aug. 31, 1982, with exceptions for certain partial liquidations, see section 222(f) of Pub. L. 97–248, set out as a note under section 302 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment Pub. L. 88–272 applicable to distributions made in any taxable year of the distributing corporation beginning after Dec. 31, 1963, see section 225(*l*) of Pub. L. 88–272, set out as a note under section 316 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 563. Rules relating to dividends paid after close of taxable year

(a) Accumulated earnings tax

In the determination of the dividends paid deduction for purposes of the accumulated earnings tax imposed by section 531, a dividend paid after the close of any taxable year and on or before the 15th day of the fourth month following the close of such taxable year shall be considered as paid during such taxable year.

(b) Personal holding company tax

In the determination of the dividends paid deduction for purposes of the personal holding company tax imposed by section 541, a dividend paid after the close of any taxable year and on or before the 15th day of the fourth month following the close of such taxable year shall, to the extent the taxpayer elects in its return for the taxable year, be considered as paid during such taxable year. The amount allowed as a dividend by reason of the application of this subsection with respect to any taxable year shall not exceed either—

(1) The undistributed personal holding company income of the corporation for the taxable year, computed without regard to this subsection, or

(2) 20 percent of the sum of the dividends paid during the taxable year, computed without regard to this subsection.

(c) Dividends considered as paid on last day of taxable year

For the purpose of applying section 562(a), with respect to distributions under subsection (a) or (b) of this section, a distribution made after the close of a taxable year and on or before the 15th day of the fourth month following the close of the taxable year shall be considered as made on the last day of such taxable year.

(Aug. 16, 1954, ch. 736, 68A Stat. 199; Pub. L. 91–172, title IX, § 914(a), Dec. 30, 1969, 83 Stat. 723; Pub. L. 101–239, title VII, § 7401(b), Dec. 19, 1989, 103 Stat. 2356; Pub. L. 108–357, title IV, § 413(c)(10), Oct. 22, 2004, 118 Stat. 1507; Pub. L. 114–41, title II, § 2006(a)(2)(B), July 31, 2015, 129 Stat. 457.)

AMENDMENTS

2015—Pub. L. 114–41 substituted ''fourth month'' for ''third month'' wherever appearing.

2004—Subsecs. (c), (d). Pub. L. 108–357 redesignated subsec. (d) as (c), substituted ''subsection (a) or (b)'' for ''subsection (a), (b), or (c)'', and struck out former subsec. (c) which related to foreign personal holding company tax.

1989—Subsec. (c). Pub. L. 101–239, §7401(b)(1), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 101–239, §7401(b)(2), substituted ''subsection (a), (b), or (c)'' for ''subsection (a) or (b)''.

Pub. L. 101–239, §7401(b)(1), redesignated former subsec. (c) as (d).

1969—Subsec. (b)(2). Pub. L. 91–172 substituted ''20 percent'' for ''10 percent''.

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–41 applicable to returns for taxable years beginning after Dec. 31, 2015, with special rule for certain C corporations, see section 2006(a)(3) of Pub. L. 114–41, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable to taxable years of foreign corporations beginning after July 10, 1989, with special rules for any foreign corporation required by the amendments made by section 7401 of Pub. L. 101–239 to change its taxable year for its first taxable year beginning after July 10, 1989, see section 7401(d) of Pub. L. 101–239, set out as an Effective Date note under section 898 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title IX, §914(b), Dec. 30, 1969, 83 Stat. 723, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1969.''

§ 564. Dividend carryover

(a) General rule

For purposes of computing the dividends paid deduction under section 561, in the case of a personal holding company the dividend carryover for any taxable year shall be the dividend carryover to such taxable year, computed as provided in subsection (b), from the two preceding taxable years.

(b) Computation of dividend carryover

The dividend carryover to the taxable year shall be determined as follows:

(1) For each of the 2 preceding taxable years there shall be determined the taxable income computed with the adjustments provided in section 545 (whether or not the taxpayer was a personal holding company for either of such preceding taxable years), and there shall also be determined for each such year the deduction for dividends paid during such year as provided in section 561 (but determined without regard to the dividend carryover to such year).

(2) There shall be determined for each such taxable year whether there is an excess of such taxable income over such deduction for dividends paid or an excess of such deduction for dividends paid over such taxable income, and the amount of each such excess.

(3) If there is an excess of such deductions for dividends paid over such taxable income for the first preceding taxable year, such excess shall be allowed as a dividend carryover to the taxable year.

(4) If there is an excess of such deduction for dividends paid over such taxable income for the second preceding taxable year, such excess shall be reduced by the amount determined in paragraph (5), and the remainder of such excess shall be allowed as a dividend carryover to the taxable year.

(5) The amount of the reduction specified in paragraph (4) shall be the amount of the excess of the taxable income, if any, for the first preceding taxable year over such deduction for dividends paid, if any, for the first preceding taxable year.

(Aug. 16, 1954, ch. 736, 68A Stat. 200; Pub. L. 94–455, title XIX, §1901(a)(81), Oct. 4, 1976, 90 Stat. 1778.)

AMENDMENTS

1976—Subsec. (c). Pub. L. 94–455 struck out subsec. (c) which related to the determination of dividend carryover from taxable years to which this subtitle does not apply.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

§ 565. Consent dividends

(a) General rule

If any person owns consent stock (as defined in subsection (f)(1)) in a corporation on the last day of the taxable year of such corporation, and such person agrees, in a consent filed with the return of such corporation in accordance with regulations prescribed by the Secretary, to treat as a dividend the amount specified in such consent, the amount so specified shall, except as provided in subsection (b), constitute a consent dividend for purposes of section 561 (relating to the deduction for dividends paid).

(b) Limitations

A consent dividend shall not include—

(1) an amount specified in a consent which, if distributed in money, would constitute, or be part of, a distribution which would be disqualified for purposes of the dividends paid deduction under section 562(c) (relating to preferential dividends), or

(2) an amount specified in a consent which would not constitute a dividend (as defined in section 316) if the total amounts specified in consents filed by the corporation had been distributed in money to shareholders on the last day of the taxable year of such corporation.

(c) Effect of consent

The amount of a consent dividend shall be considered, for purposes of this title—

(1) as distributed in money by the corporation to the shareholder on the last day of the taxable year of the corporation, and

(2) as contributed to the capital of the corporation by the shareholder on such day.

(d) Consent dividends and other distributions

If a distribution by a corporation consists in part of consent dividends and in part of money or other property, the entire amount specified in the consents and the amount of such money or other property shall be considered together for purposes of applying this title.

(e) Nonresident aliens and foreign corporations

In the case of a consent dividend which, if paid in money would be subject to the provisions of section 1441 (relating to withholding of tax on nonresident aliens) or section 1442 (relating to withholding of tax on foreign corporations), this section shall not apply unless the consent is accompanied by money, or such other medium of payment as the Secretary may by regulations authorize, in an amount equal to the amount that would be required to be deducted and withheld under sections 1441 or 1442 if the consent dividend had been, on the last day of the taxable year of the corporation, paid to the shareholder in money as a dividend. The amount accompanying the consent shall be credited against the tax imposed by this subtitle on the shareholder.

(f) Definitions

(1) Consent stock

Consent stock, for purposes of this section, means the class or classes of stock entitled, after the payment of preferred dividends, to a share in the distribution (other than in complete or partial liquidation) within the taxable year of all the remaining earnings and profits, which share constitutes the same proportion of such distribution regardless of the amount of such distribution.

(2) Preferred dividends

Preferred dividends, for purposes of this section, means a distribution (other than in complete or partial liquidation), limited in amount, which must be made on any class of stock before a further distribution (other than in complete or partial liquidation) of earnings and profits may be made within the taxable year.

(Aug. 16, 1954, ch. 736, 68A Stat. 200; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsecs. (a), (e). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

Subchapter H—Banking Institutions

Part
I. Rules of general application to banking institutions.
II. Mutual savings banks, etc.

AMENDMENTS

1976—Pub. L. 94–455, title XIX, § 1901(b)(20)(C), Oct. 4, 1976, 90 Stat. 1797, struck out item for part III ''Bank affiliates''.

PART I—RULES OF GENERAL APPLICATION TO BANKING INSTITUTIONS

Sec.
581. Definition of bank.
582. Bad debts, losses, and gains with respect to securities held by financial institutions.
[583. Repealed.]
584. Common trust funds.
585. Reserves for losses on loans of banks.
[586. Repealed.]

AMENDMENTS

1986—Pub. L. 99–514, title IX, § 901(d)(4)(H), Oct. 22, 1986, 100 Stat. 2380, struck out item 586 ''Reserves for losses on loans of small business investment companies, etc.''

1976—Pub. L. 94–455, title XIX, § 1901(b)(18), Oct. 4, 1976, 90 Stat. 1796, struck out item 583 ''Deductions of dividends paid on certain preferred stock''.

1969—Pub. L. 91–172, title IV, § 431(c)(2), Dec. 30, 1969, 83 Stat. 620, substituted ''Bad debts, losses, and gains with respect to securities held by financial institutions'', for ''Bad debt and loss deduction with respect to securities held by banks'' in item 582, and added items 585 and 586.

§ 581. Definition of bank

For purposes of sections 582 and 584, the term ''bank'' means a bank or trust company incorporated and doing business under the laws of the United States (including laws relating to the District of Columbia) or of any State, a substantial part of the business of which consists of receiving deposits and making loans and discounts, or of exercising fiduciary powers similar to those permitted to national banks under authority of the Comptroller of the Currency, and which is subject by law to supervision and examination by State or Federal authority having supervision over banking institutions. Such term also means a domestic building and loan association.

(Aug. 16, 1954, ch. 736, 68A Stat. 202; Pub. L. 87–722, § 5, Sept. 28, 1962, 76 Stat. 670; Pub. L. 94–455, title XIX, § 1901(c)(5), Oct. 4, 1976, 90 Stat. 1803.)

AMENDMENTS

1976—Pub. L. 94–455 substituted ''or of any State'' for ''of any State, or of any Territory'' after ''District of Columbia)'' and struck out '', Territorial,'' after ''examination by State''.

1962—Pub. L. 87–722 substituted ''authority of the Comptroller of the Currency'' for ''section 11(k) of the Federal Reserve Act (38 Stat. 262; 12 U.S.C. 248(k))''.

§ 582. Bad debts, losses, and gains with respect to securities held by financial institutions

(a) Securities

Notwithstanding sections 165(g)(1) and 166(e), subsections (a) and (b) of section 166 (relating to allowance of deduction for bad debts) shall apply in the case of a bank to a debt which is evidenced by a security as defined in section 165(g)(2)(C).

(b) Worthless stock in affiliated bank

For purposes of section 165(g)(1), where the taxpayer is a bank and owns directly at least 80 percent of each class of stock of another bank, stock in such other bank shall not be treated as a capital asset.

(c) Bond, etc., losses and gains of financial institutions

(1) General rule

For purposes of this subtitle, in the case of a financial institution referred to in paragraph

(2), the sale or exchange of a bond, debenture, note, or certificate or other evidence of indebtedness shall not be considered a sale or exchange of a capital asset. For purposes of the preceding sentence, any regular or residual interest in a REMIC shall be treated as an evidence of indebtedness.

(2) Financial institutions to which paragraph (1) applies

(A) In general

For purposes of paragraph (1), the financial institutions referred to in this paragraph are—

(i) any bank (and any corporation which would be a bank except for the fact it is a foreign corporation),

(ii) any financial institution referred to in section 591,

(iii) any small business investment company operating under the Small Business Investment Act of 1958, and

(iv) any business development corporation.

(B) Business development corporation

For purposes of subparagraph (A), the term ''business development corporation'' means a corporation which was created by or pursuant to an act of a State legislature for purposes of promoting, maintaining, and assisting the economy and industry within such State on a regional or statewide basis by making loans to be used in trades and businesses which would generally not be made by banks within such region or State in the ordinary course of their business (except on the basis of a partial participation), and which is operated primarily for such purposes.

(C) Limitations on foreign banks

In the case of a foreign corporation referred to in subparagraph (A)(i), paragraph (1) shall only apply to gains and losses which are effectively connected with the conduct of a banking business in the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 202; Pub. L. 85–866, title I, §34, Sept. 2, 1958, 72 Stat. 1632; Pub. L. 91–172, title IV, §433(a), (c), Dec. 30, 1969, 83 Stat. 623, 624; Pub. L. 94–455, title X, §1044(a), title XIV, §1402(b)(1)(G), (2), Oct. 4, 1976, 90 Stat. 1642, 1732; Pub. L. 98–369, div. A, title X, §1001(b)(6), (e), July 18, 1984, 98 Stat. 1011, 1012; Pub. L. 99–514, title VI, §671(b)(4), title IX, §901(d)(3), Oct. 22, 1986, 100 Stat. 2318, 2379; Pub. L. 100–647, title I, §1008(d)(3), Nov. 10, 1988, 102 Stat. 3439; Pub. L. 101–508, title XI, §11801(a)(25), (c)(11), Nov. 5, 1990, 104 Stat. 1388–521, 1388–527; Pub. L. 104–188, title I, §1621(b)(4), Aug. 20, 1996, 110 Stat. 1867; Pub. L. 108–357, title VIII, §835(b)(3), Oct. 22, 2004, 118 Stat. 1593.)

REFERENCES IN TEXT

The Small Business Investment Act of 1958, referred to in subsec. (c)(2)(A)(iii), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689, as amended, which is classified principally to chapter 14B (§661 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 661 of Title 15 and Tables.

AMENDMENTS

2004—Subsec. (c)(1). Pub. L. 108–357 struck out '', and any regular interest in a FASIT,'' before ''shall be treated''.

1996—Subsec. (c)(1). Pub. L. 104–188 inserted '', and any regular interest in a FASIT,'' after ''REMIC''.

1990—Subsec. (c)(1). Pub. L. 101–508, §11801(c)(11)(A), substituted ''paragraph (2)'' for ''paragraph (5)''.

Subsec. (c)(2). Pub. L. 101–508, §11801(a)(25), (c)(11)(B), redesignated par. (5) as (2) and struck out former par. (2) ''Transitional rule for banks'' which read as follows: ''In the case of a bank, if the net long-term capital gains of the taxable year from sales or exchanges of qualifying securities exceed the net short-term capital losses of the taxable year from such sales or exchanges, such excess shall be considered as gain from the sale of a capital asset held for more than 6 months to the extent it does not exceed the net gain on sales and exchanges described in paragraph (1).''

Subsec. (c)(3). Pub. L. 101–508, §11801(a)(25), struck out par. (3) ''Special rules'' which read as follows: ''For purposes of this subsection—

''(A) The term 'qualifying security' means a bond, debenture, note, or certificate or other evidence of indebtedness held by a bank on July 11, 1969.

''(B) The amount treated as capital gain or loss from the sale or exchange of a qualifying security shall be determined by multiplying the amount of capital gain or loss from the sale or exchange of such security (determined without regard to this subsection) by a fraction, the numerator of which is the number of days before July 12, 1969, that such security was held by the bank, and the denominator of which is the number of days the security was held by the bank.''

Subsec. (c)(4). Pub. L. 101–508, §11801(a)(25), struck out par. (4) ''Transitional rule for banks'' which read as follows: ''In the case of a corporation which would be a bank except for the fact that it is a foreign corporation, the net gain, if any, for the taxable year on sales and exchanges described in paragraph (1) shall be considered as gain from the sale or exchange of a capital asset to the extent such net gain does not exceed the portion of any capital loss carryover to such taxable year which is attributable to capital losses on sales or exchanges described in paragraph (1) for a taxable year beginning before July 12, 1969. For purposes of the preceding sentence, the portion of a net capital loss for a taxable year which is attributable to capital losses on sales or exchanges described in paragraph (1) is the amount of the net capital loss on such sales or exchanges for such taxable year (but not in excess of the net capital loss for such taxable year).''

Subsec. (c)(5). Pub. L. 101–508, §11801(c)(11)(B), redesignated par. (5) as (2).

1988—Subsec. (a). Pub. L. 100–647 substituted ''subsections (a) and (b) of section 166'' for ''subsections (a), (b), and (c) of section 166''.

1986—Subsec. (c)(1). Pub. L. 99–514, §901(d)(3)(A), substituted ''referred to in paragraph (5)'' for ''to which section 585, 586, or 593 applies''.

Pub. L. 99–514, §671(b)(4), inserted ''For purposes of the preceding sentence, any regular or residual interest in a REMIC shall be treated as an evidence of indebtedness.''

Subsec. (c)(5). Pub. L. 99–514, §901(d)(3)(B), added par. (5).

1984—Subsec. (c)(2). Pub. L. 98–369 substituted ''6 months'' for ''1 year'', applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

1976—Subsec. (c)(2). Pub. L. 94–455, §1402(b)(2), provided that ''9 months'' would be changed to ''1 year''.

Pub. L. 94–455, §1402(b)(1)(G), (2), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

Subsec. (c)(4). Pub. L. 94–455, §1044(a), added par. (4).

1969—Pub. L. 91–172, §433(c), substituted ''Bad debts, losses, and gains with respect to securities held by fi-

nancial institutions'' for ''Bad debt and loss deduction with respect to securities held by banks'' in section catchline.

Subsec. (c). Pub. L. 91–172, § 433(a), redesignated existing provisions as par. (1), inserted reference to sections 585, 586 and 593, and added pars. (2) and (3).

1958—Subsec. (c). Pub. L. 85–866 struck out ''with interest coupons or in registered form,'' before ''exceed the gains''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 effective Jan. 1, 2005, with exception for any FASIT in existence on Oct. 22, 2004, to the extent that regular interests issued by the FASIT before such date continue to remain outstanding in accordance with the original terms of issuance, see section 835(c) of Pub. L. 108–357, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective Sept. 1, 1997, see section 1621(d) of Pub. L. 104–188, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 671(b)(4) of Pub. L. 99–514 effective Jan. 1, 1987, see section 675(a) of Pub. L. 99–514, as amended, set out as an Effective Date note under section 860A of this title.

Amendment by section 901(d)(3) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 901(e) of Pub. L. 99–514, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title X, § 1044(b), Oct. 4, 1976, 90 Stat. 1643, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after July 11, 1969.

''(2) If the refund or credit of any overpayment attributable to the application of the amendment made by subsection (a) to any taxable year is otherwise prevented by the operation of any law or rule of law (other than section 7122 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], relating to compromises) on the day which is one year after the date of the enactment of this Act [Oct. 4, 1976], such credit or refund shall be nevertheless allowed or made if claim therefor is filed on or before such day.''

Pub. L. 94–455, title XIV, § 1402(b)(1), Oct. 4, 1976, 90 Stat. 1731, provided that amendment made by that section is effective with respect to taxable years beginning in 1977.

Pub. L. 94–455, title XIV, § 1402(b)(2), Oct. 4, 1976, 90 Stat. 1732, provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title IV, § 433(d), Dec. 30, 1969, 83 Stat. 624, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 1243 of this title] shall apply to taxable years beginning after July 11, 1969.

''(2) ELECTION FOR SMALL BUSINESS INVESTMENT COMPANIES AND BUSINESS DEVELOPMENT CORPORATIONS.—Notwithstanding paragraph (1), in the case of a financial institution described in section 586(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the amendments made by this section [amending this section and section 1243 of this title] shall not apply for its taxable years beginning after July 11, 1969, and before July 11, 1974, unless the taxpayer so elects at such time and in such manner as shall be prescribed by the Secretary of the Treasury or his delegate. Such election shall be irrevocable and shall apply to all such taxable years.''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

[§ 583. Repealed. Pub. L. 94–455, title XIX, § 1901(a)(82), Oct. 4, 1976, 90 Stat. 1778]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 202, related to deductions by certain taxpayers of dividends paid to the United States or any instrumentality thereof exempt from Federal income taxes on the preferred stock of the corporation owned by the United States or such instrumentality.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 2 of this title.

§ 584. Common trust funds

(a) Definitions

For purposes of this subtitle, the term ''common trust fund'' means a fund maintained by a bank—

(1) exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank in its capacity—

(A) as a trustee, executor, administrator, or guardian, or

(B) as a custodian of accounts—

(i) which the Secretary determines are established pursuant to a State law which is substantially similar to the Uniform Gifts to Minors Act as published by the American Law Institute, and

(ii) with respect to which the bank establishes, to the satisfaction of the Secretary, that it has duties and responsibilities similar to duties and responsibilities of a trustee or guardian; and

(2) in conformity with the rules and regulations, prevailing from time to time, of the Board of Governors of the Federal Reserve System or the Comptroller of the Currency pertaining to the collective investment of trust funds by national banks.

For purposes of this subsection, two or more banks which are members of the same affiliated group (within the meaning of section 1504) shall be treated as one bank for the period of affiliation with respect to any fund of which any of the member banks is trustee or two or more of the member banks are cotrustees.

(b) Taxation of common trust funds

A common trust fund shall not be subject to taxation under this chapter and for purposes of this chapter shall not be considered a corporation.

(c) Income of participants in fund

Each participant in the common trust fund in computing its taxable income shall include, whether or not distributed and whether or not distributable—

(1) as part of its gains and losses from sales or exchanges of capital assets held for not more than 1 year, its proportionate share of the gains and losses of the common trust fund from sales or exchanges of capital assets held for not more than 1 year,

(2) as part of its gains and losses from sales or exchanges of capital assets held for more than 1 year, its proportionate share of the gains and losses of the common trust fund from sales or exchanges of capital assets held for more than 1 year, and

(3) its proportionate share of the ordinary taxable income or the ordinary net loss of the common trust fund, computed as provided in subsection (d).

The proportionate share of each participant in the amount of dividends received by the common trust fund and to which section 1(h)(11) applies shall be considered for purposes of such paragraph as having been received by such participant.

(d) Computation of common trust fund income

The taxable income of a common trust fund shall be computed in the same manner and on the same basis as in the case of an individual, except that—

(1) there shall be segregated the gains and losses from sales or exchanges of capital assets;

(2) after excluding all items of gain and loss from sales or exchanges of capital assets, there shall be computed—

(A) an ordinary taxable income which shall consist of the excess of the gross income over deductions; or

(B) an ordinary net loss which shall consist of the excess of the deductions over the gross income; and

(3) the deduction provided by section 170 (relating to charitable, etc., contributions and gifts) shall not be allowed.

(e) Admission and withdrawal

No gain or loss shall be realized by the common trust fund by the admission or withdrawal of a participant. The admission of a participant shall be treated with respect to the participant as the purchase of, or an exchange for, the participating interest. The withdrawal of any participating interest by a participant shall be treated as a sale or exchange of such interest by the participant.

(f) Different taxable years of common trust fund and participant

If the taxable year of the common trust fund is different from that of a participant, the inclusions with respect to the taxable income of the common trust fund, in computing the taxable income of the participant for its taxable year, shall be based upon the taxable income of the common trust fund for any taxable year of the common trust fund ending within or with the taxable year of the participant.

(g) Net operating loss deduction

The benefit of the deduction for net operating losses provided by section 172 shall not be allowed to a common trust fund, but shall be allowed to the participants in the common trust fund under regulations prescribed by the Secretary.

(h) Nonrecognition treatment for certain transfers to regulated investment companies

(1) In general

If—

(A) a common trust fund transfers substantially all of its assets to one or more regulated investment companies in exchange solely for stock in the company or companies to which such assets are so transferred, and

(B) such stock is distributed by such common trust fund to participants in such common trust fund in exchange solely for their interests in such common trust fund,

no gain or loss shall be recognized by such common trust fund by reason of such transfer or distribution, and no gain or loss shall be recognized by any participant in such common trust fund by reason of such exchange.

(2) Basis rules

(A) Regulated investment company

The basis of any asset received by a regulated investment company in a transfer referred to in paragraph (1)(A) shall be the same as it would be in the hands of the common trust fund.

(B) Participants

The basis of the stock which is received in an exchange referred to in paragraph (1)(B) shall be the same as that of the property exchanged. If stock in more than one regulated investment company is received in such exchange, the basis determined under the preceding sentence shall be allocated among the stock in each such company on the basis of respective fair market values.

(3) Treatment of assumptions of liability

(A) In general

In determining whether the transfer referred to in paragraph (1)(A) is in exchange solely for stock in one or more regulated investment companies, the assumption by any such company of a liability of the common trust fund shall be disregarded.

(B) Special rule where assumed liabilities exceed basis

(i) In general

If, in any transfer referred to in paragraph (1)(A), the assumed liabilities exceed the aggregate adjusted bases (in the hands of the common trust fund) of the assets transferred to the regulated investment company or companies—

(I) notwithstanding paragraph (1), gain shall be recognized to the common trust fund on such transfer in an amount equal to such excess,

(II) the basis of the assets received by the regulated investment company or companies in such transfer shall be increased by the amount so recognized, and

(III) any adjustment to the basis of a participant's interest in the common trust fund as a result of the gain so recognized shall be treated as occurring immediately before the exchange referred to in paragraph (1)(B).

If the transfer referred to in paragraph (1)(A) is to two or more regulated investment companies, the basis increase under subclause (II) shall be allocated among such companies on the basis of the respective fair market values of the assets received by each of such companies.

(ii) Assumed liabilities

For purposes of clause (i), the term ''assumed liabilities'' means any liability of the common trust fund assumed by any regulated investment company in connection with the transfer referred to in paragraph (1)(A).

(C) Assumption

For purposes of this paragraph, in determining the amount of any liability assumed, the rules of section 357(d) shall apply.

(4) Common trust fund must meet diversification rules

This subsection shall not apply to any common trust fund which would not meet the requirements of section 368(a)(2)(F)(ii) if it were a corporation. For purposes of the preceding sentence, Government securities shall not be treated as securities of an issuer in applying the 25-percent and 50-percent test and such securities shall not be excluded for purposes of determining total assets under clause (iv) of section 368(a)(2)(F).

(i) Taxable year of common trust fund

For purposes of this subtitle, the taxable year of any common trust fund shall be the calendar year.

(Aug. 16, 1954, ch. 736, 68A Stat. 203; Pub. L. 87–722, § 4, Sept. 28, 1962, 76 Stat. 670; Pub. L. 88–272, title II, § 201(d)(5), Feb. 26, 1964, 78 Stat. 32; Pub. L. 94–414, § 1, Sept. 17, 1976, 90 Stat. 1273; Pub. L. 94–455, title XIV, § 1402(b)(1)(H), (2), title XIX, §§ 1901(b)(1)(G), 1906(b)(13)(A), title XXI, §§ 2131(d), 2138, Oct. 4, 1976, 90 Stat. 1732, 1790, 1834, 1924, 1932; Pub. L. 95–30, title I, § 101(d)(7), May 23, 1977, 91 Stat. 133; Pub. L. 96–223, title IV, § 404(b)(3), Apr. 2, 1980, 94 Stat. 306; Pub. L. 97–34, title III, § 301(b)(3), (6)(A), Aug. 13, 1981, 95 Stat. 270; Pub. L. 97–448, title I, § 103(a)(2), Jan. 12, 1983, 96 Stat. 2375; Pub. L. 98–369, div. A, title X, § 1001(b)(7), (e), July 18, 1984, 98 Stat. 1011, 1012; Pub. L. 99–514, title VI, § 612(b)(2), Oct. 22, 1986, 100 Stat. 2250; Pub. L. 100–647, title I, § 1008(e)(5)(A), Nov. 10, 1988, 102 Stat. 3440; Pub. L. 104–188, title I, § 1805(a), Aug. 20, 1996, 110 Stat. 1894; Pub. L. 106–36, title III, § 3001(c)(1), June 25, 1999, 113 Stat. 183; Pub. L. 108–27, title III, § 302(e)(7), May 28, 2003, 117 Stat. 764.)

AMENDMENTS

2003—Subsec. (c). Pub. L. 108–27 inserted concluding provisions.

1999—Subsec. (h)(3)(A). Pub. L. 106–36, § 3001(c)(1)(A), struck out '', and the fact that any property transferred by the common trust fund is subject to a liability,'' before ''shall be disregarded''.

Subsec. (h)(3)(B)(ii). Pub. L. 106–36, § 3001(c)(1)(B), added cl. (ii) and struck out heading and text of former cl. (ii). Text read as follows: ''For purposes of clause (i), the term 'assumed liabilities' means the aggregate of—

''(I) any liability of the common trust fund assumed by any regulated investment company in connection with the transfer referred to in paragraph (1)(A), and

''(II) any liability to which property so transferred is subject.''

Subsec. (h)(3)(C). Pub. L. 106–36, § 3001(c)(1)(B), added subpar. (C).

1996—Subsecs. (h), (i). Pub. L. 104–188 added subsec. (h) and redesignated former subsec. (h) as (i).

1988—Subsec. (h). Pub. L. 100–647 added subsec. (h).

1986—Subsec. (c). Pub. L. 99–514, § 612(b)(2)(B), substituted ''1 year'' for ''6 months'' wherever appearing in pars. (1) and (2).

Pub. L. 99–514, § 612(b)(2)(A), amended subsec. (c) generally, restating subpars. (A) to (C) of former par. (1) as pars. (1) to (3) and striking out former par. (2) which read as follows: ''The proportionate share of each participant in the amount of dividends or interest received by the common trust fund and to which section 116 or 128 applies shall be considered for purposes of such section as having been received by such participant.''

1984—Subsec. (c)(1)(A), (B). Pub. L. 98–369 substituted ''6 months'' for ''1 year'', wherever appearing, applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

1983—Subsec. (c)(2). Pub. L. 97–448 reenacted par. (2) without change.

1981—Subsec. (c)(2). Pub. L. 97–34, § 301(b)(6)(A), inserted reference to ''interest'' in heading and text, which continued the amendment made by Pub. L. 96–223.

Pub. L. 97–34, § 301(b)(3), inserted ''or 128'' after ''section 116''.

1980—Subsec. (c)(2). Pub. L. 96–223 inserted ''or interest'' after ''dividends'' in heading and text.

1977—Subsec. (d)(4). Pub. L. 95–30 struck out par. (4) relating to standard deduction.

1976—Subsec. (a). Pub. L. 94–414 inserted provision relating to treatment of two or more bank members of same affiliated group.

Subsec. (a)(1). Pub. L. 94–455, § 2138, designated existing provisions relating to trustee, executor, administrator and guardian as subpar. (A) and added subpar. (B).

Subsec. (c)(1)(A), (B). Pub. L. 94–455, § 1402(b)(2), provided that ''9 months'' would be changed to ''1 year'' wherever appearing.

Pub. L. 94–455, § 1402(b)(1)(H), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

Subsec. (c)(2). Pub. L. 94–455, § 1901(b)(1)(G), struck out provisions relating to partially tax exempt interest and election of a common trust fund to amortize premiums on bonds and other obligations.

Subsec. (e). Pub. L. 94–455, § 2131(d), inserted ''The admission of a participant shall be treated with respect to the participant as the purchase of, or exchange for, the participating interest''.

Subsec. (g). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

1964—Subsec. (c)(2). Pub. L. 88–272 struck out ''section 34 or'' before ''section 116 applies''.

1962—Subsec. (a)(2). Pub. L. 87–722 inserted ''or the Comptroller of the Currency'' after ''the Board of Governors of the Federal Reserve System''.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–27 applicable, except as otherwise provided, to taxable years beginning after Dec. 31, 2002, see section 302(f) of Pub. L. 108–27, set out as an Effective and Termination Dates of 2003 Amendment note under section 1 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–36 applicable to transfers after Oct. 18, 1998, see section 3001(e) of Pub. L. 106–36, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, § 1805(b), Aug. 20, 1996, 110 Stat. 1895, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to transfers after December 31, 1995.''

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, § 1008(e)(5)(B), Nov. 10, 1988, 102 Stat. 3440, provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect as if included in the amendments made by section 806 of the Reform Act [Pub. L. 99–514], except that section 806(e)(1) [set out as a note under section 1378 of this title] shall be applied by substituting 'December 31, 1987' for 'December 31, 1986'. For purposes of section 806(e)(2) of the Reform Act [set out as a note under section 1378 of this title]—

''(i) a participant in a common trust fund shall be treated in the same manner as a partner, and

''(ii) subparagraph (C) thereof shall be applied by substituting 'December 31, 1987' for 'December 31, 1986' and as if it did not contain the election to include all income in the short taxable year.''

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title VI, § 612(b)(2)(B), Oct. 22, 1986, 100 Stat. 2250, provided that: ''If the amendments made by section 1001 of the Tax Reform Act of 1984 [Pub. L. 98–369, amending this section and sections 166, 341, 402, 403, 423, 582, 631, 642, 702, 818, 852, 856, 857, 1222, 1223, 1231, 1232, 1233, 1234, 1235, 1246, 1247, and 1248 of this title] cease to apply [see Effective Date of 1984 Amendment note below], effective with respect to property to which such amendments do not apply, subsection (c) of section 584 is amended by striking out '6 months' each place it appears and inserting in lieu thereof '1 year'.''

Amendment by section 612(b)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 612(c) of Pub. L. 99–514, set out as a note under section 301 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 301(b)(3) of Pub. L. 97–34 applicable to taxable years ending after Sept. 30, 1981, and amendment by section 301(b)(6)(A) of Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 301(d) of Pub. L. 97–34, set out as a note under section 265 of this title.

EFFECTIVE AND TERMINATION DATES OF 1980 AMENDMENT

Amendment by Pub. L. 96–223 applicable with respect to taxable years beginning after Dec. 31, 1980, and before Jan. 1, 1982, see section 404(c) of Pub. L. 96–223, set out as a note under section 265 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XXI, § 2131(f)(6), Oct. 4, 1976, 90 Stat. 1925, provided that: ''The amendments made by subsections (d) and (e) [amending this section and section 683 of this title] shall take effect on April 8, 1976, in taxable years ending on or after such date.''

Pub. L. 94–455, title XIV, § 1402(b)(1), Oct. 4, 1976, 90 Stat. 1731, provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Pub. L. 94–455, title XIV, § 1402(b)(2), Oct. 4, 1976, 90 Stat. 1732, provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

Amendment by section 1901(b)(1)(G) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 2 of this title.

Pub. L. 94–414, § 2, Sept. 17, 1976, 90 Stat. 1273, provided that: ''The amendment made by the first section of this Act [amending this section] shall apply to taxable years beginning after December 31, 1975.''

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable with respect to dividends received after Dec. 31, 1964, in taxable years ending after such date, see section 201(e) of Pub. L. 88–272, set out as a note under section 22 of this title.

§ 585. Reserves for losses on loans of banks

(a) Reserve for bad debts

(1) In general

Except as provided in subsection (c), a bank shall be allowed a deduction for a reasonable addition to a reserve for bad debts. Such deduction shall be in lieu of any deduction under section 166(a).

(2) Bank

For purposes of this section—

(A) In general

The term ''bank'' means any bank (as defined in section 581).

(B) Banking business of United States branch of foreign corporation

The term ''bank'' also includes any corporation to which subparagraph (A) would apply except for the fact that it is a foreign corporation. In the case of any such foreign corporation, this section shall apply only with respect to loans outstanding the inter-

est on which is effectively connected with the conduct of a banking business within the United States.

(b) Addition to reserves for bad debts

(1) General rule

For purposes of subsection (a), the reasonable addition to the reserve for bad debts of any financial institution to which this section applies shall be an amount determined by the taxpayer which shall not exceed the addition to the reserve for losses on loans determined under the experience method as provided in paragraph (2).

(2) Experience method

The amount determined under this paragraph for a taxable year shall be the amount necessary to increase the balance of the reserve for losses on loans (at the close of the taxable year) to the greater of—

(A) the amount which bears the same ratio to loans outstanding at the close of the taxable year as (i) the total bad debts sustained during the taxable year and the 5 preceding taxable years (or, with the approval of the Secretary, a shorter period), adjusted for recoveries of bad debts during such period, bears to (ii) the sum of the loans outstanding at the close of such 6 or fewer taxable years, or

(B) the lower of—

(i) the balance of the reserve at the close of the base year, or

(ii) if the amount of loans outstanding at the close of the taxable year is less than the amount of loans outstanding at the close of the base year, the amount which bears the same ratio to loans outstanding at the close of the taxable year as the balance of the reserve at the close of the base year bears to the amount of loans outstanding at the close of the base year.

For purposes of this paragraph, the base year shall be the last taxable year before the most recent adoption of the experience method, except that for taxable years beginning after 1987 the base year shall be the last taxable year beginning before 1988.

(3) Regulations; definition of loan

The Secretary shall define the term loan and prescribe such regulations as may be necessary to carry out the purposes of this section.

(c) Section not to apply to large banks

(1) In general

In the case of a large bank, this section shall not apply (and no deduction shall be allowed under any other provision of this subtitle for any addition to a reserve for bad debts).

(2) Large banks

For purposes of this subsection, a bank is a large bank if, for the taxable year (or for any preceding taxable year beginning after December 31, 1986)—

(A) the average adjusted bases of all assets of such bank exceeded $500,000,000, or

(B) such bank was a member of a parent-subsidiary controlled group and the average adjusted bases of all assets of such group exceeded $500,000,000.

(3) 4-year spread of adjustments

(A) In general

Except as provided in paragraph (4), in the case of any bank which for its last taxable year before the disqualification year maintained a reserve for bad debts—

(i) the provisions of this subsection shall be treated as a change in the method of accounting of such bank for the disqualification year,

(ii) such change shall be treated as having been made with the consent of the Secretary, and

(iii) the net amount of adjustments required by section 481(a) to be taken into account by the taxpayer shall be taken into account in each of the 4 taxable years beginning with the disqualification year with—

(I) the amount taken into account for the 1st of such taxable years being the greater of 10 percent of such net amount or such higher percentage of such net amount as the taxpayer may elect, and

(II) the amount taken into account in each of the 3 succeeding taxable years being equal to the applicable fraction (determined in accordance with the following table for the taxable year involved) of the portion of such net amount not taken into account under subclause (I).

If the case of the—	The applicable fraction is—
1st succeeding year	2/3
2nd succeeding year	1/3
3rd succeeding year	1/3.

(B) Suspension of recapture for taxable year for which bank is financially troubled

(i) In general

In the case of a bank which is a financially troubled bank for any taxable year—

(I) no adjustment shall be taken into account under subparagraph (A) for such taxable year, and

(II) such taxable year shall be disregarded in determining whether any other taxable year is a taxable year for which an adjustment is required to be taken into account under subparagraph (A) or the amount of such adjustment.

(ii) Exception for elective recapture for 1st year

Clause (i) shall not apply to the 1st taxable year referred to in subparagraph (A)(iii)(I) if the taxpayer elects a higher percentage in accordance with such subparagraph.

(iii) Financially troubled bank

For purposes of clause (i), the term ''financially troubled bank'' means any bank if, for the taxable year, the nonperforming loan percentage of such bank exceeds 75 percent.

(iv) Nonperforming loan percentage

For purposes of clause (iii), the term ''nonperforming loan percentage'' means the percentage determined by dividing—

(I) the sum of the outstanding balances of nonperforming loans of the bank as of the close of each quarter of the taxable year, by

(II) the sum of the amounts of equity of the bank as of the close of each such quarter.

In the case of a bank which is a member of a parent-subsidiary controlled group for the taxable year, the preceding sentence shall be applied with respect to such group.

(v) Other definitions

For purposes of this subparagraph—

(I) Nonperforming loans

The term ''nonperforming loan'' means any loan which is considered to be nonperforming by the primary Federal regulatory agency with respect to the bank.

(II) Equity

The term ''equity'' means the equity of the bank as determined for Federal regulatory purposes.

(C) Coordination with estimated tax payments

For purposes of applying section 6655(e)(2)(A)(i) with respect to any installment, the determination under subparagraph (B) of whether an adjustment is required to be taken into account under subparagraph (A) shall be made as of the last day prescribed for payment of such installment.

(4) Elective cut-off method

If a bank makes an election under this paragraph for the disqualification year—

(A) the provisions of this subsection shall not be treated as a change in the method of accounting of the taxpayer for purposes of section 481,

(B) the taxpayer shall continue to maintain its reserve for loans held by the bank as of the 1st day of the disqualification year and charge against such reserve any losses resulting from loans held by the bank as of such 1st day, and

(C) no deduction shall be allowed under this section (or any other provision of this subtitle) for any addition to such reserve for the disqualification year or any subsequent taxable year.

If the amount of the reserve referred to in subparagraph (B) as of the close of any taxable year exceeds the outstanding balance (as of such time) of the loans referred to in subparagraph (B), such excess shall be included in gross income for such taxable year.

(5) Definitions

For purposes of this subsection—

(A) Parent-subsidiary controlled group

The term ''parent-subsidiary controlled group'' means any controlled group of corporations described in section 1563(a)(1). In determining the average adjusted bases of assets held by such a group, interests held by one member of such group in another member of such group shall be disregarded.

(B) Disqualification year

The term ''disqualification year'' means, with respect to any bank, the 1st taxable year beginning after December 31, 1986, for which such bank was a large bank if such bank maintained a reserve for bad debts for the preceding taxable year.

(C) Election made by each member

In the case of a parent-subsidiary controlled group, any election under this section shall be made separately by each member of such group.

(Added Pub. L. 91–172, title IV, §431(a), Dec. 30, 1969, 83 Stat. 616; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–34, title II, §267(a), Aug. 13, 1981, 95 Stat. 266; Pub. L. 99–514, title IX, §901(a), (d)(1), Oct. 22, 1986, 100 Stat. 2375, 2378; Pub. L. 100–203, title X, §10301(b)(2), Dec. 22, 1987, 101 Stat. 1330–429; Pub. L. 100–647, title I, §1009(a)(2), (3), Nov. 10, 1988, 102 Stat. 3445; Pub. L. 101–508, title XI, §11801(a)(26), (c)(12)(C)–(E), Nov. 5, 1990, 104 Stat. 1388–521, 1388–527; Pub. L. 104–188, title I, §1616(b)(6), Aug. 20, 1996, 110 Stat. 1856.)

AMENDMENTS

1996—Subsec. (a)(2)(A). Pub. L. 104–188 struck out ''other than an organization to which section 593 applies'' after ''section 581)''.

1990—Subsec. (b)(1). Pub. L. 101–508, §11801(c)(12)(C), substituted ''shall not exceed the addition to the reserve for losses on loans determined under the experience method as provided in paragraph (2).'' for ''shall not exceed the greater of—

''(A) for taxable years beginning before 1988 the addition to the reserve for losses on loans determined under the percentage method as provided in paragraph (2), or

''(B) the addition to the reserve for losses on loans determined under the experience method as provided in paragraph (3).''

Subsec. (b)(2). Pub. L. 101–508, §11801(a)(26), (c)(12)(D), redesignated par. (3) as (2) and struck out former par. (2) which related to use of percentage method for determining amount to add to reserve for bad debts.

Subsec. (b)(3). Pub. L. 101–508, §11801(c)(12)(D), (E), redesignated par. (4) as (3), substituted heading for one which read: ''Regulations; definition of eligible loan, etc.'', and amended text generally. Prior to amendment, text read as follows: ''The Secretary shall define the terms 'loan' and 'eligible loan' and prescribe such regulations as may be necessary to carry out the purposes of this section; except that the term 'eligible loan' shall not include—

''(A) a loan to a bank (as defined in section 581),

''(B) a loan to a domestic branch of a foreign corporation to which subsection (a)(2) applies,

''(C) a loan secured by a deposit (i) in the lending bank, or (ii) in an institution described in subparagraph (A) or (B) if the lending bank has control over withdrawal of such deposit,

''(D) a loan to or guaranteed by the United States, a possession or instrumentality thereof, or a State or a political subdivision thereof,

''(E) a loan evidenced by a security as defined in section 165(g)(2)(C),

''(F) a loan of Federal funds, and

''(G) commercial paper, including short-term promissory notes which may be purchased on the open market.'' Former par. (3) redesignated (2).

Subsec. (b)(4). Pub. L. 101–508, §11801(c)(12)(D), redesignated par. (4) as (3).

1988—Subsec. (c)(3)(A)(iii)(I). Pub. L. 100–647, §1009(a)(2)(B), substituted ''such higher percentage of such net amount as the taxpayer may elect'' for ''such greater amount as the taxpayer may designate''.

Subsec. (c)(3)(B)(ii). Pub. L. 100–647, §1009(a)(2)(C), substituted ''elects a higher percentage'' for ''designates an amount''.

Subsec. (c)(4). Pub. L. 100–647, §1009(a)(3), inserted at end ''If the amount of the reserve referred to in subparagraph (B) as of the close of any taxable year exceeds the outstanding balance (as of such time) of the loans referred to in subparagraph (B), such excess shall be included in gross income for such taxable year.''

Subsec. (c)(5)(C). Pub. L. 100–647, §1009(a)(2)(A), added subpar. (C).

1987—Subsec. (c)(3)(C). Pub. L. 100–203 substituted ''section 6655(e)(2)(A)(i)'' for ''section 6655(d)(3)''.

1986—Subsec. (a). Pub. L. 99–514, §901(a)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''This section shall apply to the following financial institutions:

''(1) any bank (as defined in section 581) other than an organization to which section 593 applies, and

''(2) any corporation to which paragraph (1) would apply except for the fact that it is a foreign corporation, and in the case of any such foreign corporation this section shall apply only with respect to loans outstanding the interest on which is effectively connected with the conduct of a banking business within the United States.''

Subsec. (b)(1). Pub. L. 99–514, §901(d)(1), substituted ''subsection (a)'' for ''section 166(c)''.

Subsec. (c). Pub. L. 99–514, §901(a)(2), added subsec. (c).

1981—Subsec. (b)(2). Pub. L. 97–34 defined ''allowable percentage'' to mean 1.0 percent for taxable years beginning in 1982 and 0.6 percent for taxable years beginning after 1982, previously so applicable for taxable years beginning after 1981 and redefined ''base year'' by substituting the last taxable year beginning before 1976 for taxable years beginning after 1975 but before 1983, for the last taxable year beginning before 1976 for taxable years after 1975 but before 1982; and the last taxable year beginning before 1983 for taxable years beginning after 1982, for the last taxable year beginning before 1982 for taxable years beginning after 1981.

1976—Subsec. (b)(3), (4). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1995, see section 1616(c) of Pub. L. 104–188, set out as a note under section 593 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title X, §10301(c), Dec. 22, 1987, 101 Stat. 1330–429, provided that: ''The amendments made by this section [amending this section and sections 6201, 6425, 6601, 6651, and 6655 of this title and repealing section 6154 of this title] shall apply to taxable years beginning after December 31, 1987.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 901(e) of Pub. L. 99–514, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title II, §267(b), Aug. 13, 1981, 95 Stat. 267, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after 1981.''

EFFECTIVE DATE

Pub. L. 91–172, title IV, §431(d), Dec. 30, 1969, 83 Stat. 620, provided that: ''The amendments made by subsections (a) [enacting this section and section 586 of this title] and (c) [amending section 166 of this title] shall apply to taxable years beginning after July 11, 1969.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

[§ 586. Repealed. Pub. L. 99–514, title IX, § 901(c), Oct. 22, 1986, 100 Stat. 2378]

Section, added Pub. L. 91–172, title IV, §431(a), Dec. 30, 1969, 83 Stat. 618; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, related to reserves for losses on loans of small business investment companies, etc.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 1986, see section 901(e) of Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 166 of this title.

PART II—MUTUAL SAVINGS BANKS, ETC.

Sec.

AMENDMENTS

1996—Pub. L. 104–188, title I, §1616(b)(16), Aug. 20, 1996, 110 Stat. 1857, struck out items 595 ''Foreclosure on property securing loans'' and 596 ''Limitation on dividends received deduction''.

1989—Pub. L. 101–73, title XIV, §1401(b)(1), Aug. 9, 1989, 103 Stat. 549, repealed amendment made by Pub. L. 99–514, §904(b)(2), see 1986 Amendment note below.

Pub. L. 101–73, title XIV, §1401(a)(3)(C), Aug. 9, 1989, 103 Stat. 549, substituted ''Treatment of transactions in which Federal financial assistance provided'' for ''FSLIC or FDIC financial assistance'' in item 597.

1988—Pub. L. 100–647, title IV, §4012(b)(2)(D)(ii), Nov. 10, 1988, 102 Stat. 3658, substituted ''FSLIC or FDIC'' for ''FSLIC'' in item 597.

1986—Pub. L. 99–514, title IX, §904(b)(2), (c)(2)(A), Oct. 22, 1986, 100 Stat. 2385, as amended by Pub. L. 100–647, title IV, §4012(a)(2), Nov. 10, 1988, 102 Stat. 3656, which, applicable to transfers after Dec. 31, 1989, in taxable years ending after that date, directed amendment of analysis by striking out item 597, was repealed by Pub. L. 101–73, title XIV, §1401(b)(1), (c)(4), Aug. 9, 1989, 103 Stat. 549, 550, eff. Oct. 22, 1986, and applicable as if the amendments made by such section had not been enacted.

1981—Pub. L. 97–34, title II, §244(b), Aug. 13, 1981, 95 Stat. 255, added item 597.

1976—Pub. L. 94–455, title XIX, §1901(b)(19), Oct. 4, 1976, 90 Stat. 1796, struck out item 592 ''Deduction for repayment of certain loans''.

1969—Pub. L. 91–172, title IV, §434(b)(2), Dec. 30, 1969, 83 Stat. 625, added item 596.

1962—Pub. L. 87–834, § 6(d), Oct. 16, 1962, 76 Stat. 984, substituted ''Reserves for losses on loans'' for ''Additions to reserve for bad debts'' in item 593, and added item 595.

§ 591. Deduction for dividends paid on deposits

(a) In general

In the case of mutual savings banks, cooperative banks, domestic building and loan associations, and other savings institutions chartered and supervised as savings and loan or similar associations under Federal or State law, there shall be allowed as deductions in computing taxable income amounts paid to, or credited to the accounts of, depositors or holders of accounts as dividends or interest on their deposits or withdrawable accounts, if such amounts paid or credited are withdrawable on demand subject only to customary notice of intention to withdraw.

(b) Mutual savings bank to include certain banks with capital stock

For purposes of this part, the term ''mutual savings bank'' includes any bank—

(1) which has capital stock represented by shares, and

(2) which is subject to, and operates under, Federal or State laws relating to mutual savings bank.

(Aug. 16, 1954, ch. 736, 68A Stat. 204; Pub. L. 87–834, § 6(f), Oct. 16, 1962, 76 Stat. 984; Pub. L. 97–34, title II, § 245(a), Aug. 13, 1981, 95 Stat. 255.)

AMENDMENTS

1981—Pub. L. 97–34 designated existing provisions as subsec. (a), inserted heading ''In general'', and added subsec. (b).

1962—Pub. L. 87–834 included other savings institutions chartered and supervised as savings and loan or similar associations under Federal or State law, and authorized amounts paid as interest as a deduction.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title II, § 246(d), Aug. 13, 1981, 95 Stat. 256, provided that: ''The amendments made by section 245 [amending this section and section 593 of this title] shall apply with respect to taxable years ending after the date of the enactment of this Act [Aug. 13, 1981].''

[§ 592. Repealed. Pub. L. 94–455, title XIX, § 1901(a)(83), Oct. 4, 1976, 90 Stat. 1778]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 205, authorized a deduction by mutual savings banks for repayment of loans made before Sept. 1, 1951, by the United States or any agency or instrumentality thereof, or any mutual fund established under the authority of the laws of any State.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 2 of this title.

§ 593. Reserves for losses on loans

(a) Reserve for bad debts

(1) In general

Except as provided in paragraph (2), in the case of—

(A) any domestic building and loan association,

(B) any mutual savings bank, or

(C) any cooperative bank without capital stock organized and operated for mutual purposes and without profit,

there shall be allowed a deduction for a reasonable addition to a reserve for bad debts. Such deduction shall be in lieu of any deduction under section 166(a).

(2) Organization must meet 60-percent asset test of section 7701(a)(19)

This section shall apply to an association or bank referred to in paragraph (1) only if it meets the requirements of section 7701(a)(19)(C).

(b) Addition to reserves for bad debts

(1) In general

For purposes of subsection (a), the reasonable addition for the taxable year to the reserve for bad debts of any taxpayer described in subsection (a) shall be an amount equal to the sum of—

(A) the amount determined to be a reasonable addition to the reserve for losses on nonqualifying loans, computed in the same manner as is provided with respect to additions to the reserves for losses on loans of banks under section 585(b)(2), plus

(B) the amount determined by the taxpayer to be a reasonable addition to the reserve for losses on qualifying real property loans, but such amount shall not exceed the amount determined under paragraph (2) or (3), whichever is the larger, but the amount determined under this subparagraph shall in no case be greater than the larger of—

(i) the amount determined under paragraph (3), or

(ii) the amount which, when added to the amount determined under subparagraph (A), equals the amount by which 12 percent of the total deposits or withdrawable accounts of depositors of the taxpayer at the close of such year exceeds the sum of its surplus, undivided profits, and reserves at the beginning of such year (taking into account any portion thereof attributable to the period before the first taxable year beginning after December 31, 1951).

(2) Percentage of taxable income method

(A) In general

Subject to subparagraphs (B) and (C), the amount determined under this paragraph for the taxable year shall be an amount equal to 8 percent of the taxable income for such year.

(B) Reduction for amounts referred to in paragraph (1)(A)

The amount determined under subparagraph (A) shall be reduced (but not below 0) by the amount determined under paragraph (1)(A).

(C) Overall limitation on paragraph

The amount determined under this paragraph shall not exceed the amount necessary to increase the balance at the close of the taxable year of the reserve for losses on qualifying real property loans to 6 percent of such loans outstanding at such time.

(D) Computation of taxable income

For purposes of this paragraph, taxable income shall be computed—

(i) by excluding from gross income any amount included therein by reason of subsection (e),

(ii) without regard to any deduction allowable for any addition to the reserve for bad debts,

(iii) by excluding from gross income an amount equal to the net gain for the taxable year arising from the sale or exchange of stock of a corporation or of obligations the interest on which is excludable from gross income under section 103,

(iv) by excluding from gross income dividends with respect to which a deduction is allowable by part VIII of subchapter B, reduced by an amount equal to 8 percent of the dividends received deduction (determined without regard to section 596)[1] for the taxable year, and

(v) if there is a capital gain rate differential (as defined in section 904(b)(3)(D)) for the taxable year, by excluding from gross income the rate differential portion (within the meaning of section 904(b)(3)(E)) of the lesser of—

(I) the net long-term capital gain for the taxable year, or

(II) the net long-term capital gain for the taxable year from the sale or exchange of property other than property described in clause (iii).

(3) Experience method

The amount determined under this paragraph for the taxable year shall be computed in the same manner as is provided with respect to additions to the reserves for losses on loans of banks under section 585(b)(2).

(c) Treatment of reserves for bad debts

(1) Establishment of reserves

Each taxpayer described in subsection (a) which uses the reserve method of accounting for bad debts shall establish and maintain a reserve for losses on qualifying real property loans, a reserve for losses on nonqualifying loans, and a supplemental reserve for losses on loans. For purposes of this title, such reserves shall be treated as reserves for bad debts, but no deduction shall be allowed for any addition to the supplemental reserve for losses on loans.

(2) Certain pre-1963 reserves

Notwithstanding the second sentence of paragraph (1), any amount allocated pursuant to paragraph (5) (as in effect immediately before the enactment of the Tax Reform Act of 1976) during a taxable year beginning before January 1, 1977, to the reserve for losses on qualifying real property loans out of the surplus, undivided profits, and bad debt reserves (determined as of December 31, 1962) attributable to the period before the first taxable year beginning after December 31, 1951, shall not be treated as a reserve for bad debts for any purpose other than determining the amount referred to in subsection (b)(1)(B), and for such purpose such amount shall be treated as remaining in such reserve.

(3) Charging of bad debts to reserves

Any debt becoming worthless or partially worthless in respect of a qualifying real property loan shall be charged to the reserve for losses on such loans, and any debt becoming worthless or partially worthless in respect of a nonqualifying loan shall be charged to the reserve for losses on nonqualifying loans; except that any such debt may, at the election of the taxpayer, be charged in whole or in part to the supplemental reserve for losses on loans.

(d) Loans defined

For purposes of this section—

(1) Qualifying real property loans

The term ''qualifying real property loan'' means any loan secured by an interest in improved real property or secured by an interest in real property which is to be improved out of the proceeds of the loan, but such term does not include—

(A) any loan evidenced by a security (as defined in section 165(g)(2)(C));

(B) any loan, whether or not evidenced by a security (as defined in section 165(g)(2)(C)), the primary obligor on which is—

(i) a government or political subdivision or instrumentality thereof;

(ii) a bank (as defined in section 581); or

(iii) another member of the same affiliated group;

(C) any loan, to the extent secured by a deposit in or share of the taxpayer; or

(D) any loan which, within a 60-day period beginning in one taxable year of the creditor and ending in its next taxable year, is made or acquired and then repaid or disposed of, unless the transactions by which such loan was made or acquired and then repaid or disposed of are established to be for bona fide business purposes. For purposes of subparagraph (B)(iii), the term ''affiliated group'' has the meaning assigned to such term by section 1504(a); except that (i) the phrase ''more than 50 percent'' shall be substituted for the phrase ''at least 80 percent'' each place it appears in section 1504(a), and (ii) all corporations shall be treated as includible corporations (without any exclusion under section 1504(b)).

(2) Nonqualifying loans

The term ''nonqualifying loan'' means any loan which is not a qualifying real property loan.

(3) Loan

The term ''loan'' means debt, as the term ''debt'' is used in section 166.

(4) Treatment of interests in REMIC's

A regular or residual interest in a REMIC shall be treated as a qualifying real property loan; except that, if less than 95 percent of the assets of such REMIC are qualifying real property loans (determined as if the taxpayer held the assets of the REMIC), such interest shall

[1] See References in Text note below.

be so treated only in the proportion which the assets of such REMIC consist of such loans. For purposes of determining whether any interest in a REMIC qualifies under the preceding sentence, any interest in another REMIC held by such REMIC shall be treated as a qualifying real property loan under principles similar to the principles of the preceding sentence, except that if such REMIC's are part of a tiered structure, they shall be treated as 1 REMIC for purposes of this paragraph.

(e) Distributions to shareholders

(1) In general

For purposes of this chapter, any distribution of property (as defined in section 317(a)) by a taxpayer having a balance described in subsection (g)(2)(A)(ii) to a shareholder with respect to its stock, if such distribution is not allowable as a deduction under section 591, shall be treated as made—

(A) first out of its earnings and profits accumulated in taxable years beginning after December 31, 1951, (and, in the case of an S corporation, the accumulated adjustments account, as defined in section 1368(e)(1)) to the extent thereof,

(B) then out of the balance taken into account under subsection (g)(2)(A)(ii) (properly adjusted for amounts charged against such reserves for taxable years beginning after December 31, 1987),

(C) then out of the supplemental reserve for losses on loans, to the extent thereof,

(D) then out of such other accounts as may be proper.

This paragraph shall apply in the case of any distribution in redemption of stock or in partial or complete liquidation of a taxpayer having a balance described in subsection (g)(2)(A)(ii), except that any such distribution shall be treated as made first out of the amount referred to in subparagraph (B), second out of the amount referred to in subparagraph (C), third out of the amount referred to in subparagraph (A), and then out of such other accounts as may be proper. This paragraph shall not apply to any transaction to which section 381 applies, or to any distribution to the Federal Savings and Loan Insurance Corporation (or any successor thereof) or the Federal Deposit Insurance Corporation in redemption of an interest in a taxpayer having a balance described in subsection (g)(2)(A)(ii), if such interest was originally received by any such entity in exchange for assistance provided under a provision of law referred to in section 597(c). This paragraph shall not apply to any distribution of all of the stock of a bank (as defined in section 581) to another corporation if, immediately after the distribution, such bank and such other corporation are members of the same affiliated group (as defined in section 1504) and the provisions of section 5(e) of the Federal Deposit Insurance Act (as in effect on December 31, 1995) or similar provisions are in effect.

(2) Amounts charged to reserve accounts and included in gross income

If any distribution is treated under paragraph (1) as having been made out of the reserves described in subparagraphs (B) and (C) of such paragraph, the amount charged against such reserve shall be the amount which, when reduced by the amount of tax imposed under this chapter and attributable to the inclusion of such amount in gross income, is equal to the amount of such distribution; and the amount so charged against such reserve shall be included in gross income of the taxpayer.

(3) Special rules

(A) For purposes of paragraph (1)(B), additions to the reserve for losses on qualifying real property loans for the taxable year in which the distribution occurs shall be taken into account.

(B) For purposes of computing under this section the amount of a reasonable addition to the reserve for losses on qualifying real property loans for any taxable year, any amount charged during any year to such reserve pursuant to the provisions of paragraph (2) shall not be taken into account.

(f) Termination of reserve method

Subsections (a), (b), (c), and (d) shall not apply to any taxable year beginning after December 31, 1995.

(g) 6-year spread of adjustments

(1) In general

In the case of any taxpayer who is required by reason of subsection (f) to change its method of computing reserves for bad debts—

(A) such change shall be treated as a change in a method of accounting,

(B) such change shall be treated as initiated by the taxpayer and as having been made with the consent of the Secretary, and

(C) the net amount of the adjustments required to be taken into account by the taxpayer under section 481(a)—

(i) shall be determined by taking into account only applicable excess reserves, and

(ii) as so determined, shall be taken into account ratably over the 6-taxable year period beginning with the first taxable year beginning after December 31, 1995.

(2) Applicable excess reserves

(A) In general

For purposes of paragraph (1), the term ''applicable excess reserves'' means the excess (if any) of—

(i) the balance of the reserves described in subsection (c)(1) (other than the supplemental reserve) as of the close of the taxpayer's last taxable year beginning before January 1, 1996, over

(ii) the lesser of—

(I) the balance of such reserves as of the close of the taxpayer's last taxable year beginning before January 1, 1988, or

(II) the balance of the reserves described in subclause (I), reduced in the same manner as under section 585(b)(2)(B)(ii) on the basis of the taxable years described in clause (i) and this clause.

(B) Special rule for thrifts which become small banks

In the case of a bank (as defined in section 581) which was not a large bank (as defined

in section 585(c)(2)) for its first taxable year beginning after December 31, 1995—

(i) the balance taken into account under subparagraph (A)(ii) shall not be less than the amount which would be the balance of such reserves as of the close of its last taxable year beginning before such date if the additions to such reserves for all taxable years had been determined under section 585(b)(2)(A), and

(ii) the opening balance of the reserve for bad debts as of the beginning of such first taxable year shall be the balance taken into account under subparagraph (A)(ii) (determined after the application of clause (i) of this subparagraph).

The preceding sentence shall not apply for purposes of paragraphs (5) and (6) or subsection (e)(1).

(3) Recapture of pre-1988 reserves where taxpayer ceases to be bank

If, during any taxable year beginning after December 31, 1995, a taxpayer to which paragraph (1) applied is not a bank (as defined in section 581), paragraph (1) shall apply to the reserves described in paragraph (2)(A)(ii) and the supplemental reserve; except that such reserves shall be taken into account ratably over the 6-taxable year period beginning with such taxable year.

(4) Suspension of recapture if residential loan requirement met

(A) In general

In the case of a bank which meets the residential loan requirement of subparagraph (B) for the first taxable year beginning after December 31, 1995, or for the following taxable year—

(i) no adjustment shall be taken into account under paragraph (1) for such taxable year, and

(ii) such taxable year shall be disregarded in determining—

(I) whether any other taxable year is a taxable year for which an adjustment is required to be taken into account under paragraph (1), and

(II) the amount of such adjustment.

(B) Residential loan requirement

A taxpayer meets the residential loan requirement of this subparagraph for any taxable year if the principal amount of the residential loans made by the taxpayer during such year is not less than the base amount for such year.

(C) Residential loan

For purposes of this paragraph, the term ''residential loan'' means any loan described in clause (v) of section 7701(a)(19)(C) but only if such loan is incurred in acquiring, constructing, or improving the property described in such clause.

(D) Base amount

For purposes of subparagraph (B), the base amount is the average of the principal amounts of the residential loans made by the taxpayer during the 6 most recent taxable years beginning on or before December 31, 1995. At the election of the taxpayer who made such loans during each of such 6 taxable years, the preceding sentence shall be applied without regard to the taxable year in which such principal amount was the highest and the taxable year in such principal amount was the lowest. Such an election may be made only for the first taxable year beginning after such date, and, if made for such taxable year, shall apply to the succeeding taxable year unless revoked with the consent of the Secretary.

(E) Controlled groups

In the case of a taxpayer which is a member of any controlled group of corporations described in section 1563(a)(1), subparagraph (B) shall be applied with respect to such group.

(5) Continued application of fresh start under section 585 transitional rules

In the case of a taxpayer to which paragraph (1) applied and which was not a large bank (as defined in section 585(c)(2)) for its first taxable year beginning after December 31, 1995:

(A) In general

For purposes of determining the net amount of adjustments referred to in section 585(c)(3)(A)(iii), there shall be taken into account only the excess (if any) of the reserve for bad debts as of the close of the last taxable year before the disqualification year over the balance taken into account by such taxpayer under paragraph (2)(A)(ii) of this subsection.

(B) Treatment under elective cut-off method

For purposes of applying section 585(c)(4)—

(i) the balance of the reserve taken into account under subparagraph (B) thereof shall be reduced by the balance taken into account by such taxpayer under paragraph (2)(A)(ii) of this subsection, and

(ii) no amount shall be includible in gross income by reason of such reduction.

(6) Suspended reserve included as section 381(c) items

The balance taken into account by a taxpayer under paragraph (2)(A)(ii) of this subsection and the supplemental reserve shall be treated as items described in section 381(c).

(7) Conversions to credit unions

In the case of a taxpayer to which paragraph (1) applied which becomes a credit union described in section 501(c) and exempt from taxation under section 501(a)—

(A) any amount required to be included in the gross income of the credit union by reason of this subsection shall be treated as derived from an unrelated trade or business (as defined in section 513), and

(B) for purposes of paragraph (3), the credit union shall not be treated as if it were a bank.

(8) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out this

subsection and subsection (e), including regulations providing for the application of such subsections in the case of acquisitions, mergers, spin-offs, and other reorganizations.

(Aug. 16, 1954, ch. 736, 68A Stat. 205; Pub. L. 87–834, §6(a), Oct. 16, 1962, 76 Stat. 977; Pub. L. 91–172, title IV, §432(a), (b), Dec. 30, 1969, 83 Stat. 620, 622; Pub. L. 94–455, title XIX, §1901(a)(84), Oct. 4, 1976, 90 Stat. 1778; Pub. L. 96–222, title I, §104(a)(3)(C), Apr. 1, 1980, 94 Stat. 215; Pub. L. 97–34, title II, §§243, 245(b), (c), Aug. 13, 1981, 95 Stat. 255, 256; Pub. L. 99–514, title III, §311(b)(2), title VI, §671(b)(2), title IX, §901(b)(1)–(3), (d)(2), Oct. 22, 1986, 100 Stat. 2219, 2317, 2378; Pub. L. 100–647, title I, §§1003(c)(3), 1006(t)(25)(B), Nov. 10, 1988, 102 Stat. 3384, 3426; Pub. L. 101–73, title XIV, §1401(b)(3), Aug. 9, 1989, 103 Stat. 550; Pub. L. 101–508, title XI, §11801(c)(12)(F), Nov. 5, 1990, 104 Stat. 1388–527; Pub. L. 104–188, title I, §§1616(a), (b)(7), 1704(t)(51), Aug. 20, 1996, 110 Stat. 1854, 1857, 1890; Pub. L. 105–34, title XVI, §1601(f)(5)(A), Aug. 5, 1997, 111 Stat. 1091.)

REFERENCES IN TEXT

Section 596, referred to in subsec. (b)(2)(D)(iv), was repealed by Pub. L. 104–188, title I, §1616(b)(9), Aug. 20, 1996, 110 Stat. 1857.

The Tax Reform Act of 1976, referred to in subsec. (c)(2), is Pub. L. 94–455, Oct. 4, 1976, 90 Stat. 1520, as amended, which was enacted Oct. 4, 1976. For complete classification of this Act to the Code, see Tables.

Section 5(e) of the Federal Deposit Insurance Act, referred to in subsec. (e)(1), is classified to section 1815(e) of Title 12, Banks and Banking.

AMENDMENTS

1997—Subsec. (e)(1)(A). Pub. L. 105–34 inserted ''(and, in the case of an S corporation, the accumulated adjustments account, as defined in section 1368(e)(1))'' after ''1951,''.

1996—Subsec. (b)(1)(A), (3). Pub. L. 104–188, §1704(t)(51), provided that the amendment made by section 11801(c)(12)(F) of Pub. L. 101–508 shall be applied as if ''and (3)'' appeared instead of ''and (E)''. See 1990 Amendment note below.

Subsec. (e)(1). Pub. L. 104–188, §1616(b)(7)(A), substituted ''by a taxpayer having a balance described in subsection (g)(2)(A)(ii)'' for ''by a domestic building and loan association or an institution that is treated as a mutual savings bank under section 591(b)'' in introductory provisions.

Pub. L. 104–188, §1616(b)(7)(C)–(E), in closing provisions, substituted ''a taxpayer having a balance described in subsection (g)(2)(A)(ii)'' for ''the association or an institution that is treated as a mutual savings bank under section 591(b)'' after ''complete liquidation of'' and for ''an association'' after ''an interest in'' and inserted at end ''This paragraph shall not apply to any distribution of all of the stock of a bank (as defined in section 581) to another corporation if, immediately after the distribution, such bank and such other corporation are members of the same affiliated group (as defined in section 1504) and the provisions of section 5(e) of the Federal Deposit Insurance Act (as in effect on December 31, 1995) or similar provisions are in effect.''

Subsec. (e)(1)(B). Pub. L. 104–188, §1616(b)(7)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''then out of the reserve for losses on qualifying real property loans, to the extent additions to such reserve exceed the additions which would have been allowed under subsection (b)(3),''.

Subsecs. (f), (g). Pub. L. 104–188, §1616(a), added subsecs. (f) and (g).

1990—Subsec. (b). Pub. L. 101–508, §11801(c)(12)(F), which directed the amendment of pars. (1)(A) and (E) by substituting ''section 585(b)(2)'' for ''section 585(b)(3)'', was executed to pars. (1)(A) and (3). See 1996 Amendment note above.

1989—Subsec. (e)(1). Pub. L. 101–73 amended last sentence generally. Prior to amendment, last sentence read as follows: ''This paragraph shall not apply to any transaction to which section 381 (relating to carryovers in certain corporate acquisitions) applies, or to any distribution to the Federal Savings and Loan Insurance Corporation in redemption of an interest in an association, if such interest was originally received by the Federal Savings and Loan Insurance Corporation in exchange for financial assistance pursuant to section 406(f) of the National Housing Act (12 U.S.C. sec. 1729(f)).''

1988—Subsec. (b)(2)(D)(v). Pub. L. 100–647, §1003(c)(3), added cl. (v).

Subsec. (d)(4). Pub. L. 100–647, §1006(t)(25)(B), inserted at end ''For purposes of determining whether any interest in a REMIC qualifies under the preceding sentence, any interest in another REMIC held by such REMIC shall be treated as a qualifying real property loan under principles similar to the principles of the preceding sentence, except that if such REMIC's are part of a tiered structure, they shall be treated as 1 REMIC for purposes of this paragraph.''

1986—Subsec. (a). Pub. L. 99–514, §901(b)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''This section shall apply to any mutual savings bank, domestic building and loan association, or cooperative bank without capital stock organized and operated for mutual purposes and without profit.''

Subsec. (b)(1). Pub. L. 99–514, §901(d)(2)(A), (B), in introductory provisions, substituted ''subsection (a)'' for ''section 166(c)'' and in subpar. (B), substituted ''paragraph (2) or (3), whichever is the larger'' for ''paragraph (2), (3), or (4), whichever amount is the largest'' in introductory provisions and ''paragraph (3)'' for ''paragraph (4)'' in cl. (i).

Subsec. (b)(2)(A). Pub. L. 99–514, §901(b)(2)(A), added subpar. (A) and struck out former subpar. (A) which provided that subject to subpars. (B), (C), and (D), the amount determined under par. (2) was to be an amount equal to applicable percentage of taxable income for such year determined under a table which fixed specific percentages for taxable years 1976, 1977, 1978, and 1979 or thereafter.

Subpar. (b)(2)(B). Pub. L. 99–514, §901(b)(2)(A), added subpar. (B), which incorporated provisions of former subpar. (C), relating to reducing amounts referred to in par. (1)(A), and struck out former subpar. (B) which provided for reduction of applicable percentage in certain cases.

Subsec. (b)(2)(C). Pub. L. 99–514, §901(b)(2)(A), (B), redesignated former subpar. (D) as (C) and struck out former subpar. (C) which related to reduction for amounts referred to in par. (1)(A). See par. (1)(B).

Subsec. (b)(2)(D). Pub. L. 99–514, §901(b)(2)(B), (d)(2)(B), redesignated subpar. (E) as (D) and substituted in cl. (iv) ''8 percent'' for ''the applicable percentage (determined under subparagraphs (A) and (B))''. Former subpar. (D) redesignated (C).

Subsec. (b)(2)(E). Pub. L. 99–514, §901(b)(2)(B), redesignated subpar. (E) as (D).

Pub. L. 99–514, §311(b)(2), redesignated former cl. (v) as (iv), and struck out former cl. (iv) which read as follows: ''by excluding from gross income an amount equal to the lesser of 18/46 of the net long-term capital gain for the taxable year or 18/46 of the net long-term capital gain for the taxable year from the sale or exchange of property other than property described in clause (iii), and''.

Subsec. (b)(3), (4). Pub. L. 99–514, §901(b)(3), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: ''The amount determined under this paragraph to be a reasonable addition to the reserve for losses on qualifying real property loans shall be computed in the same manner as is provided with respect to additions to the reserves for losses on loans of banks

under section 585(b)(2), reduced by the amount referred to in paragraph (1)(A) for the taxable year.''

Subsec. (b)(5). Pub. L. 99–514, § 901(b)(3), struck out par. (5) which read as follows: ''For purposes of paragraph (3), the amount deemed to be the balance of the reserve for losses on loans at the beginning of the taxable year shall be the total of the balances at such time of the reserve for losses on nonqualifying loans, the reserve for losses on qualifying real property loans, and the supplemental reserve for losses on loans.''

Subsec. (d)(4). Pub. L. 99–514, § 671(b)(2), added par. (4).

Subsec. (e)(1)(B). Pub. L. 99–514, § 901(d)(2)(C), substituted ''subsection (b)(3)'' for ''subsection (B)(4)''.

1981—Subsec. (a). Pub. L. 97–34, § 245(c)(1), struck out ''not having capital stock represented by shares'' after ''mutual savings bank''.

Subsec. (b)(2)(B). Pub. L. 97–34, § 245(b)(1), inserted ''which is not described in section 591(b)'' after ''mutual savings bank'' in cls. (i) and (ii) and in last sentence.

Subsec. (b)(2)(C). Pub. L. 97–34, § 245(b)(2), inserted ''which are not described in section 591(b)'' after ''mutual savings banks'' in cl. (i).

Subsec. (e)(1). Pub. L. 97–34, § 245(c)(2), inserted ''or an institution that is treated as a mutual savings bank under section 591(b)'' after ''domestic building and loan association'' and ''liquidation of the association''.

Pub. L. 97–34, § 243, inserted provisions making par. (1) inapplicable to any distribution to the Federal Savings and Loan Insurance Corporation in redemption of an interest in an association, if such interest was originally received by the Corporation in exchange for financial assistance pursuant to section 1729(f) of title 12.

1980—Subsec. (b)(2)(E)(iv). Pub. L. 96–222 substituted ''18/46'' for ''3/8'' in two places.

1976—Subsec. (b)(2)(A). Pub. L. 94–455, § 1901(a)(84)(A), struck from the percentage table the years 1969 to 1975, inclusive.

Subsec. (b)(2)(E)(i). Pub. L. 94–455, § 1901(a)(84)(D), substituted ''subsection (e)'' for ''subsection (f)'' after ''by reason of''.

Subsec. (c)(2). Pub. L. 94–455, § 1901(a)(84)(B), added par. (2). Former par. (2), relating to allocation of pre-1963 reserves for bad debts, was struck out.

Subsec. (c)(3). Pub. L. 94–455, § 1901(a)(84)(B), redesignated par. (6) as par. (3). Former par. (3), relating to the method of allocation to reserves for bad debts, was struck out.

Subsec. (c)(4), (5). Pub. L. 94–455, § 1901(a)(84)(B), struck out par. (4) which defined ''pre-1963 reserves'', and struck out par. (5) which related to certain pre-1952 surplus.

Subsec. (c)(6). Pub. L. 94–455, § 1901(a)(84)(B), redesignated par. (6) as (3).

Subsecs. (d) to (f). Pub. L. 94–455, § 1901(a)(84)(C), struck out subsec. (d) relating to the determination of taxable income for taxpayer which uses the reserve method of accounting for bad debts for taxable years beginning in 1962 and ending in 1963, and redesignated subsecs. (e) and (f) as (d) and (e), respectively.

Subsecs. (e), (f). Pub. L. 94–455, § 1901(a)(84)(C), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

1969—Subsec. (b)(1)(A). Pub. L. 91–172, § 432(a)(1), inserted provisions for the method of computing the amount of the reasonable addition to the reserve for losses on nonqualifying loans.

Subsec. (b)(2). Pub. L. 91–172, § 432(a)(2), substituted a table of applicable percentages of the taxable income for each year up to 1979 and thereafter for the amount in excess of 60 percent over the amount referred to in former subsec. (b)(1)(A), transferred the remaining provisions of former subsec. (b)(2) to subpart (D), and added subpars. (B) to (E).

Subsec. (b)(3). Pub. L. 91–172, § 432(a)(2), substantially changed method of computation of the amount by conforming it to the method of determining the additions to the reserves for losses on loans of banks under section 585(b)(2).

Subsec. (b)(4). Pub. L. 91–172, § 432(a)(2), changed method of computation of the amount by conforming it to the method of determining the additions to the reserves for losses on loans of banks under section 585(b)(3).

Subsec. (b)(5). Pub. L. 91–172, § 432(a)(2), substituted provisions relating to determination of reserve for percentage method for provisions relating to limitation in case of certain domestic building and loan associations.

Subsec. (f). Pub. L. 91–172, § 432(b), excepted the application of par. (1) to any transaction to which section 381 of this title applied.

1962—Pub. L. 87–834 amended section generally. Prior to such amendment, section read as follows:

''§ 593. Additions to reserve for bad debts

''In the case of a mutual savings bank not having capital stock represented by shares, a domestic building and loan association, and a cooperative bank without capital stock organized and operated for mutual purposes and without profit, the reasonable addition to a reserve for bad debts under section 166(c) shall be determined with due regard to the amount of the taxpayer's surplus or bad debt reserves existing at the close of December 31, 1951. In the case of a taxpayer described in the preceding sentence, the reasonable addition to a reserve for bad debts for any taxable year shall in no case be less than the amount determined by the taxpayer as the reasonable addition for such year; except that the amount determined by the taxpayer under this sentence shall not be greater than the lesser of—

''(1) the amount of its taxable income for the taxable year, computed without regard to this section, or

''(2) the amount by which 12 percent of the total deposits or withdrawable accounts of its depositors at the close of such year exceeds the sum of its surplus, undivided profits, and reserves at the beginning of the taxable year.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, § 1616(c), Aug. 20, 1996, 110 Stat. 1857, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 50, 52, 57, 246, 291, 585, 860E, 992, 1038, 1042, 1277, and 1361 of this title and repealing sections 595 and 596 of this title] shall apply to taxable years beginning after December 31, 1995.

''(2) SUBSECTION (b)(7)(B).—The amendments made by subsection (b)(7)(B) [amending this section] shall not apply to any distribution with respect to preferred stock if—

''(A) such stock is outstanding at all times after October 31, 1995, and before the distribution, and

''(B) such distribution is made before the date which is 1 year after the date of the enactment of this Act [Aug. 20, 1996] (or, in the case of stock which may be redeemed, if later, the date which is 30 days after the earliest date that such stock may be redeemed).

''(3) SUBSECTION (b)(8).—The amendment made by subsection (b)(8) [repealing section 595 of this title] shall apply to property acquired in taxable years beginning after December 31, 1995.

''(4) SUBSECTION (b)(10).—The amendments made by subsection (b)(10) [amending section 860E of this title] shall not apply to any residual interest held by a taxpayer if such interest has been held by such taxpayer at all times after October 31, 1995.''

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–73, title XIV, § 1401(c)(6), Aug. 9, 1989, 103 Stat. 550, provided that: ''The amendment made by sub-

section (b)(3) [amending this section] shall take effect on the date of the enactment of this Act [Aug. 9, 1989].''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title III, §311(c), Oct. 22, 1986, 100 Stat. 2219, as amended by Pub. L. 100–647, title I, §1003(c)(2), Nov. 10, 1988, 102 Stat. 3384, provided that: ''The amendments made by subsections (a) and (b) [amending this section and sections 631, 852, 1201, and 1445 of this title] shall apply to taxable years beginning after December 31, 1986; except that the amendment made by subsection (b)(4) [amending section 1445 of this title] shall apply to payments made after December 31, 1986.''

Amendment by section 671(b)(2) of Pub. L. 99–514 effective Jan. 1, 1987, see section 675(a) of Pub. L. 99–514, as amended, set out as an Effective Date note under section 860A of this title.

Amendment by section 901(b)(1)–(3), (d)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 901(e) of Pub. L. 99–514, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title II, §246(b), Aug. 13, 1981, 95 Stat. 256, provided that: ''The amendment made by section 243 [amending this section] shall apply to any distribution made on or after January 1, 1981.''

Amendment by section 245(b), (c) of Pub. L. 97–34 applicable with respect to taxable years ending after Aug. 13, 1981, see section 246(d) of Pub. L. 97–34, set out as a note under section 591 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title IV, §432(e), Dec. 30, 1969, 83 Stat. 623, provided that: ''The amendments made by this section [amending this section and section 7701 of this title] shall be effective for taxable years beginning after July 11, 1969.''

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87–834, §6(g)(1), Oct. 16, 1962, 76 Stat. 984, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after December 31, 1962, except that section 593(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall apply to distributions after December 31, 1962, in taxable years ending after such date.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

TRANSFER OF FUNCTIONS

Federal Savings and Loan Insurance Corporation abolished and its functions transferred, see sections 401 to 406 of Pub. L. 101–73, set out as a note under section 1437 of Title 12, Banks and Banking.

§ 594. Alternative tax for mutual savings banks conducting life insurance business

(a) Alternative tax

In the case of a mutual savings bank not having capital stock represented by shares, authorized under State law to engage in the business of issuing life insurance contracts, and which conducts a life insurance business in a separate department the accounts of which are maintained separately from the other accounts of the mutual savings bank, there shall be imposed in lieu of the tax imposed by section 11, a tax consisting of the sum of the partial taxes determined under paragraphs (1) and (2):

(1) A partial tax computed on the taxable income determined without regard to any items of gross income or deductions properly allocable to the business of the life insurance department, at the rates and in the manner as if this section had not been enacted; and

(2) a partial tax computed on the income of the life insurance department determined without regard to any items of gross income or deductions not properly allocable to such department, at the rates and in the manner provided in subchapter L (sec. 801 and following) with respect to life insurance companies.

(b) Limitations of section

Subsection (a) shall apply only if the life insurance department would, if it were treated as a separate corporation, qualify as a life insurance company under section 816.

(Aug. 16, 1954, ch. 736, 68A Stat. 205; Mar. 13, 1956, ch. 83, §5(3), 70 Stat. 49; Pub. L. 98–369, div. A, title II, §211(b)(8), July 18, 1984, 98 Stat. 755; Pub. L. 115–97, title I, §13001(b)(2)(E), Dec. 22, 2017, 131 Stat. 2096.)

AMENDMENTS

2017—Subsec. (a). Pub. L. 115–97 substituted ''tax imposed by section 11'' for ''taxes imposed by section 11 or section 1201(a)'' in introductory provisions.

1984—Subsec. (b). Pub. L. 98–369 substituted ''section 816'' for ''section 801''.

1956—Subsec. (a)(2). Act Mar. 13, 1956, substituted ''the income'' for ''the taxable income (as defined in section 803)''.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–97 applicable to taxable years beginning after Dec. 31, 2017, see section 13001(c)(1) of Pub. L. 115–97, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Mar. 13, 1956, applicable only to taxable years beginning after Dec. 31, 1954, see section 6 of act Mar. 13, 1956, set out as a note under section 821 of this title.

[§§ 595, 596. Repealed. Pub. L. 104–188, title I, § 1616(b)(8), (9), Aug. 20, 1996, 110 Stat. 1857]

Section 595, added Pub. L. 87–834, § 6(b), Oct. 16, 1962, 76 Stat. 982; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, related to foreclosure on property securing loans, including provisions relating to nonrecognition of gain or loss as result of foreclosure, character of property, basis, and regulatory authority.

Section 596, added Pub. L. 91–172, title IV, § 434(a), Dec. 30, 1969, 83 Stat. 624; amended Pub. L. 99–514, title IX, § 901(d)(4)(D), Oct. 22, 1986, 100 Stat. 2380, provided that in case of organization to which section 593 of this title applied and which computed additions to reserve for losses on loans for taxable year under section 593(b)(2) of this title, total amount allowed under sections 243, 244, and 245 of this title for taxable year as deduction with respect to dividends received was to be reduced by amount equal to 8 percent of such total amount.

EFFECTIVE DATE OF REPEAL

Repeal of section 595 applicable to property acquired in taxable years beginning after Dec. 31, 1995, and repeal of section 596 applicable to taxable years beginning after Dec. 31, 1995, see section 1616(c)(1), (3) of Pub. L. 104–188, set out as an Effective Date of 1996 Amendment note under section 593 of this title.

§ 597. Treatment of transactions in which Federal financial assistance provided

(a) General rule

The treatment for purposes of this chapter of any transaction in which Federal financial assistance is provided with respect to a bank or domestic building and loan association shall be determined under regulations prescribed by the Secretary.

(b) Principles used in prescribing regulations

(1) Treatment of taxable asset acquisitions

In the case of any acquisition of assets to which section 381(a) does not apply, the regulations prescribed under subsection (a) shall—

(A) provide that Federal financial assistance shall be properly taken into account by the institution from which the assets were acquired, and

(B) provide the proper method of allocating basis among the assets so acquired (including rights to receive Federal financial assistance).

(2) Other transactions

In the case of any transaction not described in paragraph (1), the regulations prescribed under subsection (a) shall provide for the proper treatment of Federal financial assistance and appropriate adjustments to basis or other tax attributes in connection with such assistance.

(3) Denial of double benefit

No regulations prescribed under this section shall permit the utilization of any deduction (or other tax benefit) if such amount was in effect reimbursed by nontaxable Federal financial assistance.

(c) Federal financial assistance

For purposes of this section, the term ''Federal financial assistance'' means—

(1) any money or other property provided with respect to a domestic building and loan association by the Federal Savings and Loan Insurance Corporation or the Resolution Trust Corporation pursuant to section 406(f) of the National Housing Act or section 21A[1] of the Federal Home Loan Bank Act (or under any other similar provision of law), and

(2) any money or other property provided with respect to a bank or domestic building and loan association by the Federal Deposit Insurance Corporation pursuant to section 11(f) or 13(c) of the Federal Deposit Insurance Act (or under any other similar provision of law),

regardless of whether any note or other instrument is issued in exchange therefor.

(d) Domestic building and loan association

For purposes of this section, the term ''domestic building and loan association'' has the meaning given such term by section 7701(a)(19) without regard to subparagraph (C) thereof.

(Added Pub. L. 97–34, title II, § 244(a), Aug. 13, 1981, 95 Stat. 255; amended Pub. L. 99–514, title IX, § 904(b)(1), Oct. 22, 1986, 100 Stat. 2385; Pub. L. 100–647, title IV, § 4012(b)(2)(A)–(D)(i), (c)(1), Nov. 10, 1988, 102 Stat. 3657, 3658; Pub. L. 101–73, title XIV, § 1401(a)(3)(A), (b)(1), Aug. 9, 1989, 103 Stat. 548, 549; Pub. L. 101–239, title VII, § 7841(e)(1), Dec. 19, 1989, 103 Stat. 2429; Pub. L. 101–508, title XI, § 11704(a)(7), Nov. 5, 1990, 104 Stat. 1388–518.)

REFERENCES IN TEXT

Section 406 of the National Housing Act, referred to in subsec. (c)(1), which was classified to section 1729 of Title 12, Banks and Banking, was repealed by Pub. L. 101–73, title IV, § 407, Aug. 9, 1989, 103 Stat. 363.

Section 21A of the Federal Home Loan Bank Act, referred to in subsec. (c)(1), was classified to former section 1441a of Title 12, Banks and Banking, prior to repeal by Pub. L. 111–203, title III, § 364(b), July 21, 2010, 124 Stat. 1555.

Sections 11(f) and 13(c) of the Federal Deposit Insurance Act, referred to in subsec. (c)(2), are classified to sections 1821(f) and 1823(c), respectively, of Title 12.

AMENDMENTS

1990—Subsec. (c). Pub. L. 101–508 substituted ''For purposes of'' for ''The purposes of''.

1989—Pub. L. 101–73, § 1401(b)(1), repealed amendment made by Pub. L. 99–514, § 904(b)(1), see 1986 Amendment note below.

Pub. L. 101–73, § 1401(a)(3)(A), amended section generally, substituting present provisions for former provisions which contained section catchline that read ''FSLIC or FDIC financial assistance'' and which provided: in subsec. (a) for an exclusion from gross income; in subsec. (b) for no reduction in basis of assets; in subsec. (c) for a reduction of tax attributes by 50 percent of amounts excludable under subsection (a); and in subsec. (d) for a definition of ''domestic building and loan association''.

Subsec. (b)(2). Pub. L. 101–239 substituted ''in connection with such assistance'' for ''to reflect such treatment''.

1988—Pub. L. 100–647, § 4012(b)(2)(D)(i), substituted ''FSLIC or FDIC'' for ''FSLIC'' in section catchline.

Subsec. (a). Pub. L. 100–647, § 4012(b)(2)(A), inserted at end ''Gross income of a bank does not include any amount of money or other property received from the Federal Deposit Insurance Corporation pursuant to sections 13(c), 15(c)(1), and 15(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1821(f) and 1823(c)(1) and (c)(2)), regardless of whether any note or other instrument is issued in exchange therefor.''

[1] See References in Text note below.

Subsec. (b). Pub. L. 100–647, §4012(b)(2)(C), substituted ''association or bank'' for ''association''.

Subsec. (c). Pub. L. 100–647, §4012(c)(1), added subsec. (c).

Subsec. (d). Pub. L. 100–647, §4012(b)(2)(B), which directed amendment of section 597(b), as amended by section 4012(c)(1) of Pub. L. 100–647, by adding at the end thereof subsec. (d), was executed by adding subsec. (d) at the end of section 597, as amended by section 4012(c)(1) of Pub. L. 100–647, as the probable intent of Congress.

1986—Pub. L. 99–514, §904(b)(1), (c)(2)(A), as amended by Pub. L. 100–647, title IV, §4012(a)(2), which (applicable to transfers after Dec. 31, 1989, in taxable years ending after such date, with exceptions) directed repeal of this section, was repealed by Pub. L. 101–73, §1401(b)(1), (c)(4), eff. Oct. 22, 1986, and I.R.C. of 1986 applicable as if the amendments made by such section had not been enacted.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7841(e)(2), Dec. 19, 1989, 103 Stat. 2429, provided that: ''The amendment made by this subsection [amending this section] shall apply as if included in the amendments made by section 1401 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 [Pub. L. 101–73].''

Pub. L. 101–73, title XIV, §1401(c)(3)–(5), Aug. 9, 1989, 103 Stat. 550, provided that:

''(3) SUBSECTION (a)(3).—

''(A) IN GENERAL.—The amendments made by subsection (a)(3) [amending this section and repealing provisions set out below] shall apply to any amount received or accrued by the financial institution on or after May 10, 1989, except that such amendments shall not apply to transfers on or after such date pursuant to an acquisition to which the amendment made by subsection (a)(1) [amending section 368 of this title] does not apply.

''(B) INTERIM RULE.—In the case of any payment pursuant to a transaction on or after May 10, 1989, and before the date on which the Secretary of the Treasury (or his delegate) takes action in exercise of his regulatory authority under section 597 of the Internal Revenue Code of 1986 (as amended by subsection (a)(3)), the taxpayer may rely on the legislative history for the amendments made by subsection (a)(3) in determining the proper treatment of such payment.

''(4) SUBSECTION (b)(1).—The provisions of subsection (b)(1) [set out below] shall take effect on the date of the enactment of the Tax Reform Act of 1986 [Oct. 22, 1986].

''(5) SUBSECTION (b)(2).—The amendment made by subsection (b)(2) [amending provisions set out below] shall take effect on the date of the enactment of the Technical and Miscellaneous Revenue Act of 1988 [Nov. 10, 1988].''

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title IV, §4012(b)(2)(E), Nov. 10, 1988, 102 Stat. 3658, provided that: ''The amendments made by this paragraph [amending this section] shall apply to any transfer—

''(i) after the date of the enactment of this Act [Nov. 10, 1988], and before January 1, 1990, unless such transfer is pursuant to an acquisition occurring on or before such date of enactment, and

''(ii) after December 31, 1989, if such transfer is pursuant to an acquisition occurring after such date of enactment and before January 1, 1990.''

Pub. L. 100–647, title IV, §4012(c)(3), Nov. 10, 1988, 102 Stat. 3660, as amended by Pub. L. 101–73, title XIV, §1401(b)(2), Aug. 9, 1989, 103 Stat. 549, provided that: ''The amendments made by this subsection [amending this section and provisions set out below] shall apply to any transfer—

''(A) after December 31, 1988, and before January 1, 1990, unless such transfer is pursuant to an acquisition occurring before January 1, 1989, and

''(B) after December 31, 1989, if such transfer is pursuant to an acquisition occurring after December 31, 1988, and before January 1, 1990.

In the case of any bank or any institution treated as a domestic building and loan association for purposes of section 597 of the 1986 Code by reason of the amendment made by subsection (b)(2)(B), the amendments made by this subsection shall also apply to any transfer before January 1, 1989, to which the amendments made by subsection (b)(2) [amending this section] apply.''

EFFECTIVE DATE OF REPEAL

Pub. L. 99–514, title IX, §904(c)(2), Oct. 22, 1986, 100 Stat. 2385, as amended by Pub. L. 100–647, title IV, §4012(a)(2), (c)(2), Nov. 10, 1988, 102 Stat. 3656, 3660, which provided that repeal of this section was to be applicable to transfers after Dec. 31, 1989, in taxable years ending after such date, with exceptions, and which related to clarification of treatment of amounts excluded under this section, was repealed by Pub. L. 101–73, title XIV, §1401(a)(3)(B), (b)(1), Aug. 9, 1989, 103 Stat. 549.

EFFECTIVE DATE

Pub. L. 97–34, title II, §246(c), Aug. 13, 1981, 95 Stat. 256, provided that: ''The amendment made by section 244 [enacting this section] shall apply to any payment made on or after January 1, 1981.''

TRANSFER OF FUNCTIONS

Federal Savings and Loan Insurance Corporation abolished and its functions transferred, see sections 401 to 406 of Pub. L. 101–73, set out as a note under section 1437 of Title 12, Banks and Banking.

REPEAL OF PROVISIONS RELATING TO REPEAL OF SPECIAL REORGANIZATION RULES FOR FINANCIAL INSTITUTIONS

Pub. L. 101–73, title XIV, §1401(b)(1), Aug. 9, 1989, 103 Stat. 549, provided that: ''Section 904 of the Tax Reform Act of 1986 [Pub. L. 99–514, amending section 368 of this title, repealing this section and enacting provisions set out as notes under sections 368 and 597 of this title] (other than subsection (c)(2)(B) thereof [section 904(c)(2)(B) of Pub. L. 99–514, formerly set out as a note above]) is hereby repealed and the Internal Revenue Code of 1986 shall be applied as if the amendments made by such section had not been enacted.''

REFERENCES TO FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

Pub. L. 101–73, title XIV, §1401(c)(7), Aug. 9, 1989, 103 Stat. 550, provided that: ''Any reference to the Federal Savings and Loan Insurance Corporation in section 597 of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act [Aug. 9, 1989]) shall be treated as including a reference to the Resolution Trust Corporation and the FSLIC Resolution Fund.''

ANNUAL REPORTS ON TRANSACTIONS IN WHICH FEDERAL FINANCIAL ASSISTANCE PROVIDED

Pub. L. 101–73, title XIV, §1403, Aug. 9, 1989, 103 Stat. 551, which required the Secretary of the Treasury to submit annual reports to the Senate and to the Committee on Ways and Means of the House of Representatives on transactions with respect to which Federal financial assistance subject to this section was provided, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 142 of House Document No. 103–7.

[§ 601. Repealed. Pub. L. 94–455, title XIX, § 1901(a)(85), Oct. 4, 1976, 90 Stat. 1778]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 206, related to a special deduction for bank affiliates.

EFFECTIVE DATE OF REPEAL

Repeal effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set

out as an Effective Date of 1976 Amendment note under section 2 of this title.

Subchapter I—Natural Resources

PART I—DEDUCTIONS

AMENDMENTS

1990—Pub. L. 101–508, title XI, § 11801(b)(7), Nov. 5, 1990, 104 Stat. 1388–522, struck out item for part II ''Exclusions from gross income''.

1976—Pub. L. 94–455, title XIX, § 1901(b)(21)(H), Oct. 4, 1976, 90 Stat. 1798, struck out item 615 ''Exploration expenditures''.

1969—Pub. L. 91–172, title V, §§ 503(b), 505(c), Dec. 30, 1969, 83 Stat. 631, 634, added items for parts IV and V.

Pub. L. 91–172, title V, § 504(c)(5), Dec. 30, 1969, 83 Stat. 633, substituted ''Pre-1970 exploration expenditures'' for ''Exploration expenditures'' in item 615 and substituted ''Deduction and recapture of certain mining exploration expenditures'' for ''Additional exploration expenditures in the case of domestic mining'' in item 617.

1966—Pub. L. 89–570, § 1(d), Sept. 12, 1966, 80 Stat. 762, added item 617.

§ 611. Allowance of deduction for depletion

(a) General rule

In the case of mines, oil and gas wells, other natural deposits, and timber, there shall be allowed as a deduction in computing taxable income a reasonable allowance for depletion and for depreciation of improvements, according to the peculiar conditions in each case; such reasonable allowance in all cases to be made under regulations prescribed by the Secretary. For purposes of this part, the term ''mines'' includes deposits of waste or residue, the extraction of ores or minerals from which is treated as mining under section 613(c). In any case in which it is ascertained as a result of operations or of development work that the recoverable units are greater or less than the prior estimate thereof, then such prior estimate (but not the basis for depletion) shall be revised and the allowance under this section for subsequent taxable years shall be based on such revised estimate.

(b) Special rules

(1) Leases

In the case of a lease, the deduction under this section shall be equitably apportioned between the lessor and lessee.

(2) Life tenant and remainderman

In the case of property held by one person for life with remainder to another person, the deduction under this section shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant.

(3) Property held in trust

In the case of property held in trust, the deduction under this section shall be apportioned between the income beneficiaries and the trustee in accordance with the pertinent provisions of the instrument creating the trust, or, in the absence of such provisions, on the basis of the trust income allocable to each.

(4) Property held by estate

In the case of an estate, the deduction under this section shall be apportioned between the estate and the heirs, legatees, and devisees on the basis of the income of the estate allocable to each.

(c) Cross reference

For other rules applicable to depreciation of improvements, see section 167.

(Aug. 16, 1954, ch. 736, 68A Stat. 207; Pub. L. 85–866, title I, § 35, Sept. 2, 1958, 72 Stat. 1632; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

1958—Subsec. (d)(4). Pub. L. 85–866 substituted ''devisees'' for ''devises''.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

§ 612. Basis for cost depletion

Except as otherwise provided in this subchapter, the basis on which depletion is to be allowed in respect of any property shall be the adjusted basis provided in section 1011 for the purpose of determining the gain upon the sale or other disposition of such property.

(Aug. 16, 1954, ch. 736, 68A Stat. 208.)

§ 613. Percentage depletion

(a) General rule

In the case of the mines, wells, and other natural deposits listed in subsection (b), the allowance for depletion under section 611 shall be the percentage, specified in subsection (b), of the gross income from the property excluding from such gross income an amount equal to any rents or royalties paid or incurred by the taxpayer in respect of the property. Such allowance shall not exceed 50 percent (100 percent in the case of oil and gas properties) of the taxpayer's taxable income from the property (computed without allowance for depletion and without the deduction under section 199A). For purposes of the preceding sentence, the allowable deductions taken into account with respect to expenses of mining in computing the taxable income from the property shall be decreased by an amount equal to so much of any gain which (1) is treated under section 1245 (relating to gain from disposition of

[1] Editorially supplied. Section 613A added by Pub. L. 94–12 without corresponding amendment of part analysis.

certain depreciable property) as ordinary income, and (2) is properly allocable to the property. In no case shall the allowance for depletion under section 611 be less than it would be if computed without reference to this section.

(b) Percentage depletion rates

The mines, wells, and other natural deposits, and the percentages, referred to in subsection (a) are as follows:

(1) 22 percent

(A) sulphur and uranium; and

(B) if from deposits in the United States—anorthosite, clay, laterite, and nephelite syenite (to the extent that alumina and aluminum compounds are extracted therefrom), asbestos, bauxite, celestite, chromite, corundum, fluorspar, graphite, ilmenite, kyanite, mica, olivine, quartz crystals (radio grade), rutile, block steatite talc, and zircon, and ores of the following metals: antimony, beryllium, bismuth, cadmium, cobalt, columbium, lead, lithium, manganese, mercury, molybdenum, nickel, platinum and platinum group metals, tantalum, thorium, tin, titanium, tungsten, vanadium, and zinc.

(2) 15 percent

If from deposits in the United States—

(A) gold, silver, copper, and iron ore, and

(B) oil shale (except shale described in paragraph (5)).

(3) 14 percent

(A) metal mines (if paragraph (1)(B) or (2)(A) does not apply), rock asphalt, and vermiculite; and

(B) if paragraph (1)(B), (5), or (6)(B) does not apply, ball clay, bentonite, china clay, sagger clay, and clay used or sold for use for purposes dependent on its refractory properties.

(4) 10 percent

Asbestos (if paragraph (1)(B) does not apply), brucite, coal, lignite, perlite, sodium chloride, and wollastonite.

(5) 7½ percent

Clay and shale used or sold for use in the manufacture of sewer pipe or brick, and clay, shale, and slate used or sold for use as sintered or burned lightweight aggregates.

(6) 5 percent

(A) gravel, peat, pumice, sand, scoria, shale (except shale described in paragraph (2)(B) or (5)), and stone (except stone described in paragraph (7));

(B) clay used, or sold for use, in the manufacture of drainage and roofing tile, flower pots, and kindred products; and

(C) if from brine wells—bromine, calcium chloride, and magnesium chloride.

(7) 14 percent

All other minerals, including, but not limited to, aplite, barite, borax, calcium carbonates, diatomaceous earth, dolomite, feldspar, fullers earth, garnet, gilsonite, granite, limestone, magnesite, magnesium carbonates, marble, mollusk shells (including clam shells and oyster shells), phosphate rock, potash, quartzite, slate, soapstone, stone (used or sold for use by the mine owner or operator as dimension stone or ornamental stone), thenardite, tripoli, trona, and (if paragraph (1)(B) does not apply) bauxite, flake graphite, fluorspar, lepidolite, mica, spodumene, and talc (including pyrophyllite), except that, unless sold on bid in direct competition with a bona fide bid to sell a mineral listed in paragraph (3), the percentage shall be 5 percent for any such other mineral (other than slate to which paragraph (5) applies) when used, or sold for use, by the mine owner or operator as rip rap, ballast, road material, rubble, concrete aggregates, or for similar purposes. For purposes of this paragraph, the term ''all other minerals'' does not include—

(A) soil, sod, dirt, turf, water, or mosses;

(B) minerals from sea water, the air, or similar inexhaustible sources; or

(C) oil and gas wells.

For the purposes of this subsection, minerals (other than sodium chloride) extracted from brines pumped from a saline perennial lake within the United States shall not be considered minerals from an inexhaustible source.

(c) Definition of gross income from property

For purposes of this section—

(1) Gross income from the property

The term ''gross income from the property'' means, in the case of a property other than an oil or gas well and other than a geothermal deposit, the gross income from mining.

(2) Mining

The term ''mining'' includes not merely the extraction of the ores or minerals from the ground but also the treatment processes considered as mining described in paragraph (4) (and the treatment processes necessary or incidental thereto), and so much of the transportation of ores or minerals (whether or not by common carrier) from the point of extraction from the ground to the plants or mills in which such treatment processes are applied thereto as is not in excess of 50 miles unless the Secretary finds that the physical and other requirements are such that the ore or mineral must be transported a greater distance to such plants or mills.

(3) Extraction of the ores or minerals from the ground

The term ''extraction of the ores or minerals from the ground'' includes the extraction by mine owners or operators of ores or minerals from the waste or residue of prior mining. The preceding sentence shall not apply to any such extraction of the mineral or ore by a purchaser of such waste or residue or of the rights to extract ores or minerals therefrom.

(4) Treatment processes considered as mining

The following treatment processes where applied by the mine owner or operator shall be considered as mining to the extent they are applied to the ore or mineral in respect of which he is entitled to a deduction for depletion under section 611:

(A) In the case of coal—cleaning, breaking, sizing, dust allaying, treating to prevent freezing, and loading for shipment;

(B) in the case of sulfur recovered by the Frasch process—cleaning, pumping to vats, cooling, breaking, and loading for shipment;

(C) in the case of iron ore, bauxite, ball and sagger clay, rock asphalt, and ores or minerals which are customarily sold in the form of a crude mineral product—sorting, concentrating, sintering, and substantially equivalent processes to bring to shipping grade and form, and loading for shipment;

(D) in the case of lead, zinc, copper, gold, silver, uranium, or fluorspar ores, potash, and ores or minerals which are not customarily sold in the form of the crude mineral product—crushing, grinding, and beneficiation by concentration (gravity, flotation, amalgamation, electrostatic, or magnetic), cyanidation, leaching, crystallization, precipitation (but not including electrolytic deposition, roasting, thermal or electric smelting, or refining), or by substantially equivalent processes or combination of processes used in the separation or extraction of the product or products from the ore or the mineral or minerals from other material from the mine or other natural deposit;

(E) the pulverization of talc, the burning of magnesite, the sintering and nodulizing of phosphate rock, the decarbonation of trona, and the furnacing of quicksilver ores;

(F) in the case of calcium carbonates and other minerals when used in making cement—all processes (other than preheating of the kiln feed) applied prior to the introduction of the kiln feed into the kiln, but not including any subsequent process;

(G) in the case of clay to which paragraph (5) or (6)(B) of subsection (b) applies—crushing, grinding, and separating the mineral from waste, but not including any subsequent process;

(H) in the case of oil shale—extraction from the ground, crushing, loading into the retort, and retorting (including in situ retorting), but not hydrogenation, refining, or any other process subsequent to retorting; and

(I) any other treatment process provided for by regulations prescribed by the Secretary which, with respect to the particular ore or mineral, is not inconsistent with the preceding provisions of this paragraph.

(5) Treatment processes not considered as mining

Unless such processes are otherwise provided for in paragraph (4) (or are necessary or incidental to processes so provided for), the following treatment processes shall not be considered as ''mining'': electrolytic deposition, roasting, calcining, thermal or electric smelting, refining, polishing, fine pulverization, blending with other materials, treatment effecting a chemical change, thermal action, and molding or shaping.

(d) Denial of percentage depletion in case of oil and gas wells

Except as provided in section 613A, in the case of any oil or gas well, the allowance for depletion shall be computed without reference to this section.

(e) Percentage depletion for geothermal deposits

(1) In general

In the case of geothermal deposits located in the United States or in a possession of the United States, for purposes of subsection (a)—

(A) such deposits shall be treated as listed in subsection (b), and

(B) 15 percent shall be deemed to be the percentage specified in subsection (b).

(2) Geothermal deposit defined

For purposes of paragraph (1), the term ''geothermal deposit'' means a geothermal reservoir consisting of natural heat which is stored in rocks or in an aqueous liquid or vapor (whether or not under pressure). Such a deposit shall in no case be treated as a gas well for purposes of this section or section 613A, and this section shall not apply to a geothermal deposit which is located outside the United States or its possessions.

(3) Percentage depletion not to include lease bonuses, etc.

In the case of any geothermal deposit, the term ''gross income from the property'' shall, for purposes of this section, not include any amount described in section 613A(d)(5).

(Aug. 16, 1954, ch. 736, 68A Stat. 208; Pub. L. 85–866, title I, §36(a), Sept. 2, 1958, 72 Stat. 1633; Pub. L. 86–564, title III, §302(a), (b), June 30, 1960, 74 Stat. 291, 292; Pub. L. 87–834, §13(e), Oct. 16, 1962, 76 Stat. 1034; Pub. L. 88–571, §6(a), Sept. 2, 1964, 78 Stat. 860; Pub. L. 89–809, title II, §§207(a), 208(a), 209(a), (b), Nov. 13, 1966, 80 Stat. 1579, 1580; Pub. L. 91–172, title V, §§501(a), 502(a), Dec. 30, 1969, 83 Stat. 629, 630; Pub. L. 93–499, §2(a), Oct. 29, 1974, 88 Stat. 1550; Pub. L. 94–12, title V, §501(b)(1), (2), Mar. 29, 1975, 89 Stat. 53; Pub. L. 94–455, title XIX, §§1901(b)(3)(K), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1793, 1834; Pub. L. 95–618, title IV, §403(a)(1), (2)(A), Nov. 9, 1978, 92 Stat. 3203; Pub. L. 99–514, title IV, §412(a)(2), Oct. 22, 1986, 100 Stat. 2227; Pub. L. 101–508, title XI, §§11522(a), 11815(b)(1), (2), Nov. 5, 1990, 104 Stat. 1388–486, 1388–557, 1388–558; Pub. L. 104–188, title I, §1704(t)(34), Aug. 20, 1996, 110 Stat. 1889; Pub. L. 108–357, title I, §102(d)(6), Oct. 22, 2004, 118 Stat. 1429; Pub. L. 109–135, title IV, §412(gg), Dec. 21, 2005, 119 Stat. 2639; Pub. L. 115–97, title I, §§11011(d)(3), 13305(b)(4), Dec. 22, 2017, 131 Stat. 2071, 2126.)

AMENDMENTS

2017—Subsec. (a). Pub. L. 115–97, §13305(b)(4), struck out ''and without the deduction under section 199'' after ''without allowance for depletion''.

Pub. L. 115–97, §11011(d)(3), inserted ''and without the deduction under section 199A'' after ''without the deduction under section 199''.

2005—Subsec. (c)(4)(H). Pub. L. 109–135 inserted ''(including in situ retorting)'' after ''and retorting''.

2004—Subsec. (a). Pub. L. 108–357, which directed the insertion of ''and without the deduction under section 199'' after ''without allowances for depletion'', was executed by making the insertion after ''without allowance for depletion'', to reflect the probable intent of Congress.

1996—Subsec. (e)(1)(B). Pub. L. 104–188 substituted ''subsection (b).'' for ''subsection (b),''.

1990—Subsec. (a). Pub. L. 101–508, §11522(a), inserted ''(100 percent in the case of oil and gas properties)'' after ''50 percent''.

Subsec. (e)(1)(B). Pub. L. 101–508, §11815(b)(2), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''the applicable percentage (determined under the table contained in paragraph (2)) shall be deemed to be the percentage specified in subsection (b).''

Subsec. (e)(2) to (4). Pub. L. 101–508, §11815(b)(1), redesignated pars. (3) and (4) as (2) and (3), respectively, and struck out former par. (2) which related to the applicable percentage depletion for geothermal deposits.

1986—Subsec. (e)(4). Pub. L. 99–514 added par. (4).

1978—Subsec. (c)(1). Pub. L. 95–618, §403(a)(2)(A), inserted ''and other than a geothermal deposit'' after ''oil or gas well''.

Subsec. (e). Pub. L. 95–618, §403(a)(1), added subsec. (e).

1976—Subsec. (a). Pub. L. 94–455, §1901(b)(3)(K), substituted ''ordinary income'' for ''gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231''.

Subsec. (c)(2), (4)(I). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

1975—Subsec. (b)(1). Pub. L. 94–12, §501(b)(2)(A), struck out subpar. (A) ''oil and gas wells'' and redesignated former subpars. (B) and (C) as (A) and (B), respectively.

Subsec. (b)(3), (4). Pub. L. 94–12, §501(b)(2)(B), substituted ''(1)(B)'' for ''(1)(C)'' wherever appearing.

Subsec. (b)(7). Pub. L. 94–12, §501(b)(2) (B), (C), substituted ''(1)(B)'' for ''(1)(C)'' in provisions preceding subpar. (A) and added subpar. (C).

Subsec. (d). Pub. L. 94–12, §501(b)(1), substituted provisions denying the percentage depletion allowance in the case of oil and gas wells except as provided in section 613A for provisions governing the application of percentage depletion rates to certain taxable years ending in 1954.

1974—Subsec. (c)(4)(E). Pub. L. 93–499 inserted reference to decarbonation of trona.

1969—Subsec. (b). Pub. L. 91–172, §501(a), reduced the percentage depletion rate on oil and gas wells from 27½ percent to 22 percent, reduced to 22 percent other minerals formerly receiving percentage depletion at a rate of 23 percent, added molybdenum in the category of minerals subject to the 22 percent depletion rate, reduced to 14 percent the rate on minerals formerly receiving depletion at a 15 percent rate except in the case of domestic gold, silver, oil shale, copper, and iron ore, and inserted provision that for percentage depletion purposes, minerals other than sodium chloride, extracted from brine pumped from a saline perennial lake within the United States are not to be considered minerals from an inexhaustible source.

Subsec. (c)(4)(H), (I). Pub. L. 91–172, §502(a), added subpar. (H) and redesignated former subpar. (H) as (I).

1966—Subsec. (b)(2)(B). Pub. L. 89–809, §207(a)(1), inserted ''clay, laterite, and nephelite syenite'' after ''anorthosite''.

Subsec. (b)(3)(B). Pub. L. 89–809, §§207(a)(2), 209(a)(2), substituted ''if neither paragraph (2)(B), (5), or (6)(B) applies'' for ''if paragraph (5)(B) does not apply''.

Subsec. (b)(5). Pub. L. 89–809, §209(a)(1), added par. (5). Former par. (5) redesignated (6).

Subsec. (b)(6). Pub. L. 89–809, §§208(a)(1), 209(a)(1), (3), (4), redesignated par. (5) as (6), struck out ''mollusk shells (including clam shells and oyster shells),'', substituted ''shale (except shale described in paragraph (5)), and stone (except stone described in paragraph (7))'' for ''shale, and stone, except stone described in paragraph (6)'' in subpar. (A), and struck out ''building or paving brick,'' and ''sewer pipe,'' in subpar. (B). Former par. (6) redesignated (7).

Subsec. (b)(7). Pub. L. 89–809, §§208(a)(2), 209(a)(1), (5), redesignated par. (6) as (7) and inserted ''mollusk shells (including clam shells and oyster shells),'' after ''marble,'' and ''(other than slate to which paragraph (5) applies)'' after ''any other such mineral''.

Subsec. (c)(4)(G). Pub. L. 89–809, §209(b), substituted ''paragraph (5) or (6)(B)'' for ''paragraph (5)(B)''.

1964—Subsec. (b)(2)(B), (6). Pub. L. 88–571 inserted ''beryllium'' after ''antimony'' in par. (2)(B), and deleted ''beryl'' after ''bauxite'' in pars. (2)(B) and (6).

1962—Subsec. (a). Pub. L. 87–834 inserted provisions requiring the allowable deductions taken into account with respect to expenses of mining in computing the taxable income from the property to be decreased by an amount equal to so much of any gain which is treated under section 1245 as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231, and is properly allocable to the property.

1960—Subsec. (b)(3). Pub. L. 86–564, §302(a)(1), limited the 15 percent allowance for ball clay, bentonite, china clay, and sagger clay to cases where paragraph (5)(B) does not apply, and authorized a 15 percent allowance, if paragraph (5)(B) does not apply, for clay used or sold for use for purposes dependent on its refractory properties.

Subsec. (b)(5). Pub. L. 86–564, §302(a)(2), substituted provisions authorizing a 5 percent allowance for clay used, or sold for use, in the manufacture of building or paving brick, drainage and roofing tile, sewer pipe, flower pots, and kindred products for provisions which authorized a 5 percent allowance for brick and tile clay.

Subsec. (b)(6). Pub. L. 86–564, §302(a)(3), struck out provisions which authorized a 15 percent allowance for refractory and fire clay. See subsec. (b)(3) of this section.

Subsec. (c)(2). Pub. L. 86–564, §302(b)(1), substituted ''the treatment processes considered as mining described in paragraph (4) (and the treatment processes necessary or incidental thereto)'' for ''the ordinary treatment processes normally applied by mine owners or operators in order to obtain the commercially marketable mineral product or products'', and ''such treatment processes'' for ''the ordinary treatment processes''.

Subsec. (c)(4). Pub. L. 86–564, §302(b)(2), substituted ''The following treatment processes where applied by the mine owner or operator shall be considered as mining to the extent they are applied to the ore or mineral in respect of which he is entitled to a deduction for depletion under section 611'' for ''The term 'ordinary treatment processes' includes the following'' in opening provisions, included cleaning in subpar. (B), substituted ''ores or minerals which'' for ''minerals which'' and included substantially equivalent processes in subpar. (C), included uranium and minerals which are not customarily sold in the form of the crude mineral product and substituted ''from the ore or the mineral or minerals from other material from the mine or other natural deposit'' for ''from the ore, including the furnacing of quicksilver ores'' in subpar. (D), included the furnacing of quicksilver ores in subpar. (E), and added subpars. (F) to (H).

Subsec. (c)(5). Pub. L. 86–564, §302(b)(2), added par. (5).

1958—Subsec. (d). Pub. L. 85–866 added subsec. (d).

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 11011(d)(3) of Pub. L. 115–97 applicable to taxable years beginning after Dec. 31, 2017, see section 11011(e) of Pub. L. 115–97, set out as a note under section 62 of this title.

Amendment by section 13305(b)(4) of Pub. L. 115–97 applicable to taxable years beginning after Dec. 31, 2017, see section 13305(c) of Pub. L. 115–97, set out as a note under section 74 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years beginning after Dec. 31, 2004, see section 102(e) of Pub. L. 108–357, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11522(c), Nov. 5, 1990, 104 Stat. 1388–486, provided that: ''The amendments made by this section [amending this section and sections 613A and 614 of this title] shall apply to taxable years beginning after December 31, 1990.''

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title IV, § 412(a)(3), Oct. 22, 1986, 100 Stat. 2227, provided that: ''The amendment made by this subsection [amending this section and section 613A of this title] shall apply to amounts received or accrued after August 16, 1986, in taxable years ending after such date.''

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–618, title IV, § 403(c), Nov. 9, 1978, 92 Stat. 3204, provided that: ''The amendments made by this section [amending this section and sections 613A and 614 of this title] shall take effect on October 1, 1978, and shall apply to taxable years ending on or after such date.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(b)(3)(K) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–12 effective Jan. 1, 1975, applicable to taxable years ending after Dec. 31, 1974, see section 501(c) of Pub. L. 94–12, set out as an Effective Note under section 613A of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93–499, § 2(b), Oct. 29, 1974, 88 Stat. 1550, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1970.''

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title V, § 501(b), Dec. 30, 1969, 83 Stat. 630, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after October 9, 1969.''

Pub. L. 91–172, title V, § 502(b), Dec. 30, 1969, 83 Stat. 630, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Dec. 30, 1969].''

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89–809, title II, § 207(b), Nov. 13, 1966, 80 Stat. 1579, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Nov. 13, 1966].''

Pub. L. 89–809, title II, § 208(b), Nov. 13, 1966, 80 Stat. 1579, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Nov. 13, 1966].''

Pub. L. 89–809, title II, § 209(c), Nov. 13, 1966, 80 Stat. 1580, provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Nov. 13, 1966].''

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–571, § 6(b), Sept. 2, 1964, 78 Stat. 860, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1963.''

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable to taxable years beginning after Dec. 31, 1962, see section 13(g) of Pub. L. 87–834, set out as an Effective Date note under section 1245 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Pub. L. 86–564, title III, § 302(c), June 30, 1960, 74 Stat. 293, as amended by Pub. L. 86–781, § 4, Sept. 14, 1960, 74 Stat. 1018; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(c) EFFECTIVE DATE.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by subsections (a) and (b) [amending this section] shall be applicable only with respect to taxable years beginning after December 31, 1960.

''(2) CALCIUM CARBONATES, ETC.—

''(A) ELECTION FOR PAST YEARS.—In the case of calcium carbonates or other minerals when used in making cement, if an election is made by the taxpayer under subparagraph (C)—

''(i) the amendments made by subsection (b) [amending this section] shall apply to taxable years with respect to which such election is effective and

''(ii) provisions having the same effect as the amendments made by subsection (b) [amending this section] shall be deemed to be included in the Internal Revenue Code of 1939 and shall apply to taxable years with respect to which such election is effective in lieu of the corresponding provisions of such Code.

''(B) YEARS TO WHICH APPLICABLE.—An election made under subparagraph (C) to have the provisions of this paragraph apply shall be effective for all taxable years beginning before January 1, 1961, in respect of which—

''(i) the assessment of a deficiency,

''(ii) the refund or credit of an overpayment, or

''(iii) the commencement of a suit for recovery of a refund under section 7405 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [section 7405 of this title],

is not prevented on the date of the enactment of this paragraph [Sept. 14, 1960] by the operation of any law or rule of law. Such election shall also be effective for any taxable year beginning before January 1, 1961, in respect of which an assessment of a deficiency has been made but not collected on or before the date of the enactment of this paragraph.

''(C) TIME AND MANNER OF ELECTION.—An election to have the provisions of this paragraph apply shall be made by the taxpayer on or before the 60th day after the date of publication in the Federal Register of final regulations issued under authority of subparagraph (F), and shall be made in such form and manner as the Secretary of the Treasury or his delegate shall prescribe by regulations. Such election, if made, may not be revoked.

''(D) STATUTES OF LIMITATION.—Notwithstanding any other law, the period within which an assessment of a deficiency attributable to the application of the amendments made by subsection (b) [amending this section] may be made with respect to any taxable year to which such amendments apply under an election made under subparagraph (C), and the period within which a claim for refund or credit of an overpayment attributable to the application of such amendments may be made with respect to any such taxable year, shall not expire prior to one year after the last day for making an election under subparagraph (C). An election by a taxpayer under subparagraph (C) shall be considered as a consent to the application of the provisions of this subparagraph.

''(E) TERMS; APPLICABILITY OF OTHER LAWS.—Except where otherwise distinctly expressed or manifestly intended, terms used in this paragraph shall have the same meaning as when used in the Internal Revenue Code of 1986 [this title] (or corresponding provisions of the Internal Revenue Code of 1939) and all provisions of law shall apply with respect to this paragraph as if this paragraph were a part of such Code (or corresponding provisions of the Internal Revenue Code of 1939).

''(F) REGULATIONS.—The Secretary of the Treasury or his delegate shall prescribe such regulations as may be necessary to carry out the provisions of this paragraph.''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by section 11815(b)(1), (2) of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

ELECTION FOR CLAY AND SHALE USED IN MANUFACTURE OF CLAY PRODUCTS

Pub. L. 87–312, Sept. 26, 1961, 75 Stat. 674, provided for the election of, and procedure for, a differing rate of depletion for clay and shale used in the manufacture of clay products, such election to be effective for all taxable years beginning before Jan. 1, 1961, in respect of which the assessment of a deficiency, a refund or credit of overpayment, or the commencement of a suit for recovery is not prevented on Sept. 26, 1961, by operation of any law or rule of law, and also effective for any taxable year beginning before Jan. 1961, in respect of which an assessment of a deficiency has been made but not collected on or before Sept. 26, 1961.

ELECTION FOR QUARTZITE AND CLAY USED IN PRODUCTION OF REFRACTORY PRODUCTS

Pub. L. 87–321, § 2, Sept. 26, 1961, 75 Stat. 683, provided for an election of, and procedures for, a differing rate of depletion for quartzite and clay used in production of refractory products, such election to be effective on and after Jan. 1, 1951, for all taxable years beginning before Jan. 1, 1961, in respect of which the assessment of a deficiency, the refund or credit of an overpayment, or the commencement of a suit for recovery is not prevented on Sept. 26, 1961, by the operation of any law or rule of law, and also effective on and after Jan. 1, 1951, for any taxable year beginning before Jan. 1, 1961, in respect of which an assessment of a deficiency has been made but not collected on or before Sept. 26, 1961.

REFUND OR CREDIT OF OVERPAYMENTS; LIMITATIONS; INTEREST

Pub. L. 85–866, title I, § 36(b), Sept. 2, 1958, 72 Stat. 1633, provided for the filing of a claim within 6 months of Sept. 2, 1958, and for the refund or credit of any overpayment, without interest, if such refund or credit, resulting from the addition of subsec. (d) of this section, was prevented on Sept. 2, 1958, or within 6 months thereof, by the operation of any law or rule of law other than certain specified sections of the Internal Revenue Codes of 1939 and 1954.

§ 613A. Limitations on percentage depletion in case of oil and gas wells

(a) General rule

Except as otherwise provided in this section, the allowance for depletion under section 611 with respect to any oil or gas well shall be computed without regard to section 613.

(b) Exemption for certain domestic gas wells

(1) In general

The allowance for depletion under section 611 shall be computed in accordance with section 613 with respect to—

(A) regulated natural gas, and

(B) natural gas sold under a fixed contract,

and 22 percent shall be deemed to be specified in subsection (b) of section 613 for purposes of subsection (a) of that section.

(2) Natural gas from geopressured brine

The allowance for depletion under section 611 shall be computed in accordance with section 613 with respect to any qualified natural gas from geopressured brine, and 10 percent shall be deemed to be specified in subsection (b) of section 613 for purposes of subsection (a) of such section.

(3) Definitions

For purposes of this subsection—

(A) Natural gas sold under a fixed contract

The term ''natural gas sold under a fixed contract'' means domestic natural gas sold by the producer under a contract, in effect on February 1, 1975, and at all times thereafter before such sale, under which the price for such gas cannot be adjusted to reflect to any extent the increase in liabilities of the seller for tax under this chapter by reason of the repeal of percentage depletion for gas. Price increases after February 1, 1975, shall be presumed to take increases in tax liabilities into account unless the taxpayer demonstrates to the contrary by clear and convincing evidence.

(B) Regulated natural gas

The term ''regulated natural gas'' means domestic natural gas produced and sold by the producer, before July 1, 1976, subject to the jurisdiction of the Federal Power Commission, the price for which has not been adjusted to reflect to any extent the increase in liability of the seller for tax under this chapter by reason of the repeal of percentage depletion for gas. Price increases after February 1, 1975, shall be presumed to take increases in tax liabilities into account unless the taxpayer demonstrates the contrary by clear and convincing evidence.

(C) Qualified natural gas from geopressured brine

The term ''qualified natural gas from geopressured brine'' means any natural gas—

(i) which is determined in accordance with section 503 of the Natural Gas Policy Act of 1978 to be produced from geopressured brine, and

(ii) which is produced from any well the drilling of which began after September 30, 1978, and before January 1, 1984.

(c) Exemption for independent producers and royalty owners

(1) In general

Except as provided in subsection (d), the allowance for depletion under section 611 shall be computed in accordance with section 613 with respect to—

(A) so much of the taxpayer's average daily production of domestic crude oil as does not exceed the taxpayer's depletable oil quantity; and

(B) so much of the taxpayer's average daily production of domestic natural gas as does not exceed the taxpayer's depletable natural gas quantity;

and 15 percent shall be deemed to be specified in subsection (b) of section 613 for purposes of subsection (a) of that section.

(2) Average daily production

For purposes of paragraph (1)—

(A) the taxpayer's average daily production of domestic crude oil or natural gas for any taxable year, shall be determined by dividing his aggregate production of domestic crude oil or natural gas, as the case may be, during the taxable year by the number of days in such taxable year, and

(B) in the case of a taxpayer holding a partial interest in the production from any property (including an interest held in a partnership) such taxpayer's production shall be considered to be that amount of such production determined by multiplying the total production of such property by the taxpayer's percentage participation in the revenues from such property.

(3) Depletable oil quantity

(A) In general

For purposes of paragraph (1), the taxpayer's depletable oil quantity shall be equal to—

(i) the tentative quantity determined under subparagraph (B), reduced (but not below zero) by

(ii) except in the case of a taxpayer making an election under paragraph (6)(B), the taxpayer's average daily marginal production for the taxable year.

(B) Tentative quantity

For purposes of subparagraph (A), the tentative quantity is 1,000 barrels.

(4) Daily depletable natural gas quantity

For purposes of paragraph (1), the depletable natural gas quantity of any taxpayer for any taxable year shall be equal to 6,000 cubic feet multiplied by the number of barrels of the taxpayer's depletable oil quantity to which the taxpayer elects to have this paragraph apply. The taxpayer's depletable oil quantity for any taxable year shall be reduced by the number of barrels with respect to which an election under this paragraph applies. Such election shall be made at such time and in such manner as the Secretary shall by regulations prescribe.

[(5) Repealed. Pub. L. 101–508, title XI, § 11815(a)(1)(C), Nov. 5, 1990, 104 Stat. 1388–557]

(6) Oil and natural gas produced from marginal properties

(A) In general

Except as provided in subsection (d) and subparagraph (B), the allowance for depletion under section 611 shall be computed in accordance with section 613 with respect to—

(i) so much of the taxpayer's average daily marginal production of domestic crude oil as does not exceed the taxpayer's depletable oil quantity (determined without regard to paragraph (3)(A)(ii)), and

(ii) so much of the taxpayer's average daily marginal production of domestic natural gas as does not exceed the taxpayer's depletable natural gas quantity (determined without regard to paragraph (3)(A)(ii)),

and the applicable percentage shall be deemed to be specified in subsection (b) of section 613 for purposes of subsection (a) of that section.

(B) Election to have paragraph apply to pro rata portion of marginal production

If the taxpayer elects to have this subparagraph apply for any taxable year, the rules of subparagraph (A) shall apply to the average daily marginal production of domestic crude oil or domestic natural gas of the taxpayer to which paragraph (1) would have applied without regard to this paragraph.

(C) Applicable percentage

For purposes of subparagraph (A), the term ''applicable percentage'' means the percentage (not greater than 25 percent) equal to the sum of—

(i) 15 percent, plus

(ii) 1 percentage point for each whole dollar by which $20 exceeds the reference price for crude oil for the calendar year preceding the calendar year in which the taxable year begins.

For purposes of this paragraph, the term ''reference price'' means, with respect to any calendar year, the reference price determined for such calendar year under section 45K(d)(2)(C).

(D) Marginal production

The term ''marginal production'' means domestic crude oil or domestic natural gas which is produced during any taxable year from a property which—

(i) is a stripper well property for the calendar year in which the taxable year begins, or

(ii) is a property substantially all of the production of which during such calendar year is heavy oil.

(E) Stripper well property

For purposes of this paragraph, the term ''stripper well property'' means, with respect to any calendar year, any property with respect to which the amount determined by dividing—

(i) the average daily production of domestic crude oil and domestic natural gas from producing wells on such property for such calendar year, by

(ii) the number of such wells,

is 15 barrel equivalents or less.

(F) Heavy oil

For purposes of this paragraph, the term ''heavy oil'' means domestic crude oil produced from any property if such crude oil had a weighted average gravity of 20 degrees API or less (corrected to 60 degrees Fahrenheit).

(G) Average daily marginal production

For purposes of this subsection—

(i) the taxpayer's average daily marginal production of domestic crude oil or natural gas for any taxable year shall be determined by dividing the taxpayer's aggregate marginal production of domestic

crude oil or natural gas, as the case may be, during the taxable year by the number of days in such taxable year, and

(ii) in the case of a taxpayer holding a partial interest in the production from any property (including any interest held in any partnership), such taxpayer's production shall be considered to be that amount of such production determined by multiplying the total production of such property by the taxpayer's percentage participation in the revenues from such property.

(H) Temporary suspension of taxable income limit with respect to marginal production

The second sentence of subsection (a) of section 613 shall not apply to so much of the allowance for depletion as is determined under subparagraph (A) for any taxable year—

(i) beginning after December 31, 1997, and before January 1, 2008, or

(ii) beginning after December 31, 2008, and before January 1, 2012.

(7) Special rules

(A) Production of crude oil in excess of depletable oil quantity

If the taxpayer's average daily production of domestic crude oil exceeds his depletable oil quantity, the allowance under paragraph (1)(A) with respect to oil produced during the taxable year from each property in the United States shall be that amount which bears the same ratio to the amount of depletion which would have been allowable under section 613(a) for all of the taxpayer's oil produced from such property during the taxable year (computed as if section 613 applied to all of such production at the rate specified in paragraph (1) or (6), as the case may be) as his depletable oil quantity bears to the aggregate number of barrels representing the average daily production of domestic crude oil of the taxpayer for such year.

(B) Production of natural gas in excess of depletable natural gas quantity

If the taxpayer's average daily production of domestic natural gas exceeds his depletable natural gas quantity, the allowance under paragraph (1)(B) with respect to natural gas produced during the taxable year from each property in the United States shall be that amount which bears the same ratio to the amount of depletion which would have been allowable under section 613(a) for all of the taxpayers[1] natural gas produced from such property during the taxable year (computed as if section 613 applied to all of such production at the rate specified in paragraph (1) or (6), as the case may be) as the amount of his depletable natural gas quantity in cubic feet bears to the aggregate number of cubic feet representing the average daily production of domestic natural gas of the taxpayer for such year.

(C) Taxable income from the property

If both oil and gas are produced from the property during the taxable year, for purposes of subparagraphs (A) and (B) the taxable income from the property, in applying the taxable income limitation in section 613(a), shall be allocated between the oil production and the gas production in proportion to the gross income during the taxable year from each.

(D) Partnerships

In the case of a partnership, the depletion allowance shall be computed separately by the partners and not by the partnership. The partnership shall allocate to each partner his proportionate share of the adjusted basis of each partnership oil or gas property. The allocation is to be made as of the later of the date of acquisition of the oil or gas property by the partnership, or January 1, 1975. A partner's proportionate share of the adjusted basis of partnership property shall be determined in accordance with his interest in partnership capital or income and, in the case of property contributed to the partnership by a partner, section 704(c) (relating to contributed property) shall apply in determining such share. Each partner shall separately keep records of his share of the adjusted basis in each oil and gas property of the partnership, adjust such share of the adjusted basis for any depletion taken on such property, and use such adjusted basis each year in the computation of his cost depletion or in the computation of his gain or loss on the disposition of such property by the partnership. For purposes of section 732 (relating to basis of distributed property other than money), the partnership's adjusted basis in mineral property shall be an amount equal to the sum of the partners' adjusted basis in such property as determined under this paragraph.

(8) Business under common control; members of the same family

(A) Component members of controlled group treated as one taxpayer

For purposes of this subsection, persons who are members of the same controlled group of corporations shall be treated as one taxpayer.

(B) Aggregation of business entities under common control

If 50 percent or more of the beneficial interest in two or more corporations, trusts, or estates is owned by the same or related persons (taking into account only persons who own at least 5 percent of such beneficial interest), the tentative quantity determined under paragraph (3)(B) shall be allocated among all such entities in proportion to the respective production of domestic crude oil during the period in question by such entities.

(C) Allocation among members of the same family

In the case of individuals who are members of the same family, the tentative quantity determined under paragraph (3)(B) shall be allocated among such individuals in proportion to the respective production of domes-

[1] So in original. Probably should be ''taxpayer's''.

tic crude oil during the period in question by such individuals.

(D) Definition and special rules

For purposes of this paragraph—

(i) the term ''controlled group of corporations'' has the meaning given to such term by section 1563(a), except that section 1563(b)(2) shall not apply and except that ''more than 50 percent'' shall be substituted for ''at least 80 percent'' each place it appears in section 1563(a),

(ii) a person is a related person to another person if such persons are members of the same controlled group of corporations or if the relationship between such persons would result in a disallowance of losses under section 267 or 707(b), except that for this purpose the family of an individual includes only his spouse and minor children.

(iii) the family of an individual includes only his spouse and minor children, and

(iv) each 6,000 cubic feet of domestic natural gas shall be treated as 1 barrel of domestic crude oil.

(9) Special rule for fiscal year taxpayers

In applying this subsection to a taxable year which is not a calendar year, each portion of such taxable year which occurs during a single calendar year shall be treated as if it were a short taxable year.

(10) Certain production not taken into account

In applying this subsection, there shall not be taken into account the production of natural gas with respect to which subsection (b) applies.

(11) Subchapter S corporations

(A) Computation of depletion allowance at shareholder level

In the case of an S corporation, the allowance for depletion with respect to any oil or gas property shall be computed separately by each shareholder.

(B) Allocation of basis

The S corporation shall allocate to each shareholder his pro rata share of the adjusted basis of the S corporation in each oil or gas property held by the S corporation. The allocation shall be made as of the later of the date of acquisition of the property by the S corporation, or the first day of the first taxable year of the S corporation to which the Subchapter S Revision Act of 1982 applies. Each shareholder shall separately keep records of his share of the adjusted basis in each oil and gas property of the S corporation, adjust such share of the adjusted basis for any depletion taken on such property, and use such adjusted basis each year in the computation of his cost depletion or in the computation of his gain or loss on the disposition of such property by the S corporation. In the case of any distribution of oil or gas property to its shareholders by the S corporation, the corporation's adjusted basis in the property shall be an amount equal to the sum of the shareholders' adjusted bases in such property, as determined under this subparagraph.

(d) Limitations on application of subsection (c)

(1) Limitation based on taxable income

The deduction for the taxable year attributable to the application of subsection (c) shall not exceed 65 percent of the taxpayer's taxable income for the year computed without regard to—

(A) any depletion on production from an oil or gas property which is subject to the provisions of subsection (c),

(B) any deduction allowable under section 199A,

(C) any net operating loss carryback to the taxable year under section 172,

(D) any capital loss carryback to the taxable year under section 1212, and

(E) in the case of a trust, any distributions to its beneficiary, except in the case of any trust where any beneficiary of such trust is a member of the family (as defined in section 267(c)(4)) of a settlor who created inter vivos and testamentary trusts for members of the family and such settlor died within the last six days of the fifth month in 1970, and the law in the jurisdiction in which such trust was created requires all or a portion of the gross or net proceeds of any royalty or other interest in oil, gas, or other mineral representing any percentage depletion allowance to be allocated to the principal of the trust.

If an amount is disallowed as a deduction for the taxable year by reason of application of the preceding sentence, the disallowed amount shall be treated as an amount allowable as a deduction under subsection (c) for the following taxable year, subject to the application of the preceding sentence to such taxable year. For purposes of basis adjustments and determining whether cost depletion exceeds percentage depletion with respect to the production from a property, any amount disallowed as a deduction on the application of this paragraph shall be allocated to the respective properties from which the oil or gas was produced in proportion to the percentage depletion otherwise allowable to such properties under subsection (c).

(2) Retailers excluded

Subsection (c) shall not apply in the case of any taxpayer who directly, or through a related person, sells oil or natural gas (excluding bulk sales of such items to commercial or industrial users), or any product derived from oil or natural gas (excluding bulk sales of aviation fuels to the Department of Defense)—

(A) through any retail outlet operated by the taxpayer or a related person, or

(B) to any person—

(i) obligated under an agreement or contract with the taxpayer or a related person to use a trademark, trade name, or service mark or name owned by such taxpayer or a related person, in marketing or distributing oil or natural gas or any product derived from oil or natural gas, or

(ii) given authority, pursuant to an agreement or contract with the taxpayer

or a related person, to occupy any retail outlet owned, leased, or in any way controlled by the taxpayer or a related person.

Notwithstanding the preceding sentence this paragraph shall not apply in any case where the combined gross receipts from the sale of such oil, natural gas, or any product derived therefrom, for the taxable year of all retail outlets taken into account for purposes of this paragraph do not exceed $5,000,000. For purposes of this paragraph, sales of oil, natural gas, or any product derived from oil or natural gas shall not include sales made of such items outside the United States, if no domestic production of the taxpayer or a related person is exported during the taxable year or the immediately preceding taxable year.

(3) Related person

For purposes of this subsection, a person is a related person with respect to the taxpayer if a significant ownership interest in either the taxpayer or such person is held by the other, or if a third person has a significant ownership interest in both the taxpayer and such person. For purposes of the preceding sentence, the term ''significant ownership interest'' means—

(A) with respect to any corporation, 5 percent or more in value of the outstanding stock of such corporation,

(B) with respect to a partnership, 5 percent or more interest in the profits or capital of such partnership, and

(C) with respect to an estate or trust, 5 percent or more of the beneficial interests in such estate or trust.

For purposes of determining a significant ownership interest, an interest owned by or for a corporation, partnership, trust, or estate shall be considered as owned directly both by itself and proportionately by its shareholders, partners, or beneficiaries, as the case may be.

(4) Certain refiners excluded

If the taxpayer or one or more related persons engages in the refining of crude oil, subsection (c) shall not apply to the taxpayer for a taxable year if the average daily refinery runs of the taxpayer and such persons for the taxable year exceed 75,000 barrels. For purposes of this paragraph, the average daily refinery runs for any taxable year shall be determined by dividing the aggregate refinery runs for the taxable year by the number of days in the taxable year.

(5) Percentage depletion not allowed for lease bonuses, etc.

In the case of any oil or gas property to which subsection (c) applies, for purposes of section 613, the term ''gross income from the property'' shall not include any lease bonus, advance royalty, or other amount payable without regard to production from property.

(e) Definitions

For purposes of this section—

(1) Crude oil

The term ''crude oil'' includes a natural gas liquid recovered from a gas well in lease separators or field facilities.

(2) Natural gas

The term ''natural gas'' means any product (other than crude oil) of an oil or gas well if a deduction for depletion is allowable under section 611 with respect to such product.

(3) Domestic

The term ''domestic'' refers to production from an oil or gas well located in the United States or in a possession of the United States.

(4) Barrel

The term ''barrel'' means 42 United States gallons.

(Added Pub. L. 94–12, title V, § 501(a), Mar. 29, 1975, 89 Stat. 47; amended Pub. L. 94–455, title XIX, §§ 1901(a)(86), 1906(b)(13)(A), title XXI, § 2115(a)–(c)(1), (d), (e), Oct. 4, 1976, 90 Stat. 1779, 1834, 1907–1909; Pub. L. 95–30, title I, § 102(b)(7), May 23, 1977, 91 Stat. 138; Pub. L. 95–618, title IV, § 403(a)(2)(B), (b), Nov. 9, 1978, 92 Stat. 3204; Pub. L. 96–603, § 3(a), Dec. 28, 1980, 94 Stat. 3511; Pub. L. 97–354, § 3(a), Oct. 19, 1982, 96 Stat. 1687; Pub. L. 97–448, title II, § 202(d), Jan. 12, 1983, 96 Stat. 2396; Pub. L. 98–369, div. A, title I, §§ 25(b), 71(b), July 18, 1984, 98 Stat. 506, 589; Pub. L. 99–514, title I, § 104(b)(9), title IV, § 412(a)(1), Oct. 22, 1986, 100 Stat. 2105, 2227; Pub. L. 101–508, title XI, §§ 11521(a), (b), 11522(b)(1), 11523(a), (b), 11815(a), Nov. 5, 1990, 104 Stat. 1388–485 to 1388–487, 1388–557; Pub. L. 104–188, title I, § 1702(e)(2), Aug. 20, 1996, 110 Stat. 1870; Pub. L. 105–34, title IX, § 972(a), Aug. 5, 1997, 111 Stat. 897; Pub. L. 106–170, title V, § 504(a), Dec. 17, 1999, 113 Stat. 1921; Pub. L. 107–147, title VI, § 607(a), Mar. 9, 2002, 116 Stat. 60; Pub. L. 108–311, title III, § 314(a), Oct. 4, 2004, 118 Stat. 1181; Pub. L. 109–58, title XIII, §§ 1322(a)(3)(B), 1328(a), Aug. 8, 2005, 119 Stat. 1011, 1019; Pub. L. 109–135, title IV, § 403(a)(18), Dec. 21, 2005, 119 Stat. 2619; Pub. L. 109–432, div. A, title I, § 118(a), Dec. 20, 2006, 120 Stat. 2942; Pub. L. 110–343, div. B, title II, § 210, Oct. 3, 2008, 122 Stat. 3840; Pub. L. 111–312, title VII, § 706(a), Dec. 17, 2010, 124 Stat. 3311; Pub. L. 115–97, title I, §§ 11011(d)(4), 13305(b)(5), Dec. 22, 2017, 131 Stat. 2071, 2126.)

REFERENCES IN TEXT

Section 503 of the Natural Gas Policy Act of 1978, referred to in subsec. (b)(3)(C)(i), which was classified to section 3413 of Title 15, Commerce and Trade, was repealed by Pub. L. 101–60, § 3(b)(5), July 26, 1989, 103 Stat. 159, effective Jan. 1, 1993.

The Subchapter S Revision Act of 1982, referred to in subsec. (c)(11)(B), is Pub. L. 97–354, Oct. 19, 1982, 96 Stat. 1669, which is classified principally to subchapter S (§ 1361 et seq.) of chapter 1 of this title. For complete classification of this Act to the Code, see Short Title of 1982 Amendments note set out under section 1 of this title and Tables.

AMENDMENTS

2017—Subsec. (d)(1). Pub. L. 115–97, § 13305(b)(5), redesignated subpars. (C) to (F) as (B) to (E), respectively, and struck out former subpar. (B) which read as follows: ''any deduction allowable under section 199,''.

Pub. L. 115–97, § 11011(d)(4), added subpar. (C) and redesignated former subpars. (C) to (E) as (D) to (F), respectively.

2010—Subsec. (c)(6)(H)(ii). Pub. L. 111–312 substituted ''January 1, 2012'' for ''January 1, 2010''.

2008—Subsec. (c)(6)(H). Pub. L. 110–343 substituted ''for any taxable year—'' for ''for any taxable year be-

ginning after December 31, 1997, and before January 1, 2008.'' and added cls. (i) and (ii).

2006—Subsec. (c)(6)(H). Pub. L. 109–432 substituted ''2008'' for ''2006''.

2005—Subsec. (c)(6)(C). Pub. L. 109–58, §1322(a)(3)(B), substituted ''section 45K(d)(2)(C)'' for ''section 29(d)(2)(C)'' in concluding provisions.

Subsec. (d)(1)(B) to (E). Pub. L. 109–135 added subpar. (B) and redesignated former subpars. (B) to (D) as (C) to (E), respectively.

Subsec. (d)(4). Pub. L. 109–58, §1328(a), reenacted heading without change and amended text of par. (4) generally. Prior to amendment, text read as follows: ''If the taxpayer or a related person engages in the refining of crude oil, subsection (c) shall not apply to such taxpayer if on any day during the taxable year the refinery runs of the taxpayer and such person exceed 50,000 barrels.''

2004—Subsec. (c)(6)(H). Pub. L. 108–311 substituted ''2006'' for ''2004''.

2002—Subsec. (c)(6)(H). Pub. L. 107–147 substituted ''2004'' for ''2002''.

1999—Subsec. (c)(6)(H). Pub. L. 106–170 substituted ''January 1, 2002'' for ''January 1, 2000''.

1997—Subsec. (c)(6)(H). Pub. L. 105–34 added subpar. (H).

1996—Subsec. (c)(3)(A)(i). Pub. L. 104–188 struck out ''the table contained in'' before ''subparagraph (B)''.

1990—Subsec. (c)(1). Pub. L. 101–508, §11815(a)(1)(A), substituted ''15 percent'' for ''the applicable percentage (determined in accordance with the table contained in paragraph (5))'' in concluding provisions.

Subsec. (c)(3)(A). Pub. L. 101–508, §11523(b)(2), struck out at end ''Clause (ii) shall not apply after December 31, 1983.''

Subsec. (c)(3)(A)(ii). Pub. L. 101–508, §11523(b)(1), added cl. (ii) and struck out former cl. (ii) which read as follows: ''the taxpayer's average daily secondary or tertiary production for the taxable year.''

Subsec. (c)(3)(B). Pub. L. 101–508, §11815(a)(1)(B), amended subpar. (B) generally, substituting present provisions for provisions which set out a phase-out table for determining tentative quantity in barrels.

Subsec. (c)(5). Pub. L. 101–508, §11815(a)(1)(C), struck out par. (5) which provided table of applicable percentages for purposes of par. (1).

Subsec. (c)(6). Pub. L. 101–508, §11523(a), amended par. (6) generally, providing for an increase in percentage depletion allowance for marginal production, and substituting provisions relating to oil and gas produced from marginal properties for former provisions which related to oil and gas resulting from secondary or tertiary processes.

Subsec. (c)(7)(A), (B). Pub. L. 101–508, §11815(a)(2)(A), substituted ''specified in paragraph (1)'' for ''specified in paragraph (5)''.

Subsec. (c)(7)(C). Pub. L. 101–508, §11522(b)(1), substituted ''taxable income'' for ''50-percent'' before ''limitation''.

Subsec. (c)(7)(E). Pub. L. 101–508, §11815(a)(1)(C), struck out subpar. (E) which provided special rules relating to production from secondary or tertiary recovery processes.

Subsec. (c)(8)(B), (C). Pub. L. 101–508, §11815(a)(2)(B), which directed amendment of subpars. (B) and (C) by substituting ''determined under paragraph (3)(B)'' for ''determined under the table contained in paragraph (3)(B)'', was executed by making the substitution for ''determined under the table in paragraph (3)(B)'' as the probable intent of Congress.

Subsec. (c)(9). Pub. L. 101–508, §11815(a)(2)(B), which directed amendment of par. (9) by substituting ''determined under paragraph (3)(B)'' for ''determined under the table contained in paragraph (3)(B)'', could not be executed because that phrase did not appear after execution of amendment by Pub. L. 101–508, §11521(a). See below.

Pub. L. 101–508, §11521(a), redesignated par. (11) as (9) and struck out former par. (9) which related to transfer of oil or gas property.

Subsec. (c)(10). Pub. L. 101–508, §11521(a), redesignated par. (12) as (10) and struck out former par. (10) which related to transfers by individuals to corporations.

Subsec. (c)(11). Pub. L. 101–508, §11521(a), redesignated par. (13) as (11). Former par. (11) redesignated (9).

Subsec. (c)(11)(C), (D). Pub. L. 101–508, §11521(b), struck out subpars. (C) and (D) which related to coordination with the transfer rules of former pars. (9) and (10).

Subsec. (c)(12), (13). Pub. L. 101–508, §11521(a), redesignated pars. (12) and (13) as (10) and (11), respectively.

1986—Subsec. (d)(1). Pub. L. 99–514, §104(b)(9), struck out ''(reduced in the case of an individual by the zero bracket amount)'' after ''taxable income'' in introductory provisions.

Subsec. (d)(5). Pub. L. 99–514, §412(a)(1), added par. (5).

1984—Subsec. (c)(2). Pub. L. 98–369, §25(b)(1), struck out last sentence providing that in applying this paragraph, there shall not be taken into account any production of crude oil or natural gas resulting from secondary or tertiary processes (as defined in regulations prescribed by the Secretary).

Subsec. (c)(3)(A). Pub. L. 98–369, §25(b)(2), inserted at end ''Clause (ii) shall not apply after December 31, 1983.''

Subsec. (c)(7)(D). Pub. L. 98–369, §71(b), substituted ''property contributed to the partnership by a partner, section 704(c) (relating to contributed property) shall apply in determining such share'' for ''an agreement described in section 704(c)(2) (relating to effect of partnership agreement on contributed property), such share shall be determined by taking such agreement into account'' in fourth sentence.

Subsec. (c)(7)(E). Pub. L. 98–369, §25(b)(3), inserted at end ''This subparagraph shall not apply after December 31, 1983.''

Subsec. (c)(9)(A). Pub. L. 98–369, §25(b)(4), substituted ''this subsection'' for ''paragraph (1)''.

1983—Subsec. (c)(10)(E). Pub. L. 97–448, §202(d)(1), inserted provision that ''oil and gas property'' includes, in the case of any property, necessary production equipment for such property which is in place when the property is transferred.

Subsec. (d)(2). Pub. L. 97–448, §202(d)(2), inserted ''(excluding bulk sales of aviation fuels to the Department of Defense)'' after ''any product derived from oil or natural gas''.

1982—Subsec. (c)(13). Pub. L. 97–354 added par. (13).

1980—Subsec. (c)(10) to (12). Pub. L. 96–603 added par. (10) and redesignated former pars. (10) and (11) as (11) and (12), respectively.

1978—Subsec. (b)(1)(C). Pub. L. 95–618, §403(a)(2)(B), struck out subpar. (C) which related to a computation in accordance with section 613 with respect to any geothermal deposit in the United States or in a possession of the United States which is determined to be a gas well.

Subsec. (b)(2), (3). Pub. L. 95–618, §403(b)(1), (2), added par. (2), redesignated former par. (2) as (3) and, as so redesignated, added subpar. (C).

1977—Subsec. (d)(1). Pub. L. 95–30 inserted ''(reduced in the case of an individual by the zero bracket amount)'' after ''the taxpayer's taxable income'' in introductory provisions.

1976—Subsec. (b)(1)(C). Pub. L. 94–455, §1901(a)(86)(A), struck out ''within the meaning of section 613(b)(1)(A)'' after ''determined to be a gas well''.

Subsec. (c)(2), (4). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c)(6)(A)(i). Pub. L. 94–455, §1901(a)(86)(B), substituted ''determined without'' for ''determined with''.

Subsec. (c)(7)(D). Pub. L. 94–455, §2115(c)(1), inserted provision relating to the method to be employed by the partners in computing the depletion allowance.

Subsec. (c)(7)(E). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c)(9)(B). Pub. L. 94–455, §2115(b)(1), (e), added cls. (iii) to (vi) and provision following cl. (vi).

Subsec. (d)(1). Pub. L. 94–455, §2115(b)(2), substituted in subpar. (A) reference to any depletion on production

from an oil or gas property which is subject to the provisions of subsection (c) for reference to depletion with respect to production of oil and gas subject to the provisions of subsection (c), and added subpar. (D).

Subsec. (d)(2). Pub. L. 94–455, §2115(a), inserted ''(excluding bulk sales of such items to commercial or industrial users)'' before '', or any product derived'' and inserted provisions following subpar. (B) relating to the application of this paragraph where combined gross receipts from the sale of oil, natural gas, or any product derived therefrom, for the taxable year of all retail outlets taken into account do not exceed $5,000,000 and relating to the exclusion of sales made outside the United States.

Subsec. (d)(3). Pub. L. 94–455, §2115(d), inserted provision following subpar. (C) relating to the determination of a significant ownership interest of a corporation, partnership, trust, or estate.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 11011(d)(4) of Pub. L. 115–97 applicable to taxable years beginning after Dec. 31, 2017, see section 11011(e) of Pub. L. 115–97, set out as a note under section 62 of this title.

Amendment by section 13305(b)(5) of Pub. L. 115–97 applicable to taxable years beginning after Dec. 31, 2017, see section 13305(c) of Pub. L. 115–97, set out as a note under section 74 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §706(b), Dec. 17, 2010, 124 Stat. 3312, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, §118(b), Dec. 20, 2006, 120 Stat. 2942, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 2005.''

EFFECTIVE DATE OF 2005 AMENDMENTS

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

Amendment by section 1322(a)(3)(B) of Pub. L. 109–58 applicable to credits determined under the Internal Revenue Code of 1986 for taxable years ending after Dec. 31, 2005, see section 1322(c)(1) of Pub. L. 109–58, set out as a note under section 45K of this title.

Pub. L. 109–58, title XIII, §1328(b), Aug. 8, 2005, 119 Stat. 1020, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Aug. 8, 2005].''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–311, title III, §314(b), Oct. 4, 2004, 118 Stat. 1181, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 2003.''

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title VI, §607(b), Mar. 9, 2002, 116 Stat. 60, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 2001.''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title V, §504(b), Dec. 17, 1999, 113 Stat. 1921, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1999.''

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title IX, §972(b), Aug. 5, 1997, 111 Stat. 898, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1997.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11521(c), Nov. 5, 1990, 104 Stat. 1388–486, provided that: ''The amendments made by this section [amending this section] shall apply to transfers after October 11, 1990.''

Amendment by section 11522(b)(1) of Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11522(c) of Pub. L. 101–508, set out as a note under section 613 of this title.

Pub. L. 101–508, title XI, §11523(c), Nov. 5, 1990, 104 Stat. 1388–487, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1990.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(b)(9) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 412(a)(1) of Pub. L. 99–514 applicable to amounts received or accrued after Aug. 16, 1986, in taxable years ending after such date, see section 412(a)(3) of Pub. L. 99–514, set out as a note under section 613 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §25(c)(2), July 18, 1984, 98 Stat. 507, provided that: ''The amendments made by subsection (b) [amending this section] shall take effect on January 1, 1984.''

Amendment by section 71(b) of Pub. L. 98–369 applicable with respect to property contributed to the partnership after Mar. 31, 1984, in taxable years ending after such date, see section 71(c) of Pub. L. 98–369, set out as a note under section 704 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 202(d)(1) of Pub. L. 97–448 applicable to transfers in taxable years ending after Dec. 31, 1974, but only for purposes of applying this section to periods after Dec. 31, 1979, and amendment by section 202(d)(2) of Pub. L. 97–448 applicable to bulk sales after Sept. 18, 1982, see section 203(b)(3) of Pub. L. 97–448, set out as a note under section 6652 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–603, §3(b), Dec. 28, 1980, 94 Stat. 3513, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to transfers in taxable years ending after December 31, 1974, but only for purposes of applying section 613A of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] to periods after December 31, 1979.''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–618 effective on Oct. 1, 1978, and applicable to taxable years ending on or after such date, see section 403(c) of Pub. L. 95–618, set out as a note under section 613 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of

Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(86) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Pub. L. 94–455, title XXI, § 2115(f), Oct. 4, 1976, 90 Stat. 1910, provided that: ''The amendments made by this section [amending this section and sections 703 and 705 of this title] shall take effect on January 1, 1975, and shall apply to taxable years ending after December 31, 1974.''

EFFECTIVE DATE

Pub. L. 94–12, title V, § 501(c), Mar. 29, 1975, 89 Stat. 53, provided that: ''The amendments made by this section [enacting this section and amending sections 613 and 703 of this title] shall take effect on January 1, 1975, and shall apply to taxable years ending after December 31, 1974.''

SAVINGS PROVISION

For provisions that nothing in amendment by section 11815(a) of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

TRANSFER OF FUNCTIONS

Federal Power Commission terminated and its functions, personnel, property, funds, etc., transferred to Secretary of Energy (except for certain functions which were transferred to Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a), 7291, and 7293 of Title 42, The Public Health and Welfare.

COORDINATION WITH OTHER PROVISION

Pub. L. 95–618, title IV, § 403(d), Nov. 9, 1978, 92 Stat. 3204, provided that: ''Any allowance for depletion allowed by reason of the amendments made by subsection (b) [amending this section] shall not be treated as a credit, exemption, deduction, or comparable adjustment applicable to the computation of any Federal tax which is specifically allowable with respect to any high-cost natural gas (or category thereof) for purposes of section 107(d) of the Natural Gas Policy Act of 1978 [section 3317(d) of Title 15, Commerce and Trade].''

§ 614. Definition of property

(a) General rule

For the purpose of computing the depletion allowance in the case of mines, wells, and other natural deposits, the term ''property'' means each separate interest owned by the taxpayer in each mineral deposit in each separate tract or parcel of land.

(b) Special rules as to operating mineral interests in oil and gas wells or geothermal deposits

In the case of oil and gas wells or geothermal deposits—

(1) In general

Except as otherwise provided in this subsection—

(A) all of the taxpayer's operating mineral interests in a separate tract or parcel of land shall be combined and treated as one property, and

(B) the taxpayer may not combine an operating mineral interest in one tract or parcel of land with an operating mineral interest in another tract or parcel of land.

(2) Election to treat operating mineral interests as separate properties

If the taxpayer has more than one operating mineral interest in a single tract or parcel of land, he may elect to treat one or more of such operating mineral interests as separate properties. The taxpayer may not have more than one combination of operating mineral interests in a single tract or parcel of land. If the taxpayer makes the election provided in this paragraph with respect to any interest in a tract or parcel of land, each operating mineral interest which is discovered or acquired by the taxpayer in such tract or parcel of land after the taxable year for which the election is made shall be treated—

(A) if there is no combination of interests in such tract or parcel, as a separate property unless the taxpayer elects to combine it with another interest, or

(B) if there is a combination of interests in such tract or parcel, as part of such combination unless the taxpayer elects to treat it as a separate property.

(3) Certain unitization or pooling arrangements

(A) In general

Under regulations prescribed by the Secretary, if one or more of the taxpayer's operating mineral interests participate, under a voluntary or compulsory unitization or pooling agreement, in a single cooperative or unit plan of operation, then for the period of such participation—

(i) they shall be treated for all purposes of this subtitle as one property, and

(ii) the application of paragraphs (1), (2), and (4) in respect of such interests shall be suspended.

(B) Limitation

Subparagraph (A) shall apply to a voluntary agreement only if all the operating mineral interests covered by such agreement—

(i) are in the same deposit, or are in 2 or more deposits the joint development or production of which is logical from the standpoint of geology, convenience, economy, or conservation, and

(ii) are in tracts or parcels of land which are contiguous or in close proximity.

(4) Manner, time, and scope of election

(A) Manner and time

Any election provided in paragraph (2) shall be made for each operating mineral interest, in the manner prescribed by the Secretary by regulations, not later than the time prescribed by law for filing the return (including extensions thereof) for the first taxable year in which any expenditure for development or operation in respect of such operating mineral interest is made by the taxpayer after the acquisition of such interest.

(B) Scope

Any election under paragraph (2) shall be for all purposes of this subtitle and shall be

binding on the taxpayer for all subsequent taxable years.

(c) Special rules as to operating mineral interests in mines

(1) Election to aggregate separate interests

Except in the case of oil and gas wells and geothermal deposits, if a taxpayer owns two or more separate operating mineral interests which constitute part or all of an operating unit, he may elect (for all purposes of this subtitle)—

(A) to form an aggregation of, and to treat as one property, all such interests owned by him which comprise any one mine or any two or more mines; and

(B) to treat as a separate property each such interest which is not included within an aggregation referred to in subparagraph (A).

For purposes of this paragraph, separate operating mineral interests which constitute part or all of an operating unit may be aggregated whether or not they are included in a single tract or parcel of land and whether or not they are included in contiguous tracts or parcels. For purposes of this paragraph, a taxpayer may elect to form more than one aggregation of operating mineral interests within any one operating unit; but no aggregation may include any operating mineral interest which is a part of a mine without including all of the operating mineral interests which are a part of such mine in the first taxable year for which the election to aggregate is effective, and any operating mineral interest which thereafter becomes a part of such mine shall be included in such aggregation.

(2) Election to treat a single interest as more than one property

Except in the case of oil and gas wells and geothermal deposits, if a single tract or parcel of land contains a mineral deposit which is being extracted, or will be extracted, by means of two or more mines for which expenditures for development or operation have been made by the taxpayer, then the taxpayer may elect to allocate to such mines, under regulations prescribed by the Secretary, all of the tract or parcel of land and of the mineral deposit contained therein, and to treat as a separate property that portion of the tract or parcel of land and of the mineral deposit so allocated to each mine. A separate property formed pursuant to an election under this paragraph shall be treated as a separate property for all purposes of this subtitle (including this paragraph). A separate property so formed may, under regulations prescribed by the Secretary, be included as a part of an aggregation in accordance with paragraphs (1) and (3). The election provided by this paragraph may not be made with respect to any property which is a part of an aggregation formed by the taxpayer under paragraph (1) except with the consent of the Secretary.

(3) Manner and scope of election

The elections provided by paragraphs (1) and (2) shall be made, in accordance with regulations prescribed by the Secretary, not later than the time prescribed for filing the return (including extensions thereof) for the first taxable year—

(A) in which, in the case of an election under paragraph (1), any expenditure for development or operation in respect of the separate operating mineral interest is made by the taxpayer after the acquisition of such interest, or

(B) in which, in the case of an election under paragraph (2), expenditures for development or operation of more than one mine in respect of a property are made by the taxpayer after the acquisition of the property.

An election made under paragraph (1) or (2) for a taxable year shall be binding upon the taxpayer for such year and all subsequent taxable years, except that the Secretary may consent to a different treatment of any interest with respect to which an election has been made.

(d) Operating mineral interests defined

For purposes of this section, the term ''operating mineral interest'' includes only an interest in respect of which the costs of production of the mineral are required to be taken into account by the taxpayer for purposes of computing the taxable income limitation provided for in section 613, or would be so required if the mine, well, or other natural deposit were in the production stage.

(e) Special rule as to nonoperating mineral interests

(1) Aggregation of separate interests

If a taxpayer owns two or more separate nonoperating mineral interests in a single tract or parcel of land or in two or more adjacent tracts or parcels of land, the Secretary shall, on showing by the taxpayer that a principal purpose is not the avoidance of tax, permit the taxpayer to treat (for all purposes of this subtitle) all such mineral interests in each separate kind of mineral deposit as one property. If such permission is granted for any taxable year, the taxpayer shall treat such interests as one property for all subsequent taxable years unless the Secretary consents to a different treatment.

(2) Nonoperating mineral interests defined

For purposes of this subsection, the term ''nonoperating mineral interests'' includes only interests which are not operating mineral interests.

(Aug. 16, 1954, ch. 736, 68A Stat. 210; Pub. L. 85–866, title I, §37(a)–(d), Sept. 2, 1958, 72 Stat. 1633–1637; Pub. L. 88–272, title II, §226(a), (b), Feb. 26, 1964, 78 Stat. 94, 96; Pub. L. 94–455, title XIX, §§1901(a)(87)(A)(i), (B), (C), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1779, 1834; Pub. L. 95–618, title IV, §403(a)(2)(C), (D), Nov. 9, 1978, 92 Stat. 3204; Pub. L. 101–508, title XI, §11522(b)(2), Nov. 5, 1990, 104 Stat. 1388–486; Pub. L. 113–295, div. A, title II, §221(a)(65), Dec. 19, 2014, 128 Stat. 4048.)

AMENDMENTS

2014—Subsec. (b)(3)(C). Pub. L. 113–295, §221(a)(65)(A), struck out subpar. (C) which related to a special rule for voluntary or compulsory unitization or pooling ar-

rangements entered into in taxable years beginning before Jan. 1, 1964.

Subsec. (b)(4)(A). Pub. L. 113–295, §221(a)(65)(B), which directed amendment of par. (4) by striking out ''whichever of the following years is later: The first taxable year beginning after December 31, 1963, or'', was executed by striking out ''whichever of the following taxable years is the later: The first taxable year beginning after December 31, 1963, or'' before ''the first taxable year'' in subpar. (A), to reflect the probable intent of Congress.

Subsec. (b)(5). Pub. L. 113–295, §221(a)(65)(A), struck out par. (5). Text read as follows: ''If, on the day preceding the first day of the first taxable year beginning after December 31, 1963, the taxpayer has any operating mineral interests which he treats under subsection (d) of this section (as in effect before the amendments made by the Revenue Act of 1964), such treatment shall be continued and shall be deemed to have been adopted pursuant to paragraphs (1) and (2) of this subsection (as amended by such Act).''

1990—Subsec. (d). Pub. L. 101–508 substituted ''taxable income'' for ''50 percent''.

1978—Subsec. (b). Pub. L. 95–618, §403(a)(2)(C), inserted ''or geothermal deposits'' after ''gas wells'' in heading and introductory provisions.

Subsec. (c). Pub. L. 95–618, §403(a)(2)(D), substituted ''oil and gas wells and geothermal deposits'' for ''oil and gas wells'' wherever appearing.

1976—Subsecs. (b)(3)(A), (4)(A), (e). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c)(2). Pub. L. 94–455, §§1901(a)(87)(B), 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' wherever appearing and '', but the provisions of paragraph (4) shall not apply with respect to such separate property'' after ''in accordance with paragraphs (1) and (3)''.

Subsec. (c)(3). Pub. L. 94–455, §1901(a)(87)(C), among other changes, struck out references to the first taxable year beginning after Dec. 31, 1957, and provisions relating to elections for taxable years beginning before Jan. 1, 1958, relating to election after final regulations, and relating to statute of limitations.

Subsec. (c)(4). Pub. L. 94–455, §1901(a)(87)(A)(i), struck out par. (4) which related to a special rule as to deductions under section 615(a) of this title prior to aggregation.

1964—Subsec. (b). Pub. L. 88–272, §226(a), amended subsec. (b) generally, and among other changes, substituted provisions stating that except as otherwise provided, all of the taxpayer's operating mineral interests in a separate tract or parcel of land will be combined and treated as one property, that the taxpayer may not combine any operating mineral interest in one tract or parcel of land with an operating mineral interest in another tract or parcel of land, that if he has more than one operating mineral interest in a single tract of land he may elect to treat one or more of such interests as separate properties, limited, however, to one combination of interests in a single tract of land, and providing, in the event the election in par. (2) is made with respect to any tract of land, for the treatment of interests discovered or acquired by the taxpayer in such a tract after the taxable year for which the election is made, for provisions which permitted a taxpayer who owned two or more separate operating mineral interests which constituted all or a part of an operating unit, to elect to form one aggregation and treat as one property any two or more of these interests, treating as separate properties any interests which he did not include in the one aggregation, to aggregate separate interests whether or not in a single tract of land, or contiguous tracts of land, and which forbade him to form more than one aggregation within a single operating unit, inserted provisions in par. (3) relating to unitization or pooling arrangements, and in par (5), providing that if the taxpayer has operating mineral interests on the day preceding the first day of the first taxable year beginning after Dec. 31, 1963, which he treats under subsec. (d) of this section as in effect before amendment by Pub. L. 88–272, he shall continue such treatment and it shall be deemed adopted pursuant to pars. (1) and (2) of this subsection, and struck out provisions defining ''operating mineral interests'', and providing for termination of election with respect to mines, excepting oil and gas wells. For definition of ''operating mineral interests'', see subsec. (d) of this section.

Subsec. (c). Pub. L. 88–272, §226(b)(1), (2), struck out par. (5) which defined operating mineral interests, and ''1958'' before ''Special rules'' in heading.

Subsec. (d). Pub. L. 88–272, §226(b)(3), amended subsec. (d) generally, substituting the definition of operating mineral interests, for provisions relating to the 1939 Code treatment respecting operating mineral interest in case of oil and gas wells.

Subsec. (e)(2). Pub. L. 88–272, §226(b)(4), struck out ''within the meaning of subsection (b)(3)'' at end.

1958—Subsec. (b)(4). Pub. L. 85–866, §37(a), added par. (4).

Subsecs. (c) to (e). Pub. L. 85–866, §37(b)–(d), added subsecs. (c) and (d), redesignated former subsec. (c) as (e), and substituted in first sentence of par. (1) ''or in two or more adjacent tracts'' for ''or in two or more contiguous tracts'' and ''shall, on showing by the taxpayer that a principal purpose is not the avoidance of tax, permit the taxpayer to treat (for all purposes of this subtitle) all such mineral interests in each separate kind of mineral deposit as one property'' for ''may, on showing of undue hardship, permit the taxpayer to treat (for all purposes of this subtitle) all such mineral interests as one property''.

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113–295, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11522(c) of Pub. L. 101–508, set out as a note under section 613 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–618 effective Oct. 1, 1978, and applicable to taxable years ending on or after such date, see section 403(c) of Pub. L. 95–618, set out as a note under section 613 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XIX, §1901(a)(87)(A)(ii), Oct. 4, 1976, 90 Stat. 1779, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by clause (i) [amending this section] shall apply with respect to elections to form aggregations of operating mineral interests made under section 614(c)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for taxable years beginning after December 31, 1976.''

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–272, title II, §226(d), Feb. 26, 1964, 78 Stat. 97, provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply to taxable years beginning after December 31, 1963.''

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–866, title I, §37(e), Sept. 2, 1958, 72 Stat. 1638, provided that: ''The amendments made by subsections (a) and (c) [amending this section] shall apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954. The amendments made by subsection (b) [amending this section] shall apply with respect to taxable years beginning after December 31, 1957, except that such amendments shall, at the election of the taxpayer made in conformity with such amendments, apply with respect to tax-

able years beginning after December 31, 1953, and ending after August 16, 1954. The amendment made by subsection (d) [amending this section] shall apply with respect to taxable years beginning after December 31, 1957, except that with respect to any taxpayer such amendment shall, at the election of the taxpayer, apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954.''

ALLOCATION OF BASIS IN CERTAIN CASES

Pub. L. 88–272, title II, §226(c), Feb. 26, 1964, 78 Stat. 96, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''For purposes of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]—

''(1) FAIR MARKET VALUE RULE.—Except as provided in paragraph (2), if a taxpayer has a section 614(b) aggregation, then the adjusted basis (as of the first day of the first taxable year beginning after December 31, 1963) of each property included in such aggregation shall be determined by multiplying the adjusted basis of the aggregation by a fraction—

''(A) the numerator of which is the fair market value of such property, and

''(B) the denominator of which is the fair market value of such aggregation.

For purposes of this paragraph, the adjusted basis and the fair market value of the aggregation, and the fair market value of each property included therein, shall be determined as of the day preceding the first day of the first taxable year which begins after December 31, 1963.

''(2) ALLOCATION OF ADJUSTMENTS, ETC.—If the taxpayer makes an election under this paragraph with respect to any section 614(b) aggregation, then the adjusted basis (as of the first day of the first taxable year beginning December 31, 1963) of each property included in such aggregation shall be the adjusted basis of such property at the time it was first included in the aggregation by the taxpayer, adjusted for that portion of those adjustments to the basis of the aggregation which are reasonably attributable to such property. If, under the preceding sentence, the total of the adjusted bases of the interests included in the aggregation exceeds the adjusted basis of the aggregation (as of the day preceding the first day of the first taxable year which begins after December 31, 1963), the adjusted bases of the properties which include such interests shall be adjusted, under regulations prescribed by the Secretary of the Treasury or his delegate, so that the total of the adjusted bases of such interests equals the adjusted basis of the aggregation. An election under this paragraph shall be made at such time and in such manner as the Secretary of the Treasury or his delegate shall by regulations prescribe.

''(3) DEFINITIONS.—For purposes of this subsection—

''(A) SECTION 614(b) AGGREGATION.—The term 'section 614(b) aggregation' means any aggregation to which section 614(b)(1)(A) of the Internal Revenue Code of 1986 (as in effect before the amendments made by subsection (a) of this section) applied for the day preceding the first day of the first taxable year beginning after December 31, 1963.

''(B) PROPERTY.—The term 'property' has the same meaning as is applicable, under section 614 of the Internal Revenue Code of 1986, to the taxpayer for the first taxable year beginning after December 31, 1963.''

[§ 615. Repealed. Pub. L. 94–455, title XIX, § 1901(a)(88), Oct. 4, 1976, 90 Stat. 1779]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 211; July 6, 1960, Pub. L. 86–594, §1, 74 Stat. 333; Sept. 12, 1966, Pub. L. 89–570, §2(a), 80 Stat. 763; Dec. 30, 1969, Pub. L. 91–172, title V, §504(a), 83 Stat. 632, related to pre-1970 exploration expenditures.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 2 of this title.

§ 616. Development expenditures

(a) In general

Except as provided in subsections (b) and (d), there shall be allowed as a deduction in computing taxable income all expenditures paid or incurred during the taxable year for the development of a mine or other natural deposit (other than an oil or gas well) if paid or incurred after the existence of ores or minerals in commercially marketable quantities has been disclosed. This section shall not apply to expenditures for the acquisition or improvement of property of a character which is subject to the allowance for depreciation provided in section 167, but allowances for depreciation shall be considered, for purposes of this section, as expenditures.

(b) Election of taxpayer

At the election of the taxpayer, made in accordance with regulations prescribed by the Secretary, expenditures described in subsection (a) paid or incurred during the taxable year shall be treated as deferred expenses and shall be deductible on a ratable basis as the units of produced ores or minerals benefited by such expenditures are sold. In the case of such expenditures paid or incurred during the development stage of the mine or deposit, the election shall apply only with respect to the excess of such expenditures during the taxable year over the net receipts during the taxable year from the ores or minerals produced from such mine or deposit. The election under this subsection, if made, must be for the total amount of such expenditures, or the total amount of such excess, as the case may be, with respect to the mine or deposit, and shall be binding for such taxable year.

(c) Adjusted basis of mine or deposit

The amount of expenditures which are treated under subsection (b) as deferred expenses shall be taken into account in computing the adjusted basis of the mine or deposit, except that such amount, and the adjustments to basis provided in section 1016(a)(9), shall be disregarded in determining the adjusted basis of the property for the purpose of computing a deduction for depletion under section 611.

(d) Special rules for foreign development

In the case of any expenditures paid or incurred with respect to the development of a mine or other natural deposit (other than an oil, gas, or geothermal well) located outside of the United States—

(1) subsections (a) and (b) shall not apply, and

(2) such expenditures shall—

(A) at the election of the taxpayer, be included in adjusted basis for purposes of computing the amount of any deduction allowable under section 611 (without regard to section 613), or

(B) if subparagraph (A) does not apply, be allowed as a deduction ratably over the 10-taxable year period beginning with the taxable year in which such expenditures were paid or incurred.

(e) Cross reference

For election of 10-year amortization of expenditures allowable as a deduction under subsection (a), see section 59(e).

(Aug. 16, 1954, ch. 736, 68A Stat. 212; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–248, title II, § 201(d)(9)(C), formerly § 201(c)(9)(C), Sept. 3, 1982, 96 Stat. 420, renumbered § 201(d)(9)(C), Pub. L. 97–448, title III, § 306(a)(1)(A)(i), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 99–514, title IV, § 411(b)(2)(A), (C)(i), Oct. 22, 1986, 100 Stat. 2226; Pub. L. 100–647, title I, § 1007(g)(7), Nov. 10, 1988, 102 Stat. 3435.)

AMENDMENTS

1988—Subsec. (e). Pub. L. 100–647 substituted ''section 59(e)'' for ''section 58(i)''.

1986—Subsec. (a). Pub. L. 99–514, § 411(b)(2)(C)(i), inserted reference to subsec. (d).

Subsecs. (d), (e). Pub. L. 99–514, § 411(b)(2)(A), added subsec. (d) and redesignated former subsec. (d) as (e).

1982—Subsec. (d). Pub. L. 97–248 added subsec. (d).

1976—Subsec. (b). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to costs paid or incurred after Dec. 31, 1986, in taxable years ending after such date, with transition rule, see section 411(c) of Pub. L. 99–514 set out as a note under section 263 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to taxable years beginning after Dec. 31, 1982, see section 201(e)(1) of Pub. L. 97–248, set out as a note under section 5 of this title.

§ 617. Deduction and recapture of certain mining exploration expenditures

(a) Allowance of deduction

(1) General rule

At the election of the taxpayer, expenditures paid or incurred during the taxable year for the purpose of ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral, and paid or incurred before the beginning of the development stage of the mine, shall be allowed as a deduction in computing taxable income. This subsection shall apply only with respect to the amount of such expenditures which, but for this subsection, would not be allowable as a deduction for the taxable year. This subsection shall not apply to expenditures for the acquisition or improvement of property of a character which is subject to the allowance for depreciation provided in section 167, but allowances for depreciation shall be considered, for purposes of this subsection, as expenditures paid or incurred. In no case shall this subsection apply with respect to amounts paid or incurred for the purpose of ascertaining the existence, location, extent, or quality of any deposit of oil or gas or of any mineral with respect to which a deduction for percentage depletion is not allowable under section 613.

(2) Elections

(A) Method

Any election under this subsection shall be made in such manner as the Secretary may by regulations prescribe.

(B) Time and scope

The election provided by paragraph (1) for the taxable year may be made at any time before the expiration of the period prescribed for making a claim for credit or refund of the tax imposed by this chapter for the taxable year. Such an election for the taxable year shall apply to all expenditures described in paragraph (1) paid or incurred by the taxpayer during the taxable year or during any subsequent taxable year. Such an election may not be revoked unless the Secretary consents to such revocation.

(C) Deficiencies

The statutory period for the assessment of any deficiency for any taxable year, to the extent such deficiency is attributable to an election or revocation of an election under this subsection, shall not expire before the last day of the 2-year period beginning on the day after the date on which such election or revocation of election is made; and such deficiency may be assessed at any time before the expiration of such 2-year period, notwithstanding any law or rule of law which would otherwise prevent such assessment.

(b) Recapture on reaching producing stage

(1) Recapture

If, in any taxable year, any mine with respect to which expenditures were deducted pursuant to subsection (a) reaches the producing stage, then—

(A) If the taxpayer so elects with respect to all such mines reaching the producing stage during the taxable year, he shall include in gross income for the taxable year an amount equal to the adjusted exploration expenditures with respect to such mines, and the amount so included in income shall be treated for purposes of this subtitle as expenditures which (i) are paid or incurred on the respective dates on which the mines reach the producing stage, and (ii) are properly chargeable to capital account.

(B) If subparagraph (A) does not apply with respect to any such mine, then the deduction for depletion under section 611 with respect to the property shall be disallowed until the amount of depletion which would be allowable but for this subparagraph equals the amount of the adjusted exploration expenditures with respect to such mine.

(2) Elections

(A) Method

Any election under this subsection shall be made in such manner as the Secretary may by regulations prescribe.

(B) Time and scope

The election provided by paragraph (1) for any taxable year may be made or changed

not later than the time prescribed by law for filing the return (including extensions thereof) for such taxable year.

(c) Recapture in case of bonus or royalty

If an election has been made under subsection (a) with respect to expenditures relating to a mining property and the taxpayer receives or accrues a bonus or a royalty with respect to such property, then the deduction for depletion under section 611 with respect to the bonus or royalty shall be disallowed until the amount of depletion which would be allowable but for this subsection equals the amount of the adjusted exploration expenditures with respect to the property to which the bonus or royalty relates.

(d) Gain from dispositions of certain mining property

(1) General rule

Except as otherwise provided in this subsection, if mining property is disposed of the lower of—

(A) the adjusted exploration expenditures with respect to such property, or

(B) the excess of—

(i) the amount realized (in the case of a sale, exchange, or involuntary conversion), or the fair market value (in the case of any other disposition), over

(ii) the adjusted basis of such property,

shall be treated as ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle.

(2) Disposition of portion of property

For purposes of paragraph (1)—

(A) In the case of the disposition of a portion of a mining property (other than an undivided interest), the entire amount of the adjusted exploration expenditures with respect to such property shall be treated as attributable to such portion to the extent of the amount of the gain to which paragraph (1) applies.

(B) In the case of the disposition of an undivided interest in a mining property (or a portion thereof), a proportionate part of the adjusted exploration expenditures with respect to such property shall be treated as attributable to such undivided interest to the extent of the amount of the gain to which paragraph (1) applies.

This paragraph shall not apply to any expenditure to the extent the taxpayer establishes to the satisfaction of the Secretary that such expenditure relates neither to the portion (or interest therein) disposed of nor to any mine, in the property held by the taxpayer before the disposition, which has reached the producing stage.

(3) Exceptions and limitations

Paragraphs (1), (2), and (3) of section 1245(b) (relating to exceptions and limitations with respect to gain from disposition of certain depreciable property) shall apply in respect of this subsection in the same manner and with the same effect as if references in section 1245(b) to section 1245 or any provision thereof were references to this subsection or the corresponding provisions of this subsection and as if references to section 1245 property were references to mining property.

(4) Application of subsection

This subsection shall apply notwithstanding any other provision of this subtitle.

(5) Coordination with section 1254

This subsection shall not apply to any disposition to which section 1254 applies.

(e) Basis of property

(1) Basis

The basis of any property shall not be reduced by the amount of any depletion which would be allowable but for the application of this section.

(2) Adjustments

The Secretary shall prescribe such regulations as he may deem necessary to provide for adjustments to the basis of property to reflect gain recognized under subsection (d)(1).

(f) Definitions

For purposes of this section

(1) Adjusted exploration expenditures

The term ''adjusted exploration expenditures'' means, with respect to any property or mine—

(A) the amount of the expenditures allowed for the taxable year and all preceding taxable years as deductions under subsection (a) to the taxpayer or any other person which are properly chargeable to such property or mine and which (but for the election under subsection (a)) would be reflected in the adjusted basis of such property or mine, reduced by

(B) for the taxable year and for each preceding taxable year, the amount (if any) by which (i) the amount which would have been allowable for percentage depletion under section 613 but for the deduction of such expenditures, exceeds (ii) the amount allowable for depletion under section 611,

properly adjusted for any amounts included in gross income under subsection (b) or (c) and for any amounts of gain to which subsection (d) applied.

(2) Mining property

The term ''mining property'' means any property (within the meaning of section 614 after the application of subsections (c) and (e) thereof) with respect to which any expenditures allowed as a deduction under subsection (a)(1) are properly chargeable.

(3) Disposal of coal or domestic iron ore with a retained economic interest

A transaction which constitutes a disposal of coal or iron ore under section 631(c) shall be treated as a disposition. In such a case, the excess referred to in subsection (d)(1)(B) shall be treated as equal to the gain (if any) referred to in section 631(c).

(g) Special rules relating to partnership property

(1) Property distributed to partner

In the case of any property or mine received by the taxpayer in a distribution with respect

to part or all of his interest in a partnership, the adjusted exploration expenditures with respect to such property or mine include the adjusted exploration expenditures (not otherwise included under subsection (f)(1)) with respect to such property or mine immediately prior to such distribution, but the adjusted exploration expenditures with respect to any such property or mine shall be reduced by the amount of gain to which section 751(b) applied realized by the partnership (as constituted after the distribution) on the distribution of such property or mine.

(2) Property retained by partnership

In the case of any property or mine held by a partnership after a distribution to a partner to which section 751(b) applied, the adjusted exploration expenditures with respect to such property or mine shall, under regulations prescribed by the Secretary, be reduced by the amount of gain to which section 751(b) applied realized by such partner with respect to such distribution on account of such property or mine.

(h) Special rules for foreign exploration

In the case of any expenditures paid or incurred before the development stage for the purpose of ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral (other than an oil, gas, or geothermal well) located outside the United States—

(1) subsection (a) shall not apply, and

(2) such expenditures shall—

(A) at the election of the taxpayer, be included in adjusted basis for purposes of computing the amount of any deduction allowable under section 611 (without regard to section 613), or

(B) if subparagraph (A) does not apply, be allowed as a deduction ratably over the 10-taxable year period beginning with the taxable year in which such expenditures were paid or incurred.

(i) Cross reference

For election of 10-year amortization of expenditures allowable as a deduction under this section, see section 59(e).

(Added Pub. L. 89–570, §1(a), Sept. 12, 1966, 80 Stat. 759; amended Pub. L. 91–172, title V, §504(b), Dec. 30, 1969, 83 Stat. 632; Pub. L. 94–455, title XIX, §§1901(a)(89), (b)(3)(K), (21)(C)–(E), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1779, 1793, 1797, 1834; Pub. L. 97–248, title II, §201(d)(9)(D), formerly §201(c)(9)(D), §224(c)(8), Sept. 3, 1982, 96 Stat. 420, 489, renumbered §201(d)(9)(D), Pub. L. 97–448, title III, §306(a)(1)(A)(i), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 99–514, title IV, §§411(b)(2)(B), 413(b), Oct. 22, 1986, 100 Stat. 2226, 2228; Pub. L. 100–647, title I, §1007(g)(7), Nov. 10, 1988, 102 Stat. 3435; Pub. L. 101–508, title XI, §11801(a)(27), (c)(13), Nov. 5, 1990, 104 Stat. 1388–521, 1388–527.)

AMENDMENTS

1990—Subsecs. (i), (j). Pub. L. 101–508 redesignated subsec. (j) as (i) and struck out former subsec. (i) which related to deduction of certain pre-1970 exploration expenditures.

1988—Subsec. (j). Pub. L. 100–647 substituted ''section 59(e)'' for ''section 58(i)''.

1986—Subsec. (d)(5). Pub. L. 99–514, §413(b), added par. (5).

Subsec. (h). Pub. L. 99–514, §411(b)(2)(B), amended subsec. (h) generally, substituting provisions relating to special rules for foreign exploration for provisions relating to limitations.

1982—Subsec. (h)(3)(B). Pub. L. 97–248, §224(c)(8), inserted ''338,'' after ''334(b),''.

Subsec. (j). Pub. L. 97–248, §201(d)(9)(D), formerly §201(c)(9)(D), added subsec. (j).

1976—Subsec. (a)(2)(A). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (a)(2)(B). Pub. L. 94–455, §§1901(a)(89), 1906(b)(13)(A), substituted ''may not be revoked unless'' for ''may not be revoked after the last day of the third month following the month in which the final regulations issued under the authority of this subsection are published in the Federal Register, unless'', and struck out ''or his delegate'' after ''Secretary''.

Subsec. (b)(2)(A). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (d)(1). Pub. L. 94–455, §1901(b)(3)(K), substituted ''ordinary income'' for ''gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231''.

Subsecs. (d)(2), (e)(2), (g)(2). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (h)(1). Pub. L. 94–455, §1901(b)(21)(C), substituted ''and subsection (a) of section 615 (as in effect before the enactment of the Tax Reform Act of 1976)'' for ''and section 615(a) and the amounts which are or have been treated as deferred expenses under section 615(b)''.

Subsec. (h)(3). Pub. L. 94–455, §1901(b)(21)(D), struck out ''and all amounts treated as deferred expenses which were paid or incurred'' after ''amounts deducted'' in introductory provisions, redesignated subpar. (C) as (B), and in subpar. (B) as so redesignated, substituted ''374(b)(1)'' for ''373(b)(1)''. Former subpar. (B), which related to the application of par. (2)(B) where the taxpayer would be entitled under section 381(c)(10) to deduct expenses deferred under section 615(b) had the distributor or transferor corporation elected to defer such expenses, was struck out.

Subsec. (i). Pub. L. 94–455, §1901(b)(21)(E), added subsec. (i).

1969—Pub. L. 91–172, §504(b)(1), substituted ''Deduction and recapture of certain mining exploration expenditures'' for ''Additional exploration expenditures in the case of domestic mining'' in heading.

Subsec. (a)(1). Pub. L. 91–172, §504(b)(2), struck out reference to United States, the Outer Continental Shelf and the Outer Continental Shelf Lands Act from general rule dealing with allowance of deductions for expenditures in ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral.

Subsec. (h). Pub. L. 91–172, §504(b)(3), substituted provisions imposing limitations on the operation of this section for provision making cross reference to subsecs. (f) and (g) of section 615.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 411(b)(2)(B) of Pub. L. 99–514 applicable to costs paid or incurred after Dec. 31, 1986, in taxable years ending after such date, with transition rule, see section 411(c) of Pub. L. 99–514 set out as a note under section 263 of this title.

Amendment by section 413(b) of Pub. L. 99–514 applicable to any disposition of property placed in service by taxpayer after Dec. 31, 1986, but inapplicable if such property was acquired pursuant to written contract en-

tered into before Sept. 26, 1985, and binding at all times thereafter, see section 413(c) of Pub. L. 99–514, set out as a note under section 1254 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 201(d)(9)(D) of Pub. L. 97–248 applicable to taxable years beginning after Dec. 31, 1982, see section 201(e)(1) of Pub. L. 97–248, set out as a note under section 5 of this title.

Amendment by section 224(c)(8) of Pub. L. 97–248 applicable to any target corporation with respect to which the acquisition date occurs after Aug. 31, 1982, with special rules for certain acquisitions before Sept. 1, 1982, and certain acquisitions of financial institutions in which there was a binding contract on July 22, 1982, to acquire control, see section 224(d) of Pub. L. 97–248, set out as an Effective Date note under section 338 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(89), (b)(3)(K), (21)(C)–(E) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to exploration expenditures paid or incurred after Dec. 31, 1969, and for purposes of this section, elections under section 615(e) of this title, effective with respect to exploration expenditures paid or incurred before Jan. 1, 1970, to be treated as an election under subsec. (a) of this section with respect to exploration expenditures paid or incurred after Dec. 31, 1969, see section 504(d) of Pub. L. 91–172, set out as a note under section 243 of this title.

EFFECTIVE DATE

Pub. L. 89–570, § 3, Sept. 12, 1966, 80 Stat. 764, provided that: ''The amendments made by this Act [enacting this section and amending sections 170, 301, 312, 341, 453, 615, 703, and 751 of this title] shall apply to taxable years ending after the date of the enactment of this Act [Sept. 12, 1966] but only in respect of expenditures paid or incurred after such date.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

[PART II—REPEALED]

[§ 621. Repealed. Pub. L. 101–508, title XI, § 11801(a)(28), Nov. 5, 1990, 104 Stat. 1388–521]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 212, related to payments to encourage exploration, development, and mining for defense purposes.

SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

PART III—SALES AND EXCHANGES

Sec.
631. Gain or loss in the case of timber, coal, or domestic iron ore.
[632. Repealed.]

AMENDMENTS

1976—Pub. L. 94–455, title XIX, § 1901(b)(22)(A), Oct. 4, 1976, 90 Stat. 1798, struck out item 632 ''Sale of oil or gas properties''.

1964—Pub. L. 88–272, title II, § 227(b)(2), Feb. 26, 1964, 78 Stat. 98, inserted reference to domestic iron ore in item 631.

§ 631. Gain or loss in the case of timber, coal, or domestic iron ore

(a) Election to consider cutting as sale or exchange

If the taxpayer so elects on his return for a taxable year, the cutting of timber (for sale or for use in the taxpayer's trade or business) during such year by the taxpayer who owns, or has a contract right to cut, such timber (providing he has owned such timber or has held such contract right for a period of more than 1 year) shall be considered as a sale or exchange of such timber cut during such year. If such election has been made, gain or loss to the taxpayer shall be recognized in an amount equal to the difference between the fair market value of such timber, and the adjusted basis for depletion of such timber in the hands of the taxpayer. Such fair market value shall be the fair market value as of the first day of the taxable year in which such timber is cut, and shall thereafter be considered as the cost of such cut timber to the taxpayer for all purposes for which such cost is a necessary factor. If a taxpayer makes an election under this subsection, such election shall apply with respect to all timber which is owned by the taxpayer or which the taxpayer has a contract right to cut and shall be binding on the taxpayer for the taxable year for which the election is made and for all subsequent years, unless the Secretary, on showing of undue hardship, permits the taxpayer to revoke his election; such revocation, however, shall preclude any further elections under this subsection except with the consent of the Secretary. For purposes of this subsection and subsection (b), the term ''timber'' includes evergreen trees which are more than 6 years old at the time severed from the roots and are sold for ornamental purposes.

(b) Disposal of timber

In the case of the disposal of timber held for more than 1 year before such disposal, by the owner thereof under any form or type of contract by virtue of which such owner either retains an economic interest in such timber or makes an outright sale of such timber, the difference between the amount realized from the disposal of such timber and the adjusted depletion basis thereof, shall be considered as though it were a gain or loss, as the case may be, on the sale of such timber. In determining the gross income, the adjusted gross income, or the taxable income of the lessee, the deductions allowable with respect to rents and royalties shall be determined without regard to the provisions of this subsection. In the case of disposal of timber with a retained economic interest, the date of disposal of such timber shall be deemed to be the date such timber is cut, but if payment is made to the owner under the contract before

such timber is cut the owner may elect to treat the date of such payment as the date of disposal of such timber. For purposes of this subsection, the term ''owner'' means any person who owns an interest in such timber, including a sublessor and a holder of a contract to cut timber.

(c) Disposal of coal or domestic iron ore with a retained economic interest

In the case of the disposal of coal (including lignite), or iron ore mined in the United States, held for more than 1 year before such disposal, by the owner thereof under any form of contract by virtue of which such owner retains an economic interest in such coal or iron ore, the difference between the amount realized from the disposal of such coal or iron ore and the adjusted depletion basis thereof plus the deductions disallowed for the taxable year under section 272 shall be considered as though it were a gain or loss, as the case may be, on the sale of such coal or iron ore. If for the taxable year of such gain or loss the maximum rate of tax imposed by this chapter on any net capital gain is less than such maximum rate for ordinary income, such owner shall not be entitled to the allowance for percentage depletion provided in section 613 with respect to such coal or iron ore. This subsection shall not apply to income realized by any owner as a co-adventurer, partner, or principal in the mining of such coal or iron ore, and the word ''owner'' means any person who owns an economic interest in coal or iron ore in place, including a sublessor. The date of disposal of such coal or iron ore shall be deemed to be the date such coal or iron ore is mined. In determining the gross income, the adjusted gross income, or the taxable income of the lessee, the deductions allowable with respect to rents and royalties shall be determined without regard to the provisions of this subsection. This subsection shall have no application, for purposes of applying subchapter G, relating to corporations used to avoid income tax on shareholders (including the determinations of the amount of the deductions under section 535(b)(6) or section 545(b)(5)). This subsection shall not apply to any disposal of iron ore or coal—

(1) to a person whose relationship to the person disposing of such iron ore or coal would result in the disallowance of losses under section 267 or 707(b), or

(2) to a person owned or controlled directly or indirectly by the same interests which own or control the person disposing of such iron ore or coal.

(Aug. 16, 1954, ch. 736, 68A Stat. 213; Pub. L. 88–272, title II, § 227(a)(1), (b)(1), Feb. 26, 1964, 78 Stat. 97, 98; Pub. L. 94–455, title XIV, § 1402(b)(1)(I), (2), (3), title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1732, 1733, 1834; Pub. L. 98–369, div. A, title I, § 178(a), title X, § 1001(c), (e), July 18, 1984, 98 Stat. 712, 1012; Pub. L. 99–514, title III, § 311(b)(3), Oct. 22, 1986, 100 Stat. 2219; Pub. L. 108–357, title III, § 315(a), (b), Oct. 22, 2004, 118 Stat. 1469.)

AMENDMENTS

2004—Subsec. (b). Pub. L. 108–357, in heading, struck out ''with a retained economic interest'' after ''timber'', in first sentence, substituted ''either retains an economic interest in such timber or makes an outright sale of such timber'' for ''retains an economic interest in such timber'', and, in third sentence, substituted ''In the case of disposal of timber with a retained economic interest, the date of disposal'' for ''The date of disposal''.

1986—Subsec. (c). Pub. L. 99–514 substituted ''If for the taxable year of such gain or loss the maximum rate of tax imposed by this chapter on any net capital gain is less than such maximum rate for ordinary income, such owner'' for ''Such owner''.

1984—Subsec. (a). Pub. L. 98–369, § 1001(c)(1), (e), substituted ''on the first day of such year and for a period of more than 6 months before such cutting'' for ''for a period of more than 1 year'', applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

Subsecs. (b), (c). Pub. L. 98–369, § 1001(c)(2), (e), substituted ''6 months'' for ''1 year'', applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

Pub. L. 98–369, § 178(a), inserted ''or coal'' after ''iron ore'' wherever appearing in last sentence of subsec. (c).

1976—Subsec. (a). Pub. L. 94–455, § 1402(b)(2), provided that ''9 months'' would be changed to ''1 year''.

Pub. L. 94–455, §§ 1402(b)(1)(I), (3), 1906(b)(13)(A), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977 and struck out ''before the beginning of such year'' before '') shall be considered as a sale'' effective for taxable years beginning after Dec. 31, 1976, and ''or his delegate'' after ''Secretary'' wherever appearing.

Subsec. (b). Pub. L. 94–455, § 1402(b)(2), provided that ''9 months'' would be changed to ''1 year''.

Pub. L. 94–455, § 1402(b)(1)(I), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

Subsec. (c). Pub. L. 94–455, § 1402(b)(2), provided that ''9 months'' would be changed to ''1 year''.

Pub. L. 94–455, § 1402(b)(1)(I), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

1964—Pub. L. 88–272, § 227(b)(1), inserted reference to domestic iron ore in heading.

Subsec. (c). Pub. L. 88–272, § 227(a)(1), inserted ''or domestic iron ore'' in heading, ''or iron ore mined in the United States'' after ''coal (including lignite)'', ''or iron ore'' after ''coal'' wherever appearing, and provided that the subsection shall not apply to any disposal of iron ore to a person whose relationship to the person disposing of such ore would result in the disallowance of losses under section 267 of 717(b), or to a person owned or controlled by the same interests which own or control the person disposing of such iron ore.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title III, § 315(c), Oct. 22, 2004, 118 Stat. 1469, provided that: ''The amendments made by this section [amending this section] shall apply to sales after December 31, 2004.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 311(c) of Pub. L. 99–514, set out as a note under section 593 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, § 178(b), July 18, 1984, 98 Stat. 712, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to dispositions after September 30, 1985.

''(2) SPECIAL RULE FOR FIXED CONTRACTS.—

''(A) IN GENERAL.—The amendment made by subsection (a) shall not apply to any disposition of an interest in coal by a person to a related person if such

coal is subsequently sold before January 1, 1990, by either such person—

''(i) to a person who is not a related person with respect to either such person, and

''(ii) pursuant to a qualified fixed contract.

''(B) ALLOCATION WHERE MORE THAN 1 CONTRACT.—If, for any taxable year, there is a disposition described in subparagraph (A) which is not specifically allocable to a qualified fixed contract or to a contract which is not a qualified fixed contract, such disposition shall be treated as first allocable to the qualified fixed contract.

''(C) QUALIFIED FIXED CONTRACT DEFINED.—The term 'qualified fixed contract' means any contract for the sale of coal which—

''(i) was entered into before June 12, 1984,

''(ii) is binding at all times thereafter, and

''(iii) cannot be adjusted to reflect to any extent the increase in liabilities of the person disposing of the coal for tax under chapter 1 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] by reason of the amendment made by subsection (a).

''(D) RELATED PERSON.—For purposes of this paragraph, the term 'related person' means a person who bears a relationship to another person described in the last sentence of section 631(c). ''

Amendment by section 1001(c) of Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XIV, §1402(b)(1), Oct. 4, 1976, 90 Stat. 1731, provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Pub. L. 94–455, title XIV, §1402(b)(2), Oct. 4, 1976, 90 Stat. 1732, provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

Pub. L. 94–455, title XIV, §1402(b)(3), Oct. 4, 1976, 90 Stat. 1733, provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1976.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable with respect to amounts received or accrued in taxable years beginning after Dec. 31, 1963, attributable to iron ore mined in such years, see section 227(c) of Pub. L. 88–272, set out as a note under section 272 of this title.

REVOCATION OF ELECTIONS UNDER SECTION 631(a)

Pub. L. 108–357, title I, §102(c), Oct. 22, 2004, 118 Stat. 1428, provided that: ''Any election under section 631(a) of the Internal Revenue Code of 1986 made for a taxable year ending on or before the date of the enactment of this Act [Oct. 22, 2004] may be revoked by the taxpayer for any taxable year ending after such date. For purposes of determining whether such taxpayer may make a further election under such section, such election (and any revocation under this section) shall not be taken into account.''

Pub. L. 99–514, title III, §311(d)(2), Oct. 22, 1986, 100 Stat. 2220, provided that: ''Any election under section 631(a) of the Internal Revenue Code of 1954 made (whether by a corporation or a person other than a corporation) for a taxable year beginning before January 1, 1987, may be revoked by the taxpayer for any taxable year ending after December 31, 1986. For purposes of determining whether the taxpayer may make a further election under such section, such election (and any revocation under this paragraph) shall not be taken into account.''

[§ 632. Repealed. Pub. L. 94–455, title XIX, § 1901(a)(90), Oct. 4, 1976, 90 Stat. 1779]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 214; Dec. 30, 1969, Pub. L. 91–172, title VIII, §803(d)(4), 83 Stat. 684, related to tax in case of sale of oil and gas properties.

EFFECTIVE DATE OF REPEAL

Repeal effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 2 of this title.

PART IV—MINERAL PRODUCTION PAYMENTS

AMENDMENTS

1969—Pub. L. 91–172, title V, §503(a), Dec. 30, 1969, 83 Stat. 630, added part heading and section analysis.

§ 636. Income tax treatment of mineral production payments

(a) Carved-out production payments

A production payment carved out of mineral property shall be treated, for purposes of this subtitle, as if it were a mortgage loan on the property, and shall not qualify as an economic interest in the mineral property. In the case of a production payment carved out for exploration or development of a mineral property, the preceding sentence shall apply only if and to the extent gross income from the property (for purposes of section 613) would be realized, in the absence of the application of such sentence, by the person creating the production payment.

(b) Retained production payment on sale of mineral property

A production payment retained on the sale of a mineral property shall be treated, for purposes of this subtitle, as if it were a purchase money mortgage loan and shall not qualify as an economic interest in the mineral property.

(c) Retained production payment on lease of mineral property

A production payment retained in a mineral property by the lessor in a leasing transaction shall be treated, for purposes of this subtitle, insofar as the lessee (or his successors in interest) is concerned, as if it were a bonus granted by the lessee to the lessor payable in installments. The treatment of the production payment in the hands of the lessor shall be determined without regard to the provisions of this subsection.

(d) Definition

As used in this section, the term ''mineral property'' has the meaning assigned to the term ''property'' in section 614(a).

(e) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section.

(Added Pub. L. 91–172, title V, §503(a), Dec. 30, 1969, 83 Stat. 630; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsec. (e). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE

Pub. L. 91–172, title V, §503(c), Dec. 30, 1969, 83 Stat. 631, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) GENERAL RULE.—The amendments made by this section [enacting this section] shall apply with respect to mineral production payments created on or after August 7, 1969, other than mineral production payments created before January 1, 1971, pursuant to a binding contract entered into before August 7, 1969.

''(2) ELECTION.—At the election of the taxpayer (made at such time and in such manner as the Secretary of the Treasury or his delegate prescribes by regulations), the amendments made by this section shall apply with respect to all mineral production payments which the taxpayer carved out of mineral properties after the beginning of his last taxable year ending before August 7, 1969. No interest shall be allowed on any refund or credit of any overpayment resulting from such election for any taxable year ending before August 7, 1969.

''(3) SPECIAL RULE.—With respect to a taxpayer who does not elect the treatment provided in paragraph (2) and who carves out one or more mineral production payments on or after August 7, 1969, during the taxable year which includes such date, the amendments made by this section shall apply to such production payments only to the extent the aggregate amount of such production payments exceeds the lesser of—

''(A) the excess of

''(i) the aggregate amount of production payments carved out and sold by the taxpayer during the 12-month period immediately preceding his taxable year which includes August 7, 1969, over

''(ii) the aggregate amount of production payments carved out before August 7, 1969, by the taxpayer during his taxable year which includes such date, or

''(B) the amount necessary to increase the amount of the taxpayer's gross income, within the meaning of chapter 1 of subtitle A of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [this title], for the taxable year which includes August 7, 1969, to an amount equal to the amount of deductions (other than any deduction under section 172 of such Code) allowable for such year under such chapter.

The preceding sentence shall not apply for purposes of determining the amount of any deduction allowable under section 611 or the amount of foreign tax credit allowable under section 904 of such Code.''

PART V—CONTINENTAL SHELF AREAS

AMENDMENTS

1969—Pub. L. 91–172, title V, § 505(a), Dec. 30, 1969, 83 Stat. 634, added part heading and section analysis.

§ 638. Continental shelf areas

For purposes of applying the provisions of this chapter (including sections 861(a)(3) and 862(a)(3) in the case of the performance of personal services) with respect to mines, oil and gas wells, and other natural deposits—

(1) the term ''United States'' when used in a geographical sense includes the seabed and subsoil of those submarine areas which are adjacent to the territorial waters of the United States and over which the United States has exclusive rights, in accordance with international law, with respect to the exploration and exploitation of natural resources; and

(2) the terms ''foreign country'' and ''possession of the United States'' when used in a geographical sense include the seabed and subsoil of those submarine areas which are adjacent to the territorial waters of the foreign country or such possession and over which the foreign country (or the United States in case of such possession) has exclusive rights, in accordance with international law, with respect to the exploration and exploitation of natural resources, but this paragraph shall apply in the case of a foreign country only if it exercises, directly or indirectly, taxing jurisdiction with respect to such exploration or exploitation.

No foreign country shall, by reason of the application of this section, be treated as a country contiguous to the United States.

(Added Pub. L. 91–172, title V, § 505(a), Dec. 30, 1969, 83 Stat. 634.)

Subchapter J—Estates, Trusts, Beneficiaries, and Decedents

PART I—ESTATES, TRUSTS, AND BENEFICIARIES

SUBPART A—GENERAL RULES FOR TAXATION OF ESTATES AND TRUSTS

AMENDMENTS

2001—Pub. L. 107–16, title VI, § 671(c)(1), June 7, 2001, 115 Stat. 147, added item 646.

1998—Pub. L. 105–206, title VI, § 6013(a)(2), July 22, 1998, 112 Stat. 819, renumbered item 646 as 645.

1997—Pub. L. 105–34, title V, § 507(b)(3), title XIII, § 1305(c), Aug. 5, 1997, 111 Stat. 857, 1041, added items 644 and 646 and struck out former items 644 ''Special rule for gain on property transferred to trust at less than fair market value'' and 645 ''Taxable year of trusts''.

1986—Pub. L. 99–514, title XIV, § 1403(b), Oct. 22, 1986, 100 Stat. 2713, added item 645.

1976—Pub. L. 94–455, title VII, § 701(g)(2), Oct. 4, 1976, 90 Stat. 1580, added item 644.

§ 641. Imposition of tax

(a) Application of tax

The tax imposed by section 1(e) shall apply to the taxable income of estates or of any kind of property held in trust, including—

(1) income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests, and income accumulated or held for future distribution under the terms of the will or trust;

(2) income which is to be distributed currently by the fiduciary to the beneficiaries, and income collected by a guardian of an in-

fant which is to be held or distributed as the court may direct;

(3) income received by estates of deceased persons during the period of administration or settlement of the estate; and

(4) income which, in the discretion of the fiduciary, may be either distributed to the beneficiaries or accumulated.

(b) Computation and payment

The taxable income of an estate or trust shall be computed in the same manner as in the case of an individual, except as otherwise provided in this part. The tax shall be computed on such taxable income and shall be paid by the fiduciary. For purposes of this subsection, a foreign trust or foreign estate shall be treated as a nonresident alien individual who is not present in the United States at any time.

(c) Special rules for taxation of electing small business trusts

(1) In general

For purposes of this chapter—

(A) the portion of any electing small business trust which consists of stock in 1 or more S corporations shall be treated as a separate trust, and

(B) the amount of the tax imposed by this chapter on such separate trust shall be determined with the modifications of paragraph (2).

(2) Modifications

For purposes of paragraph (1), the modifications of this paragraph are the following:

(A) Except as provided in section 1(h), the amount of the tax imposed by section 1(e) shall be determined by using the highest rate of tax set forth in section 1(e).

(B) The exemption amount under section 55(d) shall be zero.

(C) The only items of income, loss, deduction, or credit to be taken into account are the following:

(i) The items required to be taken into account under section 1366.

(ii) Any gain or loss from the disposition of stock in an S corporation.

(iii) To the extent provided in regulations, State or local income taxes or administrative expenses to the extent allocable to items described in clauses (i) and (ii).

(iv) Any interest expense paid or accrued on indebtedness incurred to acquire stock in an S corporation.

No deduction or credit shall be allowed for any amount not described in this paragraph, and no item described in this paragraph shall be apportioned to any beneficiary.

(D) No amount shall be allowed under paragraph (1) or (2) of section 1211(b).

(E)(i) Section 642(c) shall not apply.

(ii) For purposes of section 170(b)(1)(G), adjusted gross income shall be computed in the same manner as in the case of an individual, except that the deductions for costs which are paid or incurred in connection with the administration of the trust and which would not have been incurred if the property were not held in such trust shall be treated as allowable in arriving at adjusted gross income.

(3) Treatment of remainder of trust and distributions

For purposes of determining—

(A) the amount of the tax imposed by this chapter on the portion of any electing small business trust not treated as a separate trust under paragraph (1), and

(B) the distributable net income of the entire trust,

the items referred to in paragraph (2)(C) shall be excluded. Except as provided in the preceding sentence, this subsection shall not affect the taxation of any distribution from the trust.

(4) Treatment of unused deductions where termination of separate trust

If a portion of an electing small business trust ceases to be treated as a separate trust under paragraph (1), any carryover or excess deduction of the separate trust which is referred to in section 642(h) shall be taken into account by the entire trust.

(5) Electing small business trust

For purposes of this subsection, the term ''electing small business trust'' has the meaning given such term by section 1361(e)(1).

(Aug. 16, 1954, ch. 736, 68A Stat. 215; Pub. L. 91–172, title VIII, §803(d)(3), Dec. 30, 1969, 83 Stat. 684; Pub. L. 94–455, title VII, §701(e)(2), Oct. 4, 1976, 90 Stat. 1579; Pub. L. 95–30, title I, §101(d)(8), May 23, 1977, 91 Stat. 134; Pub. L. 104–188, title I, §1302(d), Aug. 20, 1996, 110 Stat. 1778; Pub. L. 105–34, title XVI, §1601(i)(3)(B), Aug. 5, 1997, 111 Stat. 1093; Pub. L. 105–206, title VI, §6007(f)(2), July 22, 1998, 112 Stat. 810; Pub. L. 110–28, title VIII, §8236(a), May 25, 2007, 121 Stat. 199; Pub. L. 115–97, title I, §13542(a), Dec. 22, 2017, 131 Stat. 2154.)

AMENDMENTS

2017—Subsec. (c)(2)(E). Pub. L. 115–97 added subpar. (E).

2007—Subsec. (c)(2)(C)(iv). Pub. L. 110–28 added cl. (iv).

1998—Subsecs. (c), (d). Pub. L. 105–206 redesignated subsec. (d) as (c) and struck out heading and text of former subsec. (c). Text read as follows:

''(1) GENERAL RULE.—For purposes of this part, the taxable income of a trust does not include the amount of any includible gain as defined in section 644(b) reduced by any deductions properly allocable thereto.

''(2) CROSS REFERENCE.—

''For the taxation of any includible gain, see section 644.''

1997—Subsec. (b). Pub. L. 105–34 inserted at end ''For purposes of this subsection, a foreign trust or foreign estate shall be treated as a nonresident alien individual who is not present in the United States at any time.''

1996—Subsec. (d). Pub. L. 104–188 added subsec. (d).

1977—Subsec. (a). Pub. L. 95–30 substituted ''section 1(e)'' for ''section 1(d)'' in introductory provisions.

1976—Subsec. (c). Pub. L. 94–455 added subsec. (c).

1969—Subsec. (a). Pub. L. 91–172 substituted ''The tax imposed by section 1(d)'' for ''The taxes imposed by this chapter on individuals''.

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–97, title I, §13542(b), Dec. 22, 2017, 131 Stat. 2154, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2017.''

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–28, title VIII, § 8236(b), May 25, 2007, 121 Stat. 199, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2006.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, § 1317(a), Aug. 20, 1996, 110 Stat. 1787, provided that: ''Except as otherwise provided in this subtitle [subtitle C (§§ 1301–1317) of title I of Pub. L. 104–188], the amendments made by this subtitle [amending this section and sections 170, 404, 512, 1042, 1237, 1361, 1362, 1366 to 1368, 1371, 1375, 1377, 1504, 6037, and 6233 of this title and repealing sections 6241 to 6245 of this title] shall apply to taxable years beginning after December 31, 1996.''

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable to transfers in trust made after May 21, 1976, see section 701(h) of Pub. L. 94–455, set out as a note under section 667 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1970, see section 803(f) of Pub. L. 91–172, set out as a note under section 1 of this title.

§ 642. Special rules for credits and deductions

(a) Foreign tax credit allowed

An estate or trust shall be allowed the credit against tax for taxes imposed by foreign countries and possessions of the United States, to the extent allowed by section 901, only in respect of so much of the taxes described in such section as is not properly allocable under such section to the beneficiaries.

(b) Deduction for personal exemption

(1) Estates

An estate shall be allowed a deduction of $600.

(2) Trusts

(A) In general

Except as otherwise provided in this paragraph, a trust shall be allowed a deduction of $100.

(B) Trusts distributing income currently

A trust which, under its governing instrument, is required to distribute all of its income currently shall be allowed a deduction of $300.

(C) Disability trusts

(i) In general

A qualified disability trust shall be allowed a deduction equal to the exemption amount under section 151(d), determined—

(I) by treating such trust as an individual described in section 68(b)(1)(C), and

(II) by applying section 67(e) (without the reference to section 642(b)) for purposes of determining the adjusted gross income of the trust.

(ii) Qualified disability trust

For purposes of clause (i), the term ''qualified disability trust'' means any trust if—

(I) such trust is a disability trust described in subsection (c)(2)(B)(iv) of section 1917 of the Social Security Act (42 U.S.C. 1396p), and

(II) all of the beneficiaries of the trust as of the close of the taxable year are determined by the Commissioner of Social Security to have been disabled (within the meaning of section 1614(a)(3) of the Social Security Act, 42 U.S.C. 1382c(a)(3)) for some portion of such year.

A trust shall not fail to meet the requirements of subclause (II) merely because the corpus of the trust may revert to a person who is not so disabled after the trust ceases to have any beneficiary who is so disabled.

(iii) Years when personal exemption amount is zero

(I) In general

In the case of any taxable year in which the exemption amount under section 151(d) is zero, clause (i) shall be applied by substituting ''$4,150'' for ''the exemption amount under section 151(d)''.

(II) Inflation adjustment

In the case of any taxable year beginning in a calendar year after 2018, the $4,150 amount in subparagraph (A) shall be increased in the same manner as provided in section 6334(d)(4)(C).

(3) Deductions in lieu of personal exemption

The deductions allowed by this subsection shall be in lieu of the deductions allowed under section 151 (relating to deduction for personal exemption).

(c) Deduction for amounts paid or permanently set aside for a charitable purpose

(1) General rule

In the case of an estate or trust (other then[1] a trust meeting the specifications of subpart B), there shall be allowed as a deduction in computing its taxable income (in lieu of the deduction allowed by section 170(a), relating to deduction for charitable, etc., contributions and gifts) any amount of the gross income, without limitation, which pursuant to the terms of the governing instrument is, during the taxable year, paid for a purpose specified

[1] So in original. Probably should be ''than''.

in section 170(c) (determined without regard to section 170(c)(2)(A)). If a charitable contribution is paid after the close of such taxable year and on or before the last day of the year following the close of such taxable year, then the trustee or administrator may elect to treat such contribution as paid during such taxable year. The election shall be made at such time and in such manner as the Secretary prescribes by regulations.

(2) Amounts permanently set aside

In the case of an estate, and in the case of a trust (other than a trust meeting the specifications of subpart B) required by the terms of its governing instrument to set aside amounts which was—

(A) created on or before October 9, 1969, if—

(i) an irrevocable remainder interest is transferred to or for the use of an organization described in section 170(c), or

(ii) the grantor is at all times after October 9, 1969, under a mental disability to change the terms of the trust; or

(B) established by a will executed on or before October 9, 1969, if—

(i) the testator dies before October 9, 1972, without having republished the will after October 9, 1969, by codicil or otherwise,

(ii) the testator at no time after October 9, 1969, had the right to change the portions of the will which pertain to the trust, or

(iii) the will is not republished by codicil or otherwise before October 9, 1972, and the testator is on such date and at all times thereafter under a mental disability to republish the will by codicil or otherwise,

there shall also be allowed as a deduction in computing its taxable income any amount of the gross income, without limitation, which pursuant to the terms of the governing instrument is, during the taxable year, permanently set aside for a purpose specified in section 170(c), or is to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, or for the establishment, acquisition, maintenance, or operation of a public cemetery not operated for profit. In the case of a trust, the preceding sentence shall apply only to gross income earned with respect to amounts transferred to the trust before October 9, 1969, or transferred under a will to which subparagraph (B) applies.

(3) Pooled income funds

In the case of a pooled income fund (as defined in paragraph (5)), there shall also be allowed as a deduction in computing its taxable income any amount of the gross income attributable to gain from the sale of a capital asset held for more than 1 year, without limitation, which pursuant to the terms of the governing instrument is, during the taxable year, permanently set aside for a purpose specified in section 170(c).

(4) Adjustments

To the extent that the amount otherwise allowable as a deduction under this subsection consists of gain described in section 1202(a), proper adjustment shall be made for any exclusion allowable to the estate or trust under section 1202. In the case of a trust, the deduction allowed by this subsection shall be subject to section 681 (relating to unrelated business income).

(5) Definition of pooled income fund

For purposes of paragraph (3), a pooled income fund is a trust—

(A) to which each donor transfers property, contributing an irrevocable remainder interest in such property to or for the use of an organization described in section 170(b)(1)(A) (other than in clauses (vii) or (viii)), and retaining an income interest for the life of one or more beneficiaries (living at the time of such transfer),

(B) in which the property transferred by each donor is commingled with property transferred by other donors who have made or make similar transfers,

(C) which cannot have investments in securities which are exempt from the taxes imposed by this subtitle,

(D) which includes only amounts received from transfers which meet the requirements of this paragraph,

(E) which is maintained by the organization to which the remainder interest is contributed and of which no donor or beneficiary of an income interest is a trustee, and

(F) from which each beneficiary of an income interest receives income, for each year for which he is entitled to receive the income interest referred to in subparagraph (A), determined by the rate of return earned by the trust for such year.

For purposes of determining the amount of any charitable contribution allowable by reason of a transfer of property to a pooled fund, the value of the income interest shall be determined on the basis of the highest rate of return earned by the fund for any of the 3 taxable years immediately preceding the taxable year of the fund in which the transfer is made. In the case of funds in existence less than 3 taxable years preceding the taxable year of the fund in which a transfer is made the rate of return shall be deemed to be 6 percent per annum, except that the Secretary may prescribe a different rate of return.

(6) Taxable private foundations

In the case of a private foundation which is not exempt from taxation under section 501(a) for the taxable year, the provisions of this subsection shall not apply and the provisions of section 170 shall apply.

(d) Net operating loss deduction

The benefit of the deduction for net operating losses provided by section 172 shall be allowed to estates and trusts under regulations prescribed by the Secretary.

(e) Deduction for depreciation and depletion

An estate or trust shall be allowed the deduction for depreciation and depletion only to the

extent not allowable to beneficiaries under sections 167(d) and 611(b).

(f) Amortization deductions

The benefit of the deductions for amortization provided by sections 169 and 197 shall be allowed to estates and trusts in the same manner as in the case of an individual. The allowable deduction shall be apportioned between the income beneficiaries and the fiduciary under regulations prescribed by the Secretary.

(g) Disallowance of double deductions

Amounts allowable under section 2053 or 2054 as a deduction in computing the taxable estate of a decedent shall not be allowed as a deduction (or as an offset against the sales price of property in determining gain or loss) in computing the taxable income of the estate or of any other person, unless there is filed, within the time and in the manner and form prescribed by the Secretary, a statement that the amounts have not been allowed as deductions under section 2053 or 2054 and a waiver of the right to have such amounts allowed at any time as deductions under section 2053 or 2054. Rules similar to the rules of the preceding sentence shall apply to amounts which may be taken into account under section 2621(a)(2) or 2622(b). This subsection shall not apply with respect to deductions allowed under part II (relating to income in respect of decedents).

(h) Unused loss carryovers and excess deductions on termination available to beneficiaries

If on the termination of an estate or trust, the estate or trust has—

(1) a net operating loss carryover under section 172 or a capital loss carryover under section 1212, or

(2) for the last taxable year of the estate or trust deductions (other than the deductions allowed under subsections (b) or (c)) in excess of gross income for such year,

then such carryover or such excess shall be allowed as a deduction, in accordance with regulations prescribed by the Secretary, to the beneficiaries succeeding to the property of the estate or trust.

(i) Certain distributions by cemetery perpetual care funds

In the case of a cemetery perpetual care fund which—

(1) was created pursuant to local law by a taxable cemetery corporation for the care and maintenance of cemetery property, and

(2) is treated for the taxable year as a trust for purposes of this subchapter,

any amount distributed by such fund for the care and maintenance of gravesites which have been purchased from the cemetery corporation before the beginning of the taxable year of the trust and with respect to which there is an obligation to furnish care and maintenance shall be considered to be a distribution solely for purposes of sections 651 and 661, but only to the extent that the aggregate amount so distributed during the taxable year does not exceed $5 multiplied by the aggregate number of such gravesites.

(Aug. 16, 1954, ch. 736, 68A Stat. 215; Pub. L. 87–834, §13(c)(2)(A), Oct. 16, 1962, 76 Stat. 1034; Pub. L. 88–272, title II, §201(d)(6)(A), (B), Feb. 26, 1964, 78 Stat. 32; Pub. L. 89–621, §2(a), Oct. 4, 1966, 80 Stat. 872; Pub. L. 91–172, title II, §201(b), title VII, §704(b)(2), Dec. 30, 1969, 83 Stat. 558, 669; Pub. L. 92–178, title III, §303(c)(4), title VII, §§701(b), 702(b), Dec. 10, 1971, 85 Stat. 522, 561, 562; Pub. L. 94–455, title XIV, §1402(b)(1)(J), (2), title XIX, §§1901(b)(1)(H)(i), 1906(b)(13)(A), 1951(c)(2)(B), title XX, §2009(d), title XXI, §2124(a)(3)(B), Oct. 4, 1976, 90 Stat. 1732, 1791, 1834, 1840, 1896, 1917; Pub. L. 94–528, §1(a), Oct. 17, 1976, 90 Stat. 2483; Pub. L. 95–30, title I, §101(d)(9), May 23, 1977, 91 Stat. 134; Pub. L. 95–600, title I, §113(a)(2)(B), Nov. 6, 1978, 92 Stat. 2778; Pub. L. 97–34, title II, §212(d)(2)(D), Aug. 13, 1981, 95 Stat. 239; Pub. L. 98–369, div. A, title IV, §474(r)(17), title X, §1001(b)(8), (e), July 18, 1984, 98 Stat. 843, 1011, 1012; Pub. L. 99–514, title I, §112(b)(2), title III, §301(b)(6), title VI, §612(b)(3), Oct. 22, 1986, 100 Stat. 2108, 2217, 2250; Pub. L. 101–239, title VII, §7811(j)(3), Dec. 19, 1989, 103 Stat. 2411; Pub. L. 101–508, title XI, §§11801(c)(6)(B), 11812(b)(9), Nov. 5, 1990, 104 Stat. 1388–524, 1388–535; Pub. L. 103–66, title XIII, §§13113(d)(2), 13261(f)(2), Aug. 10, 1993, 107 Stat. 429, 539; Pub. L. 104–188, title I, §1704(t)(8), Aug. 20, 1996, 110 Stat. 1887; Pub. L. 107–134, title I, §116(a), Jan. 23, 2002, 115 Stat. 2439; Pub. L. 113–295, div. A, title II, §202(a), Dec. 19, 2014, 128 Stat. 4024; Pub. L. 115–97, title I, §11041(b), Dec. 22, 2017, 131 Stat. 2082.)

AMENDMENTS

2017—Subsec. (b)(2)(C)(iii). Pub. L. 115–97 added cl. (iii).

2014—Subsec. (b)(2)(C)(i)(I). Pub. L. 113–295 substituted ''section 68(b)(1)(C)'' for ''section 151(d)(3)(C)(iii)''.

2002—Subsec. (b). Pub. L. 107–134 reenacted heading without change and amended text of subsec. (b) generally. Prior to amendment, text read as follows: ''An estate shall be allowed a deduction of $600. A trust which, under its governing instrument, is required to distribute all of its income currently shall be allowed a deduction of $300. All other trusts shall be allowed a deduction of $100. The deductions allowed by this subsection shall be in lieu of the deductions allowed under section 151 (relating to deduction for personal exemption).''

1996—Subsec. (g). Pub. L. 104–188 substituted ''under section 2621(a)(2)'' for ''under 2621(a)(2)''.

1993—Subsec. (c)(4). Pub. L. 103–66, §13113(d)(2), amended heading and text of par. (4) generally. Prior to amendment, text read as follows: ''In the case of a trust, the deduction allowed by this subsection shall be subject to section 681 (relating to unrelated business income).''

Subsec. (f). Pub. L. 103–66, §13261(f)(2), substituted ''sections 169 and 197'' for ''section 169''.

1990—Subsec. (e). Pub. L. 101–508, §11812(b)(9), substituted ''167(d)'' for ''167(h)''.

Subsec. (f). Pub. L. 101–508, §11801(c)(6)(B), substituted ''section 169'' for ''sections 169, 184, 187, and 188''.

1989—Subsec. (g). Pub. L. 101–239 inserted after first sentence ''Rules similar to the rules of the preceding sentence shall apply to amounts which may be taken into account under 2621(a)(2) or 2622(b).''

1986—Subsec. (a). Pub. L. 99–514, §112(b)(2), amended subsec. (a) generally, substituting ''Foreign tax credit allowed'' for ''Credits against tax'' in heading, striking out designation and heading for par. (1), and striking out par. (2) which read as follows: ''An estate or trust shall not be allowed the credit against tax for political contributions provided by section 24.''

Subsec. (c)(4). Pub. L. 99–514, §301(b)(6), in heading, substituted ''Coordination with section 681'' for ''Ad-

justments'', and in text struck out first sentence which read as follows: ''To the extent that the amount otherwise allowable as a deduction under this subsection consists of gain from the sale or exchange of capital assets held for more than 6 months, proper adjustment shall be made for any deduction allowable to the estate or trust under section 1202 (relating to deduction for excess of capital gains over capital losses).''

Subsec. (j). Pub. L. 99–514, § 612(b)(3), struck out subsec. (j) which provided a cross reference to section 116(c)(3).

1984—Subsec. (a)(2). Pub. L. 98–369, § 474(r)(17), substituted ''section 24'' for ''section 41''.

Subsec. (c)(3), (4). Pub. L. 98–369, § 1001(b)(8), (e), substituted ''6 months'' for ''1 year'', applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

1981—Subsec. (f). Pub. L. 97–34 substituted ''and 188'' for ''188, and 191''.

1978—Subsecs. (i) to (k). Pub. L. 95–600 redesignated subsecs. (j) and (k) as (i) and (j), respectively. Former subsec. (i), which did not allow estates or trusts the deduction for contributions to candidates for public office provided by section 218, was struck out.

1977—Subsec. (k). Pub. L. 95–30 struck out par. (1) which made a cross reference to section 142(b)(4) for disallowance of the standard deduction in the case of estates and trusts and struck out ''(2)'' at beginning of single remaining cross reference.

1976—Subsec. (a). Pub. L. 94–455, § 1901(b)(1)(H)(i), redesignated former pars. (2) and (3) as (1) and (2), respectively. Former par. (1), relating to the credit against tax for partially tax-exempt interest, was struck out.

Subsec. (c)(1). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c)(3), (4). Pub. L. 94–455, § 1402(b)(2), provided that ''9 months'' would be changed to ''1 year''.

Subsec. (c)(3), (4). Pub. L. 94–455, § 1402(b)(1)(J), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

Subsecs. (c)(5), (d). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (f). Pub. L. 94–455, §§ 1906(b)(13)(A), 1951(c)(2)(B), 2124(a)(3)(B), substituted ''sections 169, 184, 187, 188, and 191'' for ''sections 168, 169, 184, 187, and 188'', and struck out ''or his delegate'' after ''Secretary''.

Subsec. (g). Pub. L. 94–455, §§ 1906(b)(13)(A), 2009(d), inserted ''(or as an offset against the sales price of property in determining gain or loss)'' after ''shall not be allowed as a deduction'', and struck out ''or his delegate'' after ''Secretary''.

Subsec. (h). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsecs. (j), (k). Pub. L. 94–528 added subsec. (j) and redesignated former subsec. (j) as (k).

1971—Subsec. (a)(3). Pub. L. 92–178, § 701(b), added par. (3).

Subsec. (f). Pub. L. 92–178, § 303(c)(4), inserted reference to section 188.

Subsecs. (i), (j). Pub. L. 92–178, § 702(b), added subsec. (i) and redesignated former subsec. (i) as (j).

1969—Subsec. (c). Pub. L. 91–172, § 201(b), designated existing provisions, with minor changes, as par. (1) and added pars. (2) to (6).

Subsec. (f). Pub. L. 91–172, § 704(b)(2), struck out reference to emergency or grain storage facilities both in heading and in text, and inserted reference to sections 184 and 187 in text.

1966—Subsec. (g). Pub. L. 89–621 inserted ''or of any other person'' after ''shall not be allowed as a deduction in computing the taxable income of the estate''.

1964—Subsec. (a)(3). Pub. L. 88–272, § 201(d)(6)(A), struck out par. (3) which related to dividends received by individuals.

Subsec. (i). Pub. L. 88–272, § 201(d)(6)(B), designated existing provisions as par. (1) and added par. (2).

1962—Subsec. (e). Pub. L. 87–834 substituted a reference to section 167(h) for a reference to section 167(g).

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–97 applicable to taxable years beginning after Dec. 31, 2017, see section 11041(f)(1) of Pub. L. 115–97, set out as a note under section 151 of this title.

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–295 effective as if included in the provision of the American Taxpayer Relief Act of 2012, Pub. L. 112–240, to which such amendment relates, see section 202(f) of Pub. L. 113–295, set out as a note under section 55 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–134, title I, § 116(b), Jan. 23, 2002, 115 Stat. 2440, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years ending on or after September 11, 2001.''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13113(d)(2) of Pub. L. 103–66 applicable to stock issued after Aug. 10, 1993, see section 13113(e) of Pub. L. 103–66, set out as a note under section 53 of this title.

Amendment by section 13261(f)(2) of Pub. L. 103–66 applicable, except as otherwise provided, with respect to property acquired after Aug. 10, 1993, see section 13261(g) of Pub. L. 103–66, set out as an Effective Date note under section 197 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11812(b)(9) of Pub. L. 101–508 applicable to property placed in service after Nov. 5, 1990, but not applicable to any property to which section 168 of this title does not apply by reason of subsec. (f)(5) of section 168, and not applicable to rehabilitation expenditures described in section 252(f)(5) of Pub. L. 99–514, see section 11812(c) of Pub. L. 101–508, set out as a note under section 42 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 112(b)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 301(b)(6) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 301(c) of Pub. L. 99–514, set out as a note under section 62 of this title.

Amendment by section 612(b)(3) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 612(c) of Pub. L. 99–514, set out as a note under section 301 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(17) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 1001(b)(8) of Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to expenditures incurred after Dec. 31, 1981, in taxable years ending after such date, see section 212(e) of Pub. L. 97–34, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title I, § 113(d), Nov. 6, 1978, 92 Stat. 2778, provided that: ''The amendments made by this

section [amending this section and section 24 of this title and repealing section 218 of this title] shall apply with respect to contributions the payment of which is made after December 31, 1978, in taxable years beginning after such date.''

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XIV, § 1402(b)(1), Oct. 4, 1976, 90 Stat. 1731, provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Pub. L. 94–455, title XIV, § 1402(b)(2), Oct. 4, 1976, 90 Stat. 1732, provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

Amendment by section 1901(b)(1)(H)(i) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 1951(c)(2)(B) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1952(d) of Pub. L. 94–455, set out as a note under section 72 of this title.

Pub. L. 94–455, title XX, § 2009(e)(4), Oct. 4, 1976, 90 Stat. 1896, provided that: ''The amendment made by subsection (d) [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Oct. 4, 1976].''

Pub. L. 94–455, title XXI, § 2124(a)(4), Oct. 4, 1976, 90 Stat. 1918, provided that: ''The amendments made by this subsection [enacting section 191 of this title and amending this section and sections 1082, 1245, and 1250 of this title] shall apply with respect to additions to capital account made after June 14, 1976 and before June 15, 1981.''

Pub. L. 94–528, § 1(b), Oct. 17, 1976, 90 Stat. 2483, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1977, and shall apply to amounts distributed during taxable years ending after December 31, 1963.''

EFFECTIVE DATE OF 1971 AMENDMENT

Pub. L. 92–178, title III, § 303(d), Dec. 10, 1971, 85 Stat. 522, provided that: ''The amendments made by this section [enacting section 188 of this title and amending this section and sections 57, 1082, 1245, and 1250 of this title] shall apply to taxable years ending after December 31, 1971.''

Pub. L. 92–178, title VII, § 703, Dec. 10, 1971, 85 Stat. 562, provided that: ''The amendments made by this title [enacting sections 24 and 218 of this title and amending this section] shall apply to taxable years ending after December 31, 1971, but only with respect to political contributions, payment of which is made after such date.''

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 201(b) of Pub. L. 91–172 applicable with respect to amounts paid, permanently set aside, or to be used for a charitable purpose in taxable years beginning after Dec. 31, 1969, except that subsec. (c)(5) applicable to transfers in trust made after July 31, 1969, see section 201(g) of Pub. L. 91–172, set out as a note under section 170 of this title.

Amendment by section 704(b)(2) of Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1968, see section 704(c) of Pub. L. 91–172, set out as an Effective Date note under section 169 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89–621, § 2(b), Oct. 4, 1966, 80 Stat. 873, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Oct. 4, 1966], but only with respect to amounts paid or incurred, and losses sustained, after such date.''

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to dividends received after December 31, 1964, in taxable years ending after such date, see section 201(e) of Pub. L. 88–272, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable to taxable years beginning after Dec. 31, 1961, and ending after Oct. 16, 1962, see section 13(g) of Pub. L. 87–834, set out as an Effective Date note under section 1245 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§ 643. Definitions applicable to subparts A, B, C, and D

(a) Distributable net income

For purposes of this part, the term ''distributable net income'' means, with respect to any taxable year, the taxable income of the estate or trust computed with the following modifications—

(1) Deduction for distributions

No deduction shall be taken under sections 651 and 661 (relating to additional deductions).

(2) Deduction for personal exemption

No deduction shall be taken under section 642(b) (relating to deduction for personal exemptions).

(3) Capital gains and losses

Gains from the sale or exchange of capital assets shall be excluded to the extent that such gains are allocated to corpus and are not (A) paid, credited, or required to be distributed to any beneficiary during the taxable year, or (B) paid, permanently set aside, or to be used for the purposes specified in section 642(c). Losses from the sale or exchange of capital assets shall be excluded, except to the extent such losses are taken into account in determining the amount of gains from the sale or exchange of capital assets which are paid, credited, or required to be distributed to any beneficiary during the taxable year. The exclusion under section 1202 shall not be taken into account.

(4) Extraordinary dividends and taxable stock dividends

For purposes only of subpart B (relating to trusts which distribute current income only), there shall be excluded those items of gross income constituting extraordinary dividends or taxable stock dividends which the fiduciary, acting in good faith, does not pay or credit to any beneficiary by reason of his determination that such dividends are allocable to corpus under the terms of the governing instrument and applicable local law.

(5) Tax-exempt interest

There shall be included any tax-exempt interest to which section 103 applies, reduced by any amounts which would be deductible in respect of disbursements allocable to such interest but for the provisions of section 265 (relating to disallowance of certain deductions).

(6) Income of foreign trust

In the case of a foreign trust—

(A) There shall be included the amounts of gross income from sources without the United States, reduced by any amounts which would be deductible in respect of disbursements allocable to such income but for the provisions of section 265(a)(1) (relating to disallowance of certain deductions).

(B) Gross income from sources within the United States shall be determined without regard to section 894 (relating to income exempt under treaty).

(C) Paragraph (3) shall not apply to a foreign trust. In the case of such a trust, there shall be included gains from the sale or exchange of capital assets, reduced by losses from such sales or exchanges to the extent such losses do not exceed gains from such sales or exchanges.

(7) Abusive transactions

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this part, including regulations to prevent avoidance of such purposes.

If the estate or trust is allowed a deduction under section 642(c), the amount of the modifications specified in paragraphs (5) and (6) shall be reduced to the extent that the amount of income which is paid, permanently set aside, or to be used for the purposes specified in section 642(c) is deemed to consist of items specified in those paragraphs. For this purpose, such amount shall (in the absence of specific provisions in the governing instrument) be deemed to consist of the same proportion of each class of items of income of the estate or trust as the total of each class bears to the total of all classes.

(b) Income

For purposes of this subpart and subparts B, C, and D, the term ''income'', when not preceded by the words ''taxable'', ''distributable net'', ''undistributed net'', or ''gross'', means the amount of income of the estate or trust for the taxable year determined under the terms of the governing instrument and applicable local law. Items of gross income constituting extraordinary dividends or taxable stock dividends which the fiduciary, acting in good faith, determines to be allocable to corpus under the terms of the governing instrument and applicable local law shall not be considered income.

(c) Beneficiary

For purposes of this part, the term ''beneficiary'' includes heir, legatee, devisee.

(d) Coordination with back-up withholding

Except to the extent otherwise provided in regulations, this subchapter shall be applied with respect to payments subject to withholding under section 3406—

(1) by allocating between the estate or trust and its beneficiaries any credit allowable under section 31(c) (on the basis of their respective shares of any such payment taken into account under this subchapter),

(2) by treating each beneficiary to whom such credit is allocated as if an amount equal to such credit has been paid to him by the estate or trust, and

(3) by allowing the estate or trust a deduction in an amount equal to the credit so allocated to beneficiaries.

(e) Treatment of property distributed in kind

(1) Basis of beneficiary

The basis of any property received by a beneficiary in a distribution from an estate or trust shall be—

(A) the adjusted basis of such property in the hands of the estate or trust immediately before the distribution, adjusted for

(B) any gain or loss recognized to the estate or trust on the distribution.

(2) Amount of distribution

In the case of any distribution of property (other than cash), the amount taken into account under sections 661(a)(2) and 662(a)(2) shall be the lesser of—

(A) the basis of such property in the hands of the beneficiary (as determined under paragraph (1)), or

(B) the fair market value of such property.

(3) Election to recognize gain

(A) In general

In the case of any distribution of property (other than cash) to which an election under this paragraph applies—

(i) paragraph (2) shall not apply,

(ii) gain or loss shall be recognized by the estate or trust in the same manner as if such property had been sold to the distributee at its fair market value, and

(iii) the amount taken into account under sections 661(a)(2) and 662(a)(2) shall be the fair market value of such property.

(B) Election

Any election under this paragraph shall apply to all distributions made by the estate or trust during a taxable year and shall be made on the return of such estate or trust for such taxable year.

Any such election, once made, may be revoked only with the consent of the Secretary.

(4) Exception for distributions described in section 663(a)

This subsection shall not apply to any distribution described in section 663(a).

(f) Treatment of multiple trusts

For purposes of this subchapter, under regulations prescribed by the Secretary, 2 or more trusts shall be treated as 1 trust if—

(1) such trusts have substantially the same grantor or grantors and substantially the same primary beneficiary or beneficiaries, and

(2) a principal purpose of such trusts is the avoidance of the tax imposed by this chapter.

For purposes of the preceding sentence, a husband and wife shall be treated as 1 person.

(g) Certain payments of estimated tax treated as paid by beneficiary

(1) In general

In the case of a trust—

(A) the trustee may elect to treat any portion of a payment of estimated tax made by such trust for any taxable year of the trust as a payment made by a beneficiary of such trust,

(B) any amount so treated shall be treated as paid or credited to the beneficiary on the last day of such taxable year, and

(C) for purposes of subtitle F, the amount so treated—

(i) shall not be treated as a payment of estimated tax made by the trust, but

(ii) shall be treated as a payment of estimated tax made by such beneficiary on January 15 following the taxable year.

(2) Time for making election

An election under paragraph (1) shall be made on or before the 65th day after the close of the taxable year of the trust and in such manner as the Secretary may prescribe.

(3) Extension to last year of estate

In the case of a taxable year reasonably expected to be the last taxable year of an estate—

(A) any reference in this subsection to a trust shall be treated as including a reference to an estate, and

(B) the fiduciary of the estate shall be treated as the trustee.

(h) Distributions by certain foreign trusts through nominees

For purposes of this part, any amount paid to a United States person which is derived directly or indirectly from a foreign trust of which the payor is not the grantor shall be deemed in the year of payment to have been directly paid by the foreign trust to such United States person.

(i) Loans from foreign trusts

For purposes of subparts B, C, and D—

(1) General rule

Except as provided in regulations, if a foreign trust makes a loan of cash or marketable securities (or permits the use of any other trust property) directly or indirectly to or by—

(A) any grantor or beneficiary of such trust who is a United States person, or

(B) any United States person not described in subparagraph (A) who is related to such grantor or beneficiary,

the amount of such loan (or the fair market value of the use of such property) shall be treated as a distribution by such trust to such grantor or beneficiary (as the case may be).

(2) Definitions and special rules

For purposes of this subsection—

(A) Cash

The term ''cash'' includes foreign currencies and cash equivalents.

(B) Related person

(i) In general

A person is related to another person if the relationship between such persons would result in a disallowance of losses under section 267 or 707(b). In applying section 267 for purposes of the preceding sentence, section 267(c)(4) shall be applied as if the family of an individual includes the spouses of the members of the family.

(ii) Allocation

If any person described in paragraph (1)(B) is related to more than one person, the grantor or beneficiary to whom the treatment under this subsection applies shall be determined under regulations prescribed by the Secretary.

(C) Exclusion of tax-exempts

The term ''United States person'' does not include any entity exempt from tax under this chapter.

(D) Trust not treated as simple trust

Any trust which is treated under this subsection as making a distribution shall be treated as not described in section 651.

(E) Exception for compensated use of property

In the case of the use of any trust property other than a loan of cash or marketable securities, paragraph (1) shall not apply to the extent that the trust is paid the fair market value of such use within a reasonable period of time of such use.

(3) Subsequent transactions

If any loan (or use of property) is taken into account under paragraph (1), any subsequent transaction between the trust and the original borrower regarding the principal of the loan (by way of complete or partial repayment, satisfaction, cancellation, discharge, or otherwise) or the return of such property shall be disregarded for purposes of this title.

(Aug. 16, 1954, ch. 736, 68A Stat. 217; Pub. L. 87–834, § 7(a), Oct. 16, 1962, 76 Stat. 985; Pub. L. 94–455, title X, § 1013(c), (e)(2), Oct. 4, 1976, 90 Stat. 1615, 1616; Pub. L. 96–223, title IV, § 404(b)(4), Apr. 2, 1980, 94 Stat. 306; Pub. L. 97–34, title III, § 301(b)(4), (6)(B), Aug. 13, 1981, 95 Stat. 270; Pub. L. 97–248, title III, §§ 302(b)(1), 308(a), Sept. 3, 1982, 96 Stat. 586, 591; Pub. L. 97–448, title I, § 103(a)(3), Jan. 12, 1983, 96 Stat. 2375; Pub. L. 98–67, title I, § 102(a), Aug. 5, 1983, 97 Stat. 369; Pub. L. 98–369, div. A, title I, §§ 81(a), 82(a), title VII, § 722(h)(3), July 18, 1984, 98 Stat. 597, 598, 975; Pub. L. 99–514, title III, § 301(b)(7), title VI, § 612(b)(4), title XIV, § 1404(b), title XVIII, § 1806(a), (c), Oct. 22, 1986, 100 Stat. 2217, 2250, 2713, 2810, 2811; Pub. L. 100–647, title I, § 1014(d)(3), (4), Nov. 10, 1988, 102 Stat. 3561; Pub. L. 101–239, title VII, § 7811(b), (f)(1), Dec. 19, 1989, 103 Stat. 2406, 2409; Pub. L. 103–66, title XIII, § 13113(d)(3), Aug. 10, 1993, 107 Stat. 430; Pub. L. 104–188, title I, §§ 1904(c)(1), 1906(b), (c)(1), Aug. 20, 1996, 110 Stat. 1912, 1915; Pub. L. 111–147, title V, § 533(a), (b), (d), Mar. 18, 2010, 124 Stat. 114.)

AMENDMENTS

2010—Subsec. (i)(1). Pub. L. 111–147, § 533(a), substituted ''(or permits the use of any other trust property) directly or indirectly to or by'' for ''directly or indirectly to'' in introductory provisions and inserted ''(or the fair market value of the use of such property)''

after ''the amount of such loan'' in concluding provisions.

Subsec. (i)(2)(E). Pub. L. 111–147, §533(b), added subpar. (E).

Subsec. (i)(3). Pub. L. 111–147, §533(d), struck out ''regarding loan principal'' after ''transactions'' in heading and inserted ''(or use of property)'' after ''If any loan'' and ''or the return of such property'' after ''otherwise)''.

1996—Subsec. (a)(7). Pub. L. 104–188, §1906(b), added par. (7).

Subsec. (h). Pub. L. 104–188, §1904(c)(1), added subsec. (h).

Subsec. (i). Pub. L. 104–188, §1906(c)(1), added subsec. (i).

1993—Subsec. (a)(3). Pub. L. 103–66 inserted at end ''The exclusion under section 1202 shall not be taken into account.''

1989—Subsec. (a)(6)(A). Pub. L. 101–239, §7811(f)(1), substituted ''section 265(a)(1)'' for ''section 265(1)''.

Subsec. (a)(6)(C). Pub. L. 101–239, §7811(b)(1), struck out ''(i)'' after ''such a trust,'' and '', and (ii) the deduction under section 1202 (relating to deduction for excess of capital gains over capital losses) shall not be taken into account'' before period at end.

Subsec. (a)(6)(D). Pub. L. 101–239, §7811(b)(2), struck out subpar. (D) which read as follows: ''Effective for distributions made in taxable years beginning after December 31, 1975, the undistributed net income of each foreign trust for each taxable year beginning on or before December 31, 1975, remaining undistributed at the close of the last taxable year beginning on or before December 31, 1975, shall be redetermined by taking into account the deduction allowed by section 1202.''

1988—Subsec. (g)(1). Pub. L. 100–647, §1014(d)(3)(A), struck out at end ''The preceding sentence shall apply only to the extent the payments of estimated tax made by the trust for the taxable year exceed the tax imposed by this chapter shown on its return for the taxable year.''

Subsec. (g)(2). Pub. L. 100–647, §1014(d)(3)(B), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''An election under paragraph (1) may be made—

''(A) only on the trust's return of the tax imposed by this chapter for the taxable year, and

''(B) only if such return is filed on or before the 65th day after the close of the taxable year.''

Subsec. (g)(3). Pub. L. 100–647, §1014(d)(4), added par. (3).

1986—Subsec. (a)(3). Pub. L. 99–514, §301(b)(7), struck out ''The deduction under section 1202 (relating to deduction for excess of capital gains over capital losses) shall not be taken into account.''

Subsec. (a)(7). Pub. L. 99–514, §612(b)(4), struck out par. (7), dividends or interest, which read as follows: ''There shall be included the amount of any dividends or interest excluded from gross income pursuant to section 116 (relating to partial exclusion of dividends) or section 128 (relating to certain interest).''

Subsec. (d). Pub. L. 99–514, §1806(c)(1), redesignated subsec. (d), relating to treatment of property distributed in kind, as (e). Former subsec. (e) redesignated (f).

Subsec. (e). Pub. L. 99–514, §1806(a), (c)(1), redesignated subsec. (d) relating to treatment of property distributed in kind as (e) and amended par. (3)(B) generally, substituting ''shall apply to all distributions made by the estate or trust during a taxable year and shall be made on the return of such estate or trust for such taxable year'' for ''shall be made by the estate or trust on its return for the taxable year for which the distribution was made''. Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 99–514, §1806(c)(2), redesignated subsec. (e) as (f).

Subsec. (g). Pub. L. 99–514, §1404(b), added subsec. (g).

1984—Subsec. (d). Pub. L. 98–369, §81(a), added subsec. (d) relating to treatment of property distributed in kind.

Pub. L. 98–369, §722(h)(3), added subsec. (d) relating to coordination with back-up withholding.

Subsec. (e). Pub. L. 98–369, §82(a), added subsec. (e).

1983—Subsec. (a)(7). Pub. L. 97–448 substituted ''section 116 (relating to partial exclusion of dividends) or section 128 (relating to certain interest)'' for ''section 116 (relating to partial exclusion of dividends or interest received) or section 128 (relating to interest on certain savings certificates)''.

Subsec. (d). Pub. L. 98–67 repealed amendments made by Pub. L. 97–248. See 1982 Amendment note below.

1982—Subsec. (d). Pub. L. 97–248 provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, this section is amended by adding subsec. (d) relating to coordination with withholding on interest and dividends. Section 102(a), (b) of Pub. L. 98–67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§301–308) of title III of Pub. L. 97–248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 (this title) shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

1981—Subsec. (a)(7). Pub. L. 97–34, §301(b)(6)(A), inserted reference to ''interest'' in heading and text, which continued the amendment made by Pub. L. 96–223.

Pub. L. 97–34, §301(b)(4), inserted ''or section 128 (relating to interest on certain savings certificates)'' after ''received)''.

1980—Subsec. (a)(7). Pub. L. 96–223 inserted ''or interest'' after ''dividends'' in heading and text.

1976—Subsec. (a)(6)(C). Pub. L. 94–455, §1013(c)(1), struck out ''created by a United States person'' after ''foreign trust''.

Subsec. (a)(6)(D). Pub. L. 94–455, §1013(c)(2), added subpar. (D).

Subsec. (d). Pub. L. 94–455, §1013(e)(2), struck out subsec. (a) which defined a foreign trust created by a United States person.

1962—Subsec. (a)(6). Pub. L. 87–834, §7(a)(1), substituted ''Income of foreign trust'' for ''Foreign income'' in heading, designated existing provisions as subpar. (A), and added subpars. (B) and (C).

Subsec. (d). Pub. L. 87–834, §7(a)(2), added subsec. (d).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–147, title V, §533(e), Mar. 18, 2010, 124 Stat. 114, provided that: ''The amendments made by this section [amending this section and section 679 of this title] shall apply to loans made, and uses of property, after the date of the enactment of this Act [Mar. 18, 2010].''

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1904(d), Aug. 20, 1996, 110 Stat. 1912, provided that:

''(1) IN GENERAL.—Except as provided by paragraph (2), the amendments made by this section [amending this section and sections 665, 672, and 901 of this title] shall take effect on the date of the enactment of this Act [Aug. 20, 1996].

''(2) EXCEPTION FOR CERTAIN TRUSTS.—The amendments made by this section shall not apply to any trust—

''(A) which is treated as owned by the grantor under section 676 or 677 (other than subsection (a)(3) thereof) of the Internal Revenue Code of 1986, and

''(B) which is in existence on September 19, 1995.

The preceding sentence shall not apply to the portion of any such trust attributable to any transfer to such trust after September 19, 1995.''

Pub. L. 104–188, title I, §1906(d)(2), (3), Aug. 20, 1996, 110 Stat. 1916, provided that:

''(2) ABUSIVE TRANSACTIONS.—The amendment made by subsection (b) [amending this section] shall take effect on the date of the enactment of this Act [Aug. 20, 1996].

''(3) LOANS FROM TRUSTS.—The amendment made by subsection (c) [amending this section and section 7872 of this title] shall apply to loans of cash or marketable securities made after September 19, 1995.''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to stock issued after Aug. 10, 1993, see section 13113(e) of Pub. L. 103–66, set out as a note under section 53 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 301(b)(7) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 301(c) of Pub. L. 99–514, set out as a note under section 62 of this title.

Amendment by section 612(b)(4) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 612(c) of Pub. L. 99–514, set out as a note under section 301 of this title.

Pub. L. 99–514, title XIV, § 1404(d), Oct. 22, 1986, 100 Stat. 2714, provided that: ''The amendments made by this section [amending this section and sections 6215, 6601, and 6654 of this title and repealing section 6152 of this title] shall apply to taxable years beginning after December 31, 1986.''

Amendment by section 1806(a), (c) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, § 81(b), July 18, 1984, 98 Stat. 598, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to distributions after June 1, 1984, in taxable years ending after such date.

''(2) TIME FOR MAKING ELECTION.—In the case of any distribution before the date of the enactment of this Act [July 18, 1984]—

''(A) the time for making an election under section 643(d)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this section) shall not expire before January 1, 1985, and

''(B) the requirement that such election be made on the return of the estate or trust shall not apply.''

Pub. L. 98–369, div. A, title I, § 82(b), July 18, 1984, 98 Stat. 598, as amended by Pub. L. 99–514, title XVIII, § 1806(b), Oct. 22, 1986, 100 Stat. 2811, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after March 1, 1984; except that, in the case of a trust which was irrevocable on March 1, 1984, such amendment shall so apply only to that portion of the trust which is attributable to contributions to corpus after March 1, 1984.''

Pub. L. 98–369, div. A, title VII, § 722(h)(5), July 18, 1984, 98 Stat. 976, provided that:

''(A) Except as provided in this paragraph, the amendments made by this subsection [amending this section and sections 3405, 3406, and 6041 of this title] shall apply as if included in the amendments made by the Interest and Dividend Tax Compliance Act of 1983 [Pub. L. 98–67].

''(B) The amendments made by paragraph (4) [amending sections 3405 and 6041 of this title] shall apply to payments or distributions after December 31, 1984, unless the payor elects to have such amendments apply to payments or distributions before January 1, 1985.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 301(b)(4) of Pub. L. 97–34 applicable to taxable years ending after Sept. 30, 1981, and amendment by section 301(b)(6)(A) of Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 301(d) of Pub. L. 97–34, set out as a note under section 265 of this title.

EFFECTIVE AND TERMINATION DATES OF 1980 AMENDMENT

Amendment by Pub. L. 96–223 applicable with respect to taxable years beginning after Dec. 31, 1980, and before Jan. 1, 1982, see section 404(c) of Pub. L. 96–223, set out as a note under section 265 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment by section 1013(e)(2) of Pub. L. 94–455, see section 1013(f)(1) of Pub. L. 94–455, set out as an Effective Date note under section 679 of this title.

Pub. L. 94–455, title X, § 1013(f)(2), Oct. 4, 1976, 90 Stat. 1617, provided that: ''The amendments made by subsection (c) [amending this section] shall apply to taxable years beginning after December 31, 1975.''

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87–834, § 7(j), Oct. 16, 1962, 76 Stat. 989, provided that: ''The amendments made by this section [amending this section and sections 665, 666, and 668 of this title and enacting section 669 of this title] (other than by subsections (f), (g) and (h) [enacting sections 6048 and 6677 of this title and amending section 7701 of this title]), shall apply with respect to distributions made after December 31, 1962.''

TREATMENT AS SINGLE TRUST

Pub. L. 100–647, title X, § 1018(e), Nov. 10, 1988, 102 Stat. 3581, provided that: ''If—

''(1) on a return for the 1st taxable year of the trusts involved beginning after March 1, 1984, 2 or more trusts were treated as a single trust for purposes of the tax imposed by chapter 1 of the Internal Revenue Code of 1954 [now 1986],

''(2) such trusts would have been required to be so treated but for the amendment made by section 1806(b) of the Reform Act [Pub. L. 99–514, which amended provisions set out as an Effective Date of 1984 Amendment note above], and

''(3) such trusts did not accumulate any income during such taxable year and did not make any accumulation distributions during such taxable year,

then, notwithstanding the amendment made by section 1806(b) of the Reform Act, such trusts shall be treated as one trust for purposes of such taxable year.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 644. Taxable year of trusts

(a) In general

For purposes of this subtitle, the taxable year of any trust shall be the calendar year.

(b) Exception for trusts exempt from tax and charitable trusts

Subsection (a) shall not apply to a trust exempt from taxation under section 501(a) or to a trust described in section 4947(a)(1).

(Added Pub. L. 99–514, title XIV, § 1403(a), Oct. 22, 1986, 100 Stat. 2713, § 645; renumbered § 644, Pub. L. 105–34, title V, § 507(b)(1), Aug. 5, 1997, 111 Stat. 856.)

PRIOR PROVISIONS

A prior section 644, added Pub. L. 94–455, title VII, § 701(e)(1), Oct. 4, 1976, 90 Stat. 1578; amended Pub. L. 95–600, title VII, § 701(p)(1)–(3), Nov. 6, 1978, 92 Stat. 2908; Pub. L. 96–471, § 2(b)(4), Oct. 19, 1980, 94 Stat. 2254; Pub. L. 99–514, title XV, § 1511(c)(5), Oct. 22, 1986, 100 Stat. 2745, related to special rule for gain on property transferred to trust at less than fair market value, prior to repeal by Pub. L. 105–34, title V, § 507(b)(1), Aug. 5, 1997, 111 Stat. 856.

AMENDMENTS

1997—Pub. L. 105–34 renumbered section 645 of this title as this section.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title V, § 507(c)(2), Aug. 5, 1997, 111 Stat. 857, provided that: ''The amendments made by subsection (b) [amending section 706 of this title, repealing section 644 of this title, and renumbering section 645 of this title as this section] shall apply to sales or exchanges after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE; TRANSITION RULE

Pub. L. 99–514, title XIV, § 1403(c), Oct. 22, 1986, 100 Stat. 2713, provided that:

''(1) EFFECTIVE DATE.—The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1986.

''(2) TRANSITION RULE.—With respect to any trust beneficiary who is required to include in gross income amounts under sections 652(a) or 662(a) of the Internal Revenue Code of 1986 in the 1st taxable year of the beneficiary beginning after December 31, 1986, by reason of any short taxable year of the trust required by the amendments made by this section, such income shall be ratably included in the income of the trust beneficiary over the 4-taxable year period beginning with such taxable year.''

APPLICATION OF TRANSITION RULES TO TRUST BENEFICIARIES TO WHICH SECTION 664 APPLIES

Pub. L. 100–647, title I, § 1014(c), Nov. 10, 1988, 102 Stat. 3559, provided that:

''(1) If a beneficiary of a trust to which section 664 of the 1986 Code applies elects (at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe) to have this paragraph apply, such beneficiary shall be entitled to the benefits of section 1403(c)(2) of the Reform Act [Pub. L. 99–514, set out as an Effective Date; Transition Rule note above] with respect to amounts included in gross income under section 664(b) of the 1986 Code in the same manner as if such amounts were included in gross income under section 652(a) of the 1986 Code.

''(2) Any trust beneficiary may elect (at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe) to waive the benefits of section 1403(c)(2) of the Reform Act.

''(3)(A) For purposes of determining the gross income of any pass-thru entity, such pass-thru entity shall not be allowed the benefits of section 806(e)(2)(C) [Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 1378 of this title] (other than with respect to income from a common trust fund) or 1403(c)(2) of the Reform Act if such pass-thru entity is required to change its taxable year by reason of the amendments made by section 806 or 1403 of the Reform Act [Pub. L. 99–514, which enacted this section and amended sections 267, 441, 706, and 1378 of this title].

''(B) For purposes of subparagraph (A), the term 'pass-thru entity' means any trust, partnership, S corporation, or common trust fund.

''(4) If any trust was required to change its taxable year by the amendments made by section 1403 of the Reform Act [Pub. L. 99–514, which enacted this section], such change shall be treated as initiated by such trust and approved by the Secretary of the Treasury or his delegate.''

§ 645. Certain revocable trusts treated as part of estate

(a) General rule

For purposes of this subtitle, if both the executor (if any) of an estate and the trustee of a qualified revocable trust elect the treatment provided in this section, such trust shall be treated and taxed as part of such estate (and not as a separate trust) for all taxable years of the estate ending after the date of the decedent's death and before the applicable date.

(b) Definitions

For purposes of subsection (a)—

(1) Qualified revocable trust

The term ''qualified revocable trust'' means any trust (or portion thereof) which was treated under section 676 as owned by the decedent of the estate referred to in subsection (a) by reason of a power in the grantor (determined without regard to section 672(e)).

(2) Applicable date

The term ''applicable date'' means—

(A) if no return of tax imposed by chapter 11 is required to be filed, the date which is 2 years after the date of the decedent's death, and

(B) if such a return is required to be filed, the date which is 6 months after the date of the final determination of the liability for tax imposed by chapter 11.

(c) Election

The election under subsection (a) shall be made not later than the time prescribed for filing the return of tax imposed by this chapter for the first taxable year of the estate (determined with regard to extensions) and, once made, shall be irrevocable.

(Added Pub. L. 105–34, title XIII, § 1305(a), Aug. 5, 1997, 111 Stat. 1040, § 646; renumbered § 645, Pub. L. 105–206, title VI, § 6013(a)(1), July 22, 1998, 112 Stat. 819.)

PRIOR PROVISIONS

A prior section 645 was renumbered section 644 of this title.

AMENDMENTS

1998—Pub. L. 105–206 renumbered section 646 of this title as this section.

EFFECTIVE DATE

Pub. L. 105–34, title XIII, § 1305(d), Aug. 5, 1997, 111 Stat. 1041, provided that: ''The amendments made by

this section [enacting this section and amending section 2652 of this title] shall apply with respect to estates of decedents dying after the date of the enactment of this Act [Aug. 5, 1997].''

§ 646. Tax treatment of electing Alaska Native Settlement Trusts

(a) In general

If an election under this section is in effect with respect to any Settlement Trust, the provisions of this section shall apply in determining the income tax treatment of the Settlement Trust and its beneficiaries with respect to the Settlement Trust.

(b) Taxation of income of trust

Except as provided in subsection (f)(1)(B)(ii)—

(1) In general

There is hereby imposed on the taxable income of an electing Settlement Trust, other than its net capital gain, a tax at the lowest rate specified in section 1(c).[1]

(2) Capital gain

In the case of an electing Settlement Trust with a net capital gain for the taxable year, a tax is hereby imposed on such gain at the rate of tax which would apply to such gain if the taxpayer were subject to a tax on its other taxable income at only the lowest rate specified in section 1(c).

Any such tax shall be in lieu of the income tax otherwise imposed by this chapter on such income or gain.

(c) One-time election

(1) In general

A Settlement Trust may elect to have the provisions of this section apply to the trust and its beneficiaries.

(2) Time and method of election

An election under paragraph (1) shall be made by the trustee of such trust—

(A) on or before the due date (including extensions) for filing the Settlement Trust's return of tax for the first taxable year of such trust ending after the date of the enactment of this section, and

(B) by attaching to such return of tax a statement specifically providing for such election.

(3) Period election in effect

Except as provided in subsection (f), an election under this subsection—

(A) shall apply to the first taxable year described in paragraph (2)(A) and all subsequent taxable years, and

(B) may not be revoked once it is made.

(d) Contributions to trust

(1) Beneficiaries of electing trust not taxed on contributions

In the case of an electing Settlement Trust, no amount shall be includible in the gross income of a beneficiary of such trust by reason of a contribution to such trust.

(2) Earnings and profits

The earnings and profits of the sponsoring Native Corporation shall not be reduced on account of any contribution to such Settlement Trust.

(e) Tax treatment of distributions to beneficiaries

Amounts distributed by an electing Settlement Trust during any taxable year shall be considered as having the following characteristics in the hands of the recipient beneficiary:

(1) First, as amounts excludable from gross income for the taxable year to the extent of the taxable income of such trust for such taxable year (decreased by any income tax paid by the trust with respect to the income) plus any amount excluded from gross income of the trust under section 103.

(2) Second, as amounts excludable from gross income to the extent of the amount described in paragraph (1) for all taxable years for which an election is in effect under subsection (c) with respect to the trust, and not previously taken into account under paragraph (1).

(3) Third, as amounts distributed by the sponsoring Native Corporation with respect to its stock (within the meaning of section 301(a)) during such taxable year and taxable to the recipient beneficiary as amounts described in section 301(c)(1), to the extent of current or accumulated earnings and profits of the sponsoring Native Corporation as of the close of such taxable year after proper adjustment is made for all distributions made by the sponsoring Native Corporation during such taxable year.

(4) Fourth, as amounts distributed by the trust in excess of the distributable net income of such trust for such taxable year.

Amounts distributed to which paragraph (3) applies shall not be treated as a corporate distribution subject to section 311(b), and for purposes of determining the amount of a distribution for purposes of paragraph (3) and the basis to the recipients, section 643(e) and not section 301(b) or (d) shall apply.

(f) Special rules where transfer restrictions modified

(1) Transfer of beneficial interests

If, at any time, a beneficial interest in an electing Settlement Trust may be disposed of to a person in a manner which would not be permitted by section 7(h) of the Alaska Native Claims Settlement Act (43 U.S.C. 1606(h)) if such interest were Settlement Common Stock—

(A) no election may be made under subsection (c) with respect to such trust, and

(B) if such an election is in effect as of such time—

(i) such election shall cease to apply as of the first day of the taxable year in which such disposition is first permitted,

(ii) the provisions of this section shall not apply to such trust for such taxable year and all taxable years thereafter, and

(iii) the distributable net income of such trust shall be increased by the current or accumulated earnings and profits of the sponsoring Native Corporation as of the close of such taxable year after proper adjustment is made for all distributions

[1] See References in Text note below.

made by the sponsoring Native Corporation during such taxable year.

In no event shall the increase under clause (iii) exceed the fair market value of the trust's assets as of the date the beneficial interest of the trust first becomes so disposable. The earnings and profits of the sponsoring Native Corporation shall be adjusted as of the last day of such taxable year by the amount of earnings and profits so included in the distributable net income of the trust.

(2) Stock in corporation

If—

(A) stock in the sponsoring Native Corporation may be disposed of to a person in a manner which would not be permitted by section 7(h) of the Alaska Native Claims Settlement Act (43 U.S.C. 1606(h)) if such stock were Settlement Common Stock, and

(B) at any time after such disposition of stock is first permitted, such corporation transfers assets to a Settlement Trust,

paragraph (1)(B) shall be applied to such trust on and after the date of the transfer in the same manner as if the trust permitted dispositions of beneficial interests in the trust in a manner not permitted by such section 7(h).

(3) Certain distributions

For purposes of this section, the surrender of an interest in a Native Corporation or an electing Settlement Trust in order to accomplish the whole or partial redemption of the interest of a shareholder or beneficiary in such corporation or trust, or to accomplish the whole or partial liquidation of such corporation or trust, shall be deemed to be a transfer permitted by section 7(h) of the Alaska Native Claims Settlement Act.

(g) Taxable income

For purposes of this title, the taxable income of an electing Settlement Trust shall be determined under section 641(b) without regard to any deduction under section 651 or 661.

(h) Definitions

For purposes of this section—

(1) Electing Settlement Trust

The term ''electing Settlement Trust'' means a Settlement Trust which has made the election, effective for a taxable year, described in subsection (c).

(2) Native Corporation

The term ''Native Corporation'' has the meaning given such term by section 3(m) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(m)).

(3) Settlement Common Stock

The term ''Settlement Common Stock'' has the meaning given such term by section 3(p) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(p)).

(4) Settlement Trust

The term ''Settlement Trust'' means a trust that constitutes a settlement trust under section 3(t) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(t)).

(5) Sponsoring Native Corporation

The term ''sponsoring Native Corporation'' means the Native Corporation which transfers assets to an electing Settlement Trust.

(i) Special loss disallowance rule

Any loss that would otherwise be recognized by a shareholder upon a disposition of a share of stock of a sponsoring Native Corporation shall be reduced (but not below zero) by the per share loss adjustment factor. The per share loss adjustment factor shall be the aggregate of all contributions to all electing Settlement Trusts sponsored by such Native Corporation made on or after the first day each trust is treated as an electing Settlement Trust expressed on a per share basis and determined as of the day of each such contribution.

(j) Cross reference

For information required with respect to electing Settlement Trusts and sponsoring Native Corporations, see section 6039H.

(Added Pub. L. 107–16, title VI, §671(a), June 7, 2001, 115 Stat. 144.)

REFERENCES IN TEXT

Section 1(c), referred to in subsec. (b), to be treated, for purposes of the rate of tax, as a reference to the corresponding rate bracket under section 1(j)(2)(C) of this title, see section 1(j)(2)(F) of this title.

The date of the enactment of this section, referred to in subsec. (c)(2)(A), is the date of enactment of Pub. L. 107–16, which was approved June 7, 2001.

PRIOR PROVISIONS

A prior section 646 was renumbered section 645 of this title.

EFFECTIVE DATE

Pub. L. 107–16, title VI, §671(d), June 7, 2001, 115 Stat. 148, provided that: ''The amendments made by this section [enacting this section and section 6039H of this title] shall apply to taxable years ending after the date of the enactment of this Act [June 7, 2001] and to contributions made to electing Settlement Trusts for such year or any subsequent year.''

SUBPART B—TRUSTS WHICH DISTRIBUTE CURRENT INCOME ONLY

§ 651. Deduction for trusts distributing current income only

(a) Deduction

In the case of any trust the terms of which—

(1) provide that all of its income is required to be distributed currently, and

(2) do not provide that any amounts are to be paid, permanently set aside, or used for the purposes specified in section 642(c) (relating to deduction for charitable, etc., purposes),

there shall be allowed as a deduction in computing the taxable income of the trust the amount of the income for the taxable year which is required to be distributed currently. This section shall not apply in any taxable year in which the

trust distributes amounts other than amounts of income described in paragraph (1).

(b) Limitation on deduction

If the amount of income required to be distributed currently exceeds the distributable net income of the trust for the taxable year, the deduction shall be limited to the amount of the distributable net income. For this purpose, the computation of distributable net income shall not include items of income which are not included in the gross income of the trust and the deductions allocable thereto.

(Aug. 16, 1954, ch. 736, 68A Stat. 219.)

§ 652. Inclusion of amounts in gross income of beneficiaries of trusts distributing current income only

(a) Inclusion

Subject to subsection (b), the amount of income for the taxable year required to be distributed currently by a trust described in section 651 shall be included in the gross income of the beneficiaries to whom the income is required to be distributed, whether distributed or not. If such amount exceeds the distributable net income, there shall be included in the gross income of each beneficiary an amount which bears the same ratio to distributable net income as the amount of income required to be distributed to such beneficiary bears to the amount of income required to be distributed to all beneficiaries.

(b) Character of amounts

The amounts specified in subsection (a) shall have the same character in the hands of the beneficiary as in the hands of the trust. For this purpose, the amounts shall be treated as consisting of the same proportion of each class of items entering into the computation of distributable net income of the trust as the total of each class bears to the total distributable net income of the trust, unless the terms of the trust specifically allocate different classes of income to different beneficiaries. In the application of the preceding sentence, the items of deduction entering into the computation of distributable net income shall be allocated among the items of distributable net income in accordance with regulations prescribed by the Secretary.

(c) Different taxable years

If the taxable year of a beneficiary is different from that of the trust, the amount which the beneficiary is required to include in gross income in accordance with the provisions of this section shall be based upon the amount of income of the trust for any taxable year or years of the trust ending within or with his taxable year.

(Aug. 16, 1954, ch. 736, 68A Stat. 219; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsec. (b). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

SUBPART C—ESTATES AND TRUSTS WHICH MAY ACCUMULATE INCOME OR WHICH DISTRIBUTE CORPUS

AMENDMENTS

1969—Pub. L. 91–172, title II, § 201(e)(2), Dec. 30, 1969, 83 Stat. 564, added item 664.

§ 661. Deduction for estates and trusts accumulating income or distributing corpus

(a) Deduction

In any taxable year there shall be allowed as a deduction in computing the taxable income of an estate or trust (other than a trust to which subpart B applies), the sum of—

(1) any amount of income for such taxable year required to be distributed currently (including any amount required to be distributed which may be paid out of income or corpus to the extent such amount is paid out of income for such taxable year); and

(2) any other amounts properly paid or credited or required to be distributed for such taxable year;

but such deduction shall not exceed the distributable net income of the estate or trust.

(b) Character of amounts distributed

The amount determined under subsection (a) shall be treated as consisting of the same proportion of each class of items entering into the computation of distributable net income of the estate or trust as the total of each class bears to the total distributable net income of the estate or trust in the absence of the allocation of different classes of income under the specific terms of the governing instrument. In the application of the preceding sentence, the items of deduction entering into the computation of distributable net income (including the deduction allowed under section 642(c)) shall be allocated among the items of distributable net income in accordance with regulations prescribed by the Secretary.

(c) Limitation on deduction

No deduction shall be allowed under subsection (a) in respect of any portion of the amount allowed as a deduction under that subsection (without regard to this subsection) which is treated under subsection (b) as consisting of any item of distributable net income which is not included in the gross income of the estate or trust.

(Aug. 16, 1954, ch. 736, 68A Stat. 220; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–248, title III, §§ 302(b)(2), 308(a), Sept. 3, 1982, 96 Stat. 586, 591; Pub. L. 98–67, title I, § 102(a), Aug. 5, 1983, 97 Stat. 369.)

[1] So in original. Does not conform to section catchline.

AMENDMENTS

1983—Subsec. (a). Pub. L. 98–67 repealed amendments made by Pub. L. 97–248. See 1982 Amendment note below.

1982—Subsec. (a). Pub. L. 97–248 provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, subsec. (a) is amended by inserting at end ''For purposes of paragraph (1), the amount of distributable net income shall be computed without the deduction allowed by section 642(c).''. Section 102(a), (b) of Pub. L. 98–67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§301–308) of title III of Pub. L. 97–248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 (this title) shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

1976—Subsec. (b). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

§ 662. Inclusion of amounts in gross income of beneficiaries of estates and trusts accumulating income or distributing corpus

(a) Inclusion

Subject to subsection (b), there shall be included in the gross income of a beneficiary to whom an amount specified in section 661(a) is paid, credited, or required to be distributed (by an estate or trust described in section 661), the sum of the following amounts:

(1) Amounts required to be distributed currently

The amount of income for the taxable year required to be distributed currently to such beneficiary, whether distributed or not. If the amount of income required to be distributed currently to all beneficiaries exceeds the distributable net income (computed without the deduction allowed by section 642(c), relating to deduction for charitable, etc., purposes) of the estate or trust, then, in lieu of the amount provided in the preceding sentence, there shall be included in the gross income of the beneficiary an amount which bears the same ratio to distributable net income (as so computed) as the amount of income required to be distributed currently to such beneficiary bears to the amount required to be distributed currently to all beneficiaries. For purposes of this section, the phrase ''the amount of income for the taxable year required to be distributed currently'' includes any amount required to be paid out of income or corpus to the extent such amount is paid out of income for such taxable year.

(2) Other amounts distributed

All other amounts properly paid, credited, or required to be distributed to such beneficiary for the taxable year. If the sum of—

(A) the amount of income for the taxable year required to be distributed currently to all beneficiaries, and

(B) all other amounts properly paid, credited, or required to be distributed to all beneficiaries

exceeds the distributable net income of the estate or trust, then, in lieu of the amount provided in the preceding sentence, there shall be included in the gross income of the beneficiary an amount which bears the same ratio to distributable net income (reduced by the amounts specified in (A)) as the other amounts properly paid, credited or required to be distributed to the beneficiary bear to the other amounts properly paid, credited, or required to be distributed to all beneficiaries.

(b) Character of amounts

The amounts determined under subsection (a) shall have the same character in the hands of the beneficiary as in the hands of the estate or trust. For this purpose, the amounts shall be treated as consisting of the same proportion of each class of items entering into the computation of distributable net income as the total of each class bears to the total distributable net income of the estate or trust unless the terms of the governing instrument specifically allocate different classes of income to different beneficiaries. In the application of the preceding sentence, the items of deduction entering into the computation of distributable net income (including the deduction allowed under section 642(c)) shall be allocated among the items of distributable net income in accordance with regulations prescribed by the Secretary. In the application of this subsection to the amount determined under paragraph (1) of subsection (a), distributable net income shall be computed without regard to any portion of the deduction under section 642(c) which is not attributable to income of the taxable year.

(c) Different taxable years

If the taxable year of a beneficiary is different from that of the estate or trust, the amount to be included in the gross income of the beneficiary shall be based on the distributable net income of the estate or trust and the amounts properly paid, credited, or required to be distributed to the beneficiary during any taxable year or years of the estate or trust ending within or with his taxable year.

(Aug. 16, 1954, ch. 736, 68A Stat. 220; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsec. (b). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

§ 663. Special rules applicable to sections 661 and 662

(a) Exclusions

There shall not be included as amounts falling within section 661(a) or 662(a)—

(1) Gifts, bequests, etc.

Any amount which, under the terms of the governing instrument, is properly paid or credited as a gift or bequest of a specific sum of money or of specific property and which is paid or credited all at once or in not more than 3 installments. For this purpose an amount which can be paid or credited only from the income of the estate or trust shall not be considered as a gift or bequest of a specific sum of money.

(2) Charitable, etc., distributions

Any amount paid or permanently set aside or otherwise qualifying for the deduction pro-

vided in section 642(c) (computed without regard to sections 508(d), 681, and 4948(c)(4)).

(3) Denial of double deduction

Any amount paid, credited, or distributed in the taxable year, if section 651 or section 661 applied to such amount for a preceding taxable year of an estate or trust because credited or required to be distributed in such preceding taxable year.

(b) Distributions in first sixty-five days of taxable year

(1) General rule

If within the first 65 days of any taxable year of an estate or a trust, an amount is properly paid or credited, such amount shall be considered paid or credited on the last day of the preceding taxable year.

(2) Limitation

Paragraph (1) shall apply with respect to any taxable year of an estate or a trust only if the executor of such estate or the fiduciary of such trust (as the case may be) elects, in such manner and at such time as the Secretary prescribes by regulations, to have paragraph (1) apply for such taxable year.

(c) Separate shares treated as separate estates or trusts

For the sole purpose of determining the amount of distributable net income in the application of sections 661 and 662, in the case of a single trust having more than one beneficiary, substantially separate and independent shares of different beneficiaries in the trust shall be treated as separate trusts. Rules similar to the rules of the preceding provisions of this subsection shall apply to treat substantially separate and independent shares of different beneficiaries in an estate having more than 1 beneficiary as separate estates. The existence of such substantially separate and independent shares and the manner of treatment as separate trusts or estates, including the application of subpart D, shall be determined in accordance with regulations prescribed by the Secretary.

(Aug. 16, 1954, ch. 736, 68A Stat. 222; Pub. L. 91–172, title I, §101(j)(17), title III, §331(b), Dec. 30, 1969, 83 Stat. 528, 598; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 105–34, title XIII, §§1306(a), (b), 1307(a), (b), Aug. 5, 1997, 111 Stat. 1041.)

AMENDMENTS

1997—Subsec. (b). Pub. L. 105–34, §1306(a), inserted ''an estate or'' before ''a trust'' in pars. (1) and (2).

Subsec. (b)(2). Pub. L. 105–34, §1306(b), substituted ''the executor of such estate or the fiduciary of such trust (as the case may be)'' for ''the fiduciary of such trust''.

Subsec. (c). Pub. L. 105–34, §1307(a), (b), inserted ''estates or'' before ''trusts'' in heading, ''Rules similar to the rules of the preceding provisions of this subsection shall apply to treat substantially separate and independent shares of different beneficiaries in an estate having more than 1 beneficiary as separate estates.'' before last sentence, and ''or estates'' after ''trusts'' in last sentence.

1976—Subsecs. (b)(2), (c). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

1969—Subsec. (a)(2). Pub. L. 91–172, §101(j)(17), substituted ''sections 508(d), 681, and 4948(c)(4)'' for ''section 681''.

Subsec. (b)(2). Pub. L. 91–172, §331(b), incorporated existing provisions of subpar. (C) of former first sentence making subsec. (b) applicable only to a trust where the fiduciary elected to have the subsec. apply and part of former second sentence making the election applicable in accordance with prescribed regulations; substituted provisions for regulations to spell out manner and time of election for part of former second sentence requiring the election to be made not later than the time prescribed by law for filing the return for the year, including any extension; and omitted: subpars. (A) and (B) of former first sentence which had provided for application of subsec. (b) only to a trust ''(A) which was in existence prior to January 1, 1954'' and ''(B) which, under the terms of its governing instrument, may not distribute in any taxable year amounts in excess of the income of the preceding taxable year''; part of former second sentence which required the election to be made for first taxable year to which this part is applicable; and third sentence that ''If such election is made with respect to a taxable year, this subsection shall apply to all amounts properly paid or credited within the first 65 days of all subsequent taxable years of such trust.''

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XIII, §1306(c), Aug. 5, 1997, 111 Stat. 1041, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 5, 1997].''

Pub. L. 105–34, title XIII, §1307(c), Aug. 5, 1997, 111 Stat. 1041, provided that: ''The amendments made by this section [amending this section] shall apply to estates of decedents dying after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 101(j)(17) of Pub. L. 91–172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

Amendment by section 331(b) of Pub. L. 91–172 applicable to taxable years beginning before Jan. 1, 1970, see section 331(d) of Pub. L. 91–172, set out as a note under section 665 of this title.

§ 664. Charitable remainder trusts

(a) General rule

Notwithstanding any other provision of this subchapter, the provisions of this section shall, in accordance with regulations prescribed by the Secretary, apply in the case of a charitable remainder annuity trust and a charitable remainder unitrust.

(b) Character of distributions

Amounts distributed by a charitable remainder annuity trust or by a charitable remainder unitrust shall be considered as having the following characteristics in the hands of a beneficiary to whom is paid the annuity described in subsection (d)(1)(A) or the payment described in subsection (d)(2)(A):

(1) First, as amounts of income (other than gains, and amounts treated as gains, from the sale or other disposition of capital assets) includible in gross income to the extent of such income of the trust for the year and such undistributed income of the trust for prior years;

(2) Second, as a capital gain to the extent of the capital gain of the trust for the year and the undistributed capital gain of the trust for prior years;

(3) Third, as other income to the extent of such income of the trust for the year and such

undistributed income of the trust for prior years; and

(4) Fourth, as a distribution of trust corpus.

For purposes of this section, the trust shall determine the amount of its undistributed capital gain on a cumulative net basis.

(c) Taxation of trusts

(1) Income tax

A charitable remainder annuity trust and a charitable remainder unitrust shall, for any taxable year, not be subject to any tax imposed by this subtitle.

(2) Excise tax

(A) In general

In the case of a charitable remainder annuity trust or a charitable remainder unitrust which has unrelated business taxable income (within the meaning of section 512, determined as if part III of subchapter F applied to such trust) for a taxable year, there is hereby imposed on such trust or unitrust an excise tax equal to the amount of such unrelated business taxable income.

(B) Certain rules to apply

The tax imposed by subparagraph (A) shall be treated as imposed by chapter 42 for purposes of this title other than subchapter E of chapter 42.

(C) Tax court proceedings

For purposes of this paragraph, the references in section 6212(c)(1) to section 4940 shall be deemed to include references to this paragraph.

(d) Definitions

(1) Charitable remainder annuity trust

For purposes of this section, a charitable remainder annuity trust is a trust—

(A) from which a sum certain (which is not less than 5 percent nor more than 50 percent of the initial net fair market value of all property placed in trust) is to be paid, not less often than annually, to one or more persons (at least one of which is not an organization described in section 170(c) and, in the case of individuals, only to an individual who is living at the time of the creation of the trust) for a term of years (not in excess of 20 years) or for the life or lives of such individual or individuals,

(B) from which no amount other than the payments described in subparagraph (A) and other than qualified gratuitous transfers described in subparagraph (C) may be paid to or for the use of any person other than an organization described in section 170(c),

(C) following the termination of the payments described in subparagraph (A), the remainder interest in the trust is to be transferred to, or for the use of, an organization described in section 170(c) or is to be retained by the trust for such a use or, to the extent the remainder interest is in qualified employer securities (as defined in subsection (g)(4)), all or part of such securities are to be transferred to an employee stock ownership plan (as defined in section 4975(e)(7)) in a qualified gratuitous transfer (as defined by subsection (g)), and

(D) the value (determined under section 7520) of such remainder interest is at least 10 percent of the initial net fair market value of all property placed in the trust.

(2) Charitable remainder unitrust

For purposes of this section, a charitable remainder unitrust is a trust—

(A) from which a fixed percentage (which is not less than 5 percent nor more than 50 percent) of the net fair market value of its assets, valued annually, is to be paid, not less often than annually, to one or more persons (at least one of which is not an organization described in section 170(c) and, in the case of individuals, only to an individual who is living at the time of the creation of the trust) for a term of years (not in excess of 20 years) or for the life or lives of such individual or individuals,

(B) from which no amount other than the payments described in subparagraph (A) and other than qualified gratuitous transfers described in subparagraph (C) may be paid to or for the use of any person other than an organization described in section 170(c),

(C) following the termination of the payments described in subparagraph (A), the remainder interest in the trust is to be transferred to, or for the use of, an organization described in section 170(c) or is to be retained by the trust for such a use or, to the extent the remainder interest is in qualified employer securities (as defined in subsection (g)(4)), all or part of such securities are to be transferred to an employee stock ownership plan (as defined in section 4975(e)(7)) in a qualified gratuitous transfer (as defined by subsection (g)), and

(D) with respect to each contribution of property to the trust, the value (determined under section 7520) of such remainder interest in such property is at least 10 percent of the net fair market value of such property as of the date such property is contributed to the trust.

(3) Exception

Notwithstanding the provisions of paragraphs (2)(A) and (B), the trust instrument may provide that the trustee shall pay the income beneficiary for any year—

(A) the amount of the trust income, if such amount is less than the amount required to be distributed under paragraph (2)(A), and

(B) any amount of the trust income which is in excess of the amount required to be distributed under paragraph (2)(A), to the extent that (by reason of subparagraph (A)) the aggregate of the amounts paid in prior years was less than the aggregate of such required amounts.

(4) Severance of certain additional contributions

If—

(A) any contribution is made to a trust which before the contribution is a charitable remainder unitrust, and

(B) such contribution would (but for this paragraph) result in such trust ceasing to be

a charitable unitrust by reason of paragraph (2)(D),

such contribution shall be treated as a transfer to a separate trust under regulations prescribed by the Secretary.

(e) Valuation of interests

For purposes of determining the amount of any charitable contribution, the remainder interest of a charitable remainder annuity trust or charitable remainder unitrust shall be computed on the basis that an amount equal to 5 percent of the net fair market value of its assets (or a greater amount, if required under the terms of the trust instrument) is to be distributed each year. In the case of the early termination of a trust which is a charitable remainder unitrust by reason of subsection (d)(3), the valuation of interests in such trust for purposes of this section shall be made under rules similar to the rules of the preceding sentence.

(f) Certain contingencies permitted

(1) General rule

If a trust would, but for a qualified contingency, meet the requirements of paragraph (1)(A) or (2)(A) of subsection (d), such trust shall be treated as meeting such requirements.

(2) Value determined without regard to qualified contingency

For purposes of determining the amount of any charitable contribution (or the actuarial value of any interest), a qualified contingency shall not be taken into account.

(3) Qualified contingency

For purposes of this subsection, the term ''qualified contingency'' means any provision of a trust which provides that, upon the happening of a contingency, the payments described in paragraph (1)(A) or (2)(A) of subsection (d) (as the case may be) will terminate not later than such payments would otherwise terminate under the trust.

(g) Qualified gratuitous transfer of qualified employer securities

(1) In general

For purposes of this section, the term ''qualified gratuitous transfer'' means a transfer of qualified employer securities to an employee stock ownership plan (as defined in section 4975(e)(7)) but only to the extent that—

(A) the securities transferred previously passed from a decedent dying before January 1, 1999, to a trust described in paragraph (1) or (2) of subsection (d),

(B) no deduction under section 404 is allowable with respect to such transfer,

(C) such plan contains the provisions required by paragraph (3),

(D) such plan treats such securities as being attributable to employer contributions but without regard to the limitations otherwise applicable to such contributions under section 404, and

(E) the employer whose employees are covered by the plan described in this paragraph files with the Secretary a verified written statement consenting to the application of sections 4978 and 4979A with respect to such employer.

(2) Exception

The term ''qualified gratuitous transfer'' shall not include a transfer of qualified employer securities to an employee stock ownership plan unless—

(A) such plan was in existence on August 1, 1996,

(B) at the time of the transfer, the decedent and members of the decedent's family (within the meaning of section 2032A(e)(2)) own (directly or through the application of section 318(a)) no more than 10 percent of the value of the stock of the corporation referred to in paragraph (4), and

(C) immediately after the transfer, such plan owns (after the application of section 318(a)(4)) at least 60 percent of the value of the outstanding stock of the corporation.

(3) Plan requirements

A plan contains the provisions required by this paragraph if such plan provides that—

(A) the qualified employer securities so transferred are allocated to plan participants in a manner consistent with section 401(a)(4),

(B) plan participants are entitled to direct the plan as to the manner in which such securities which are entitled to vote and are allocated to the account of such participant are to be voted,

(C) an independent trustee votes the securities so transferred which are not allocated to plan participants,

(D) each participant who is entitled to a distribution from the plan has the rights described in subparagraphs (A) and (B) of section 409(h)(1),

(E) such securities are held in a suspense account under the plan to be allocated each year, up to the applicable limitation under paragraph (7) (determined on the basis of fair market value of securities when allocated to participants), after first allocating all other annual additions for the limitation year, up to the limitations under sections 415(c) and (e),[1] and

(F) on termination of the plan, all securities so transferred which are not allocated to plan participants as of such termination are to be transferred to, or for the use of, an organization described in section 170(c).

For purposes of the preceding sentence, the term ''independent trustee'' means any trustee who is not a member of the family (within the meaning of section 2032A(e)(2)) of the decedent or a 5-percent shareholder. A plan shall not fail to be treated as meeting the requirements of section 401(a) by reason of meeting the requirements of this subsection.

(4) Qualified employer securities

For purposes of this section, the term ''qualified employer securities'' means employer securities (as defined in section 409(*l*)) which are issued by a domestic corporation—

(A) which has no outstanding stock which is readily tradable on an established securities market, and

[1] See References in Text note below.

(B) which has only 1 class of stock.

(5) Treatment of securities allocated by employee stock ownership plan to persons related to decedent or 5-percent shareholders

(A) In general

If any portion of the assets of the plan attributable to securities acquired by the plan in a qualified gratuitous transfer are allocated to the account of—

(i) any person who is related to the decedent (within the meaning of section 267(b)) or a member of the decedent's family (within the meaning of section 2032A(e)(2)), or

(ii) any person who, at the time of such allocation or at any time during the 1-year period ending on the date of the acquisition of qualified employer securities by the plan, is a 5-percent shareholder of the employer maintaining the plan,

the plan shall be treated as having distributed (at the time of such allocation) to such person or shareholder the amount so allocated.

(B) 5-percent shareholder

For purposes of subparagraph (A), the term ''5-percent shareholder'' means any person who owns (directly or through the application of section 318(a)) more than 5 percent of the outstanding stock of the corporation which issued such qualified employer securities or of any corporation which is a member of the same controlled group of corporations (within the meaning of section 409(*l*)(4)) as such corporation. For purposes of the preceding sentence, section 318(a) shall be applied without regard to the exception in paragraph (2)(B)(i) thereof.

(C) Cross reference

For excise tax on allocations described in subparagraph (A), see section 4979A.

(6) Tax on failure to transfer unallocated securities to charity on termination of plan

If the requirements of paragraph (3)(F) are not met with respect to any securities, there is hereby imposed a tax on the employer maintaining the plan in an amount equal to the sum of—

(A) the amount of the increase in the tax which would be imposed by chapter 11 if such securities were not transferred as described in paragraph (1), and

(B) interest on such amount at the underpayment rate under section 6621 (and compounded daily) from the due date for filing the return of the tax imposed by chapter 11.

(7) Applicable limitation

(A) In general

For purposes of paragraph (3)(E), the applicable limitation under this paragraph with respect to a participant is an amount equal to the lesser of—

(i) $30,000, or

(ii) 25 percent of the participant's compensation (as defined in section 415(c)(3)).

(B) Cost-of-living adjustment

The Secretary shall adjust annually the $30,000 amount under subparagraph (A)(i) at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter beginning October 1, 1993, and any increase under this subparagraph which is not a multiple of $5,000 shall be rounded to the next lowest multiple of $5,000.

(Added Pub. L. 91–172, title II, §201(e)(1), Dec. 30, 1969, 83 Stat. 562; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title X, §1022(d), July 18, 1984, 98 Stat. 1029; Pub. L. 105–34, title X, §1089(a)(1), (b)(1), (2), (4), title XV, §1530(a), (b), (c)(5), Aug. 5, 1997, 111 Stat. 960, 1075, 1078; Pub. L. 105–206, title VI, §6010(r), July 22, 1998, 112 Stat. 817; Pub. L. 106–554, §1(a)(7) [title III, §319(7)], Dec. 21, 2000, 114 Stat. 2763, 2763A–646; Pub. L. 107–16, title VI, §632(a)(3)(H), June 7, 2001, 115 Stat. 114; Pub. L. 109–280, title VIII, §868(a), Aug. 17, 2006, 120 Stat. 1025; Pub. L. 109–432, div. A, title IV, §424(a), Dec. 20, 2006, 120 Stat. 2974; Pub. L. 114–113, div. Q, title III, §344(a), Dec. 18, 2015, 129 Stat. 3115.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table under section 401 of this title.

REFERENCES IN TEXT

Section 415(e) of this title, referred to in subsec. (g)(3)(E), was repealed by Pub. L. 104–188, title I, §1452(a), Aug. 20, 1996, 110 Stat. 1816.

AMENDMENTS

2015—Subsec. (e). Pub. L. 114–113 substituted ''of interests'' for ''for purposes of charitable contribution'' in heading and inserted at end of text ''In the case of the early termination of a trust which is a charitable remainder unitrust by reason of subsection (d)(3), the valuation of interests in such trust for purposes of this section shall be made under rules similar to the rules of the preceding sentence.''

2006—Subsec. (c). Pub. L. 109–432 amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: ''A charitable remainder annuity trust and a charitable remainder unitrust shall, for any taxable year, not be subject to any tax imposed by this subtitle, unless such trust, for such year, has unrelated business taxable income (within the meaning of section 512, determined as if part III of subchapter F applied to such trust).''

Subsec. (g)(3)(E). Pub. L. 109–280 inserted ''(determined on the basis of fair market value of securities when allocated to participants)'' after ''paragraph (7)''.

2001—Subsec. (g)(3)(E). Pub. L. 107–16, §632(a)(3)(H)(i), substituted ''applicable limitation under paragraph (7)'' for ''limitations under section 415(c)''.

Subsec. (g)(7). Pub. L. 107–16, §632(a)(3)(H)(ii), added par. (7).

2000—Subsec. (d)(1)(C), (2)(C). Pub. L. 106–554 struck out period after ''(as defined by subsection (g))''. See 1997 Amendment notes below.

1998—Subsec. (d)(1)(C), (2)(C). Pub. L. 105–206 inserted '', and'' at end.

1997—Subsec. (d)(1)(A). Pub. L. 105–34, §1089(a)(1), inserted ''nor more than 50 percent'' after ''not less than 5 percent''.

Subsec. (d)(1)(B). Pub. L. 105–34, §1530(c)(5), inserted ''and other than qualified gratuitous transfers described in subparagraph (C)'' after ''subparagraph (A)''.

Pub. L. 105–34, §1089(b)(1), struck out ''and'' at end.

Subsec. (d)(1)(C). Pub. L. 105–34, §1530(a), which directed amendment of subpar. (C) by striking period at end and inserting ''or, to the extent the remainder in-

terest is in qualified employer securities (as defined in subsection (g)(4)), all or part of such securities are to be transferred to an employee stock ownership plan (as defined in section 4975(e)(7)) in a qualified gratuitous transfer (as defined by subsection (g)).'', was executed by making the insertion after ''for such a use'' to reflect the probable intent of Congress. Subpar. (C) did not contain a period after amendment by Pub. L. 105–34, § 1089(b)(1). See below.

Pub. L. 105–34, § 1089(b)(1), struck out period after ''for such a use''.

Subsec. (d)(1)(D). Pub. L. 105–34, § 1089(b)(1), added subpar. (D).

Subsec. (d)(2)(A). Pub. L. 105–34, § 1089(a)(1), inserted ''nor more than 50 percent'' after ''not less than 5 percent''.

Subsec. (d)(2)(B). Pub. L. 105–34, § 1530(c)(5), inserted ''and other than qualified gratuitous transfers described in subparagraph (C)'' after ''subparagraph (A)''.

Pub. L. 105–34, § 1089(b)(2), struck out ''and'' at end.

Subsec. (d)(2)(C). Pub. L. 105–34, § 1530(a), which directed amendment of subpar. (C) by striking period at end and inserting ''or, to the extent the remainder interest is in qualified employer securities (as defined in subsection (g)(4)), all or part of such securities are to be transferred to an employee stock ownership plan (as defined in section 4975(e)(7)) in a qualified gratuitous transfer (as defined by subsection (g)).'', was executed by making the insertion after ''for such a use'' to reflect the probable intent of Congress. Subpar. (C) did not contain a period after amendment by Pub. L. 105–34, § 1089(b)(2). See below.

Pub. L. 105–34, § 1089(b)(2), struck out period after ''for such a use''.

Subsec. (d)(2)(D). Pub. L. 105–34, § 1089(b)(2), added subpar. (D).

Subsec. (d)(4). Pub. L. 105–34, § 1089(b)(4), added par. (4).

Subsec. (g). Pub. L. 105–34, § 1530(b), added subsec. (g).

1984—Subsec. (f). Pub. L. 98–369 added subsec. (f).

1976—Subsec. (a). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114–113, div. Q, title III, § 344(b), Dec. 18, 2015, 129 Stat. 3115, provided that: ''The amendment made by this section [amending this section] shall apply to terminations of trusts occurring after the date of the enactment of this Act [Dec. 18, 2015].''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title IV, § 424(b), Dec. 20, 2006, 120 Stat. 2974, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2006.''

Pub. L. 109–280, title VIII, § 868(b), Aug. 17, 2006, 120 Stat. 1025, provided that: ''The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Aug. 17, 2006].''

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to years beginning after Dec. 31, 2001, see section 632(a)(4) of Pub. L. 107–16, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title X, § 1089(a)(2), Aug. 5, 1997, 111 Stat. 960, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to transfers in trust after June 18, 1997.''

Pub. L. 105–34, title X, § 1089(b)(6), Aug. 5, 1997, 111 Stat. 961, provided that:

''(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendments made by this subsection [amending this section and section 2055 of this title] shall apply to transfers in trust after July 28, 1997.

''(B) SPECIAL RULE FOR CERTAIN DECEDENTS.—The amendments made by this subsection shall not apply to transfers in trust under the terms of a will (or other testamentary instrument) executed on or before July 28, 1997, if the decedent—

''(i) dies before January 1, 1999, without having republished the will (or amended such instrument) by codicil or otherwise, or

''(ii) was on July 28, 1997, under a mental disability to change the disposition of his property and did not regain his competence to dispose of such property before the date of his death.''

Amendment by section 1530(a), (b), (c)(5) of Pub. L. 105–34 applicable to transfers made by trusts to, or for the use of, an employee stock ownership plan after Aug. 5, 1997, see section 1530(d) of Pub. L. 105–34, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369, applicable to transfers after Dec. 31, 1978, see section 1022(e)(2) of Pub. L. 98–369, set out as a note under section 2055 of this title.

EFFECTIVE DATE

Section applicable to transfers in trust made after July 31, 1969, see section 201(g)(5), set out as an Effective Date of 1969 Amendment note under section 170 of this title.

SUBPART D—TREATMENT OF EXCESS DISTRIBUTIONS BY TRUSTS

AMENDMENTS

1976—Pub. L. 94–455, title VII, § 701(g)(1), title X, § 1014(c), Oct. 4, 1976, 90 Stat. 1580, 1617, substituted in item 667 ''Treatment of amounts deemed distributed by trust in preceding years'' for ''Denial of refund to trusts; authorization of credit to beneficiaries'', in item 668 ''Interest charge on accumulation distributions from foreign trusts'' for ''Treatment of amounts deemed distributed in preceding years'', and struck out item 669 ''Treatment of capital gain deemed distributed in preceding years''.

1969—Pub. L. 91–172, title III, § 331(a), Dec. 30, 1969, 83 Stat. 592, struck out ''5'' after ''allocated to'' in item 666, inserted ''authorization of credit to beneficiaries'' in item 667, and substituted ''Treatment of capital gain deemed distributed in preceding years'' for ''Special rules applicable to certain foreign trusts'' in item 669.

1962—Pub. L. 87–834, § 7(i)(1), Oct. 16, 1962, 76 Stat. 988, added item 669.

§ 665. Definitions applicable to subpart D

(a) Undistributed net income

For purposes of this subpart, the term ''undistributed net income'' for any taxable year means the amount by which distributable net income of the trust for such taxable year exceeds the sum of—

(1) the amounts for such taxable year specified in paragraphs (1) and (2) of section 661(a), and

(2) the amount of taxes imposed on the trust attributable to such distributable net income.

(b) Accumulation distribution

For purposes of this subpart, except as provided in subsection (c), the term ''accumulation distribution'' means, for any taxable year of the trust, the amount by which—

(1) the amounts specified in paragraph (2) of section 661(a) for such taxable year, exceed

(2) distributable net income for such year reduced (but not below zero) by the amounts specified in paragraph (1) of section 661(a).

For purposes of section 667 (other than subsection (c) thereof, relating to multiple trusts), the amounts specified in paragraph (2) of section 661(a) shall not include amounts properly paid, credited, or required to be distributed to a beneficiary from a trust (other than a foreign trust) as income accumulated before the birth of such beneficiary or before such beneficiary attains the age of 21. If the amounts properly paid, credited, or required to be distributed by the trust for the taxable year do not exceed the income of the trust for such year, there shall be no accumulation distribution for such year.

(c) Exception for accumulation distributions from certain domestic trusts

For purposes of this subpart—

(1) In general

In the case of a qualified trust, any distribution in any taxable year beginning after the date of the enactment of this subsection shall be computed without regard to any undistributed net income.

(2) Qualified trust

For purposes of this subsection, the term ''qualified trust'' means any trust other than—

(A) a foreign trust (or, except as provided in regulations, a domestic trust which at any time was a foreign trust), or

(B) a trust created before March 1, 1984, unless it is established that the trust would not be aggregated with other trusts under section 643(f) if such section applied to such trust.

(d) Taxes imposed on the trust

For purposes of this subpart—

(1) In general

The term ''taxes imposed on the trust'' means the amount of the taxes which are imposed for any taxable year of the trust under this chapter (without regard to this subpart or part IV of subchapter A) and which, under regulations prescribed by the Secretary, are properly allocable to the undistributed portions of distributable net income and gains in excess of losses from sales or exchanges of capital assets. The amount determined in the preceding sentence shall be reduced by any amount of such taxes deemed distributed under section 666(b) and (c) to any beneficiary.

(2) Foreign trusts

In the case of any foreign trust, the term ''taxes imposed on the trust'' includes the amount, reduced as provided in the last sentence of paragraph (1), of any income, war profits, and excess profits taxes imposed by any foreign country or possession of the United States on such foreign trust which, as determined under paragraph (1), are so properly allocable. Under rules or regulations prescribed by the Secretary, in the case of any foreign trust of which the settlor or another person would be treated as owner of any portion of the trust under subpart E but for section 672(f), the term ''taxes imposed on the trust'' includes the allocable amount of any income, war profits, and excess profits taxes imposed by any foreign country or possession of the United States on the settlor or such other person in respect of trust income.

(e) Preceding taxable year

For purposes of this subpart—

(1) In the case of a foreign trust created by a United States person, the term ''preceding taxable year'' does not include any taxable year of the trust to which this part does not apply.

(2) In the case of a preceding taxable year with respect to which a trust qualified, without regard to this subpart, under the provisions of subpart B, for purposes of the application of this subpart to such trust for such taxable year, such trust shall, in accordance with regulations prescribed by the Secretary, be treated as a trust to which subpart C applies.

(Aug. 16, 1954, ch. 736, 68A Stat. 223; Pub. L. 87–834, §7(b), Oct. 16, 1962, 76 Stat. 985; Pub. L. 91–172, title III, §331(a), Dec. 30, 1969, 83 Stat. 592; Pub. L. 92–178, title III, §306(a), Dec. 10, 1971, 85 Stat. 524; Pub. L. 94–455, title VII, §§701(b), (c), (d)(2), (3), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1577, 1578, 1834; Pub. L. 95–600, title VII, §701(q)(1)(A), Nov. 6, 1978, 92 Stat. 2909; Pub. L. 99–514, title XVIII, §1847(b)(16), Oct. 22, 1986, 100 Stat. 2857; Pub. L. 101–508, title XI, §11802(f)(2), Nov. 5, 1990, 104 Stat. 1388–530; Pub. L. 104–188, title I, §1904(b)(1), (c)(2), Aug. 20, 1996, 110 Stat. 1912; Pub. L. 105–34, title V, §507(a), title XVI, §1604(g)(2), Aug. 5, 1997, 111 Stat. 856, 1099.)

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (c)(1), is the date of enactment of Pub. L. 105–34, which was approved Aug. 5, 1997.

AMENDMENTS

1997—Subsec. (b). Pub. L. 105–34, §507(a)(2), inserted ''except as provided in subsection (c),'' after ''subpart,'' in introductory provisions.

Subsec. (c). Pub. L. 105–34, §507(a)(1), added subsec. (c).

Subsec. (d)(1). Pub. L. 105–34, §1604(g)(2), struck out ''or 669(d) and (e)'' after ''666(b) and (c)''.

1996—Subsec. (c). Pub. L. 104–188, §1904(c)(2), struck out subsec. (c) which read as follows: ''SPECIAL RULE APPLICABLE TO DISTRIBUTIONS BY CERTAIN FOREIGN TRUSTS.—For purposes of this subpart, any amount paid to a United States person which is from a payor who is not a United States person and which is derived directly or indirectly from a foreign trust created by a United States person shall be deemed in the year of payment to have been directly paid by the foreign trust.''

Subsec. (d)(2). Pub. L. 104–188, §1904(b)(1), inserted at end ''Under rules or regulations prescribed by the Secretary, in the case of any foreign trust of which the set-

tlor or another person would be treated as owner of any portion of the trust under subpart E but for section 672(f), the term 'taxes imposed on the trust' includes the allocable amount of any income, war profits, and excess profits taxes imposed by any foreign country or possession of the United States on the settlor or such other person in respect of trust income.''

1990—Subsec. (e). Pub. L. 101–508 amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''For purposes of this subpart—

''(1) in the case of a trust (other than a foreign trust created by a United States person), the term 'preceding taxable year' does not include any taxable year of the trust—

''(A) which precedes by more than 5 years the taxable year of the trust in which an accumulation distribution is made, if it is made in a taxable year beginning before January 1, 1974, or

''(B) which begins before January 1, 1969, in the case of an accumulation distribution made during a taxable year beginning after December 31, 1973, and

''(2) in the case of a foreign trust created by a United States person, such term does not include any taxable year of the trust to which this part does not apply.

In the case of a preceding taxable year with respect to which a trust qualifies (without regard to this subpart) under the provisions of subpart B, for purposes of the application of this subpart to such trust for such taxable year, such trust shall, in accordance with regulations prescribed by the Secretary, be treated as a trust to which subpart C applies.''

1986—Subsec. (d)(1). Pub. L. 99–514 substituted ''part IV'' for ''subpart A of part IV''.

1978—Subsec. (d). Pub. L. 95–600 designated existing provisions as par. (1), defined ''taxes imposed on the trust'' to mean imposition of taxes without regard to subpart A of part IV of subchapter (A), and added par. (2).

1976—Subsec. (b). Pub. L. 94–455, § 701(b), (c), inserted provisions that for purposes of sec. 667 the amounts specified in par. (2) of sec. 661(a) not include amounts paid, credited, or required to be distributed to a beneficiary from a trust as income accumulated before the birth of such beneficiary or before such beneficiary reaches 21, and that if the amounts paid, credited, or required to be distributed by the trust for the taxable year do not exceed the income of the trust for such year, there be no accumulation distribution for such year.

Subsecs. (d), (e). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (e)(1). Pub. L. 94–455, § 701(d)(2), struck out provision that preceding taxable year does not include any taxable year of the trust which begins before Jan. 1, 1969, in the case of a capital gain distribution made during a taxable year beginning after Dec. 31, 1968.

Subsecs. (f), (g). Pub. L. 94–455, § 701(d)(3), struck out subsec. (f) which related to undistributed capital gains, and subsec. (g) which related to capital gain distribution.

1971—Subsec. (g). Pub. L. 92–178 struck out ''for such taxable year'' after ''undistributed capital gain'' in introductory text.

1969—Subsec. (a)(2). Pub. L. 91–172 inserted ''attributable to such distributable net income'' after ''on the trust''.

Subsec. (b). Pub. L. 91–172 substituted ''Accumulation distribution'' for ''Accumulation distributions of trusts other than certain foreign trusts'' in heading, combined existing provisions of subsecs. (b) and (c) defining ''accumulation distribution'' in the case of a trust (other than a foreign trust created by a United States person) and of a foreign trust created by a United States person, respectively, in provisions now designated as pars. (1) and (2), deleting ''the amount (if in excess of $2,000)'' before ''by which'' in introductory text and inserting ''(but not below zero)'' in par. (2), and deleted second sentence providing that for purposes of this subsection, the amount specified in par. (2) of section 661(a) shall be determined without regard to section 666 and excepting from ''accumulation distributions'': accumulations before birth or attainment of age 21; distributions for emergency needs; distributions, where beneficiary attained specified age or ages and there were not more than 4 distributions, at intervals of 4 or more years; and final distribution of trust was made more than 9 years after date of last transfer to the trust.

Subsec. (c). Pub. L. 91–172 substituted ''Special rule applicable to distributions by certain foreign trusts'' for ''Accumulation distribution of certain foreign trusts'' in heading, inserted introductory phrase ''For purposes of this subpart'', reenacted provisions of former third sentence as the subsection, struck out first sentence which defined in the case of a foreign trust created by a United States person the term ''accumulation distribution'', (see subsec. (b) of this section), and deleted second sentence which stated that ''For purposes of this subsection, the amount specified in paragraph (2) of section 661(a) shall be determined without regard to section 666.''

Subsec. (d). Pub. L. 91–172 substituted ''taxable year of the trust'' for ''taxable year on the trust'', ''allocable to the undistributed portions of distributable net income and gains to excess of losses from sales or exchanges of capital assets'' for ''allocable to the undistributed portion of the distributable net income'', and ''reduced by any amount of such taxes deemed distributed under section 666(b) and (c) or 669(d) and (e) to any beneficiary'' for ''reduced by any amount of such taxes allowed, under sections 667 and 668, as a credit to any beneficiary on account of any accumulation distribution determined for any taxable year''.

Subsec. (e). Pub. L. 91–172 substituted provisions of first sentence contained in pars. 1(A) to (C) and (2) for prior first sentence which read ''For purposes of this subpart, the term 'preceding taxable year' does not include any taxable year of the trust to which this part does not apply'' and reenacted provisions of second sentence.

Subsecs. (f), (g). Pub. L. 91–172 added subsecs. (f) and (g).

1962—Subsec. (b). Pub. L. 87–834, § 7(b)(1), substituted ''Accumulation distributions of trusts other than certain foreign trusts'' for ''Accumulation distribution'' in heading, and inserted ''in the case of a trust (other than a foreign trust created by a United States person),'' after ''purposes of this subpart,''.

Subsecs. (c) to (e). Pub. L. 87–834, § 7(b)(2), added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title V, § 507(c)(1), Aug. 5, 1997, 111 Stat. 857, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to distributions in taxable years beginning after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective Aug. 20, 1996, with exception for certain trusts, see section 1904(d) of Pub. L. 104–188, set out as a note under section 643 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title VII, § 701(q)(3)(A), Nov. 6, 1978, 92 Stat. 2910, provided that: ''The amendments made by paragraph (1) [amending this section and section 667 of this title] shall apply to distributions made in taxable years beginning after December 31, 1975.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 701(b), (c), (d)(2), (3) of Pub. L. 94–455 applicable to distributions made in taxable years beginning after Dec. 31, 1975, see section 701(h), set out as a note under section 667 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Pub. L. 92–178, title III, §306(a), Dec. 10, 1971, 85 Stat. 524, provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1968.

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title III, §331(d), Dec. 30, 1969, 83 Stat. 598, as amended by Pub. L. 92–178, title III, §306(b), Dec. 10, 1971, 85 Stat. 524; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) GENERAL RULE.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 663, 666 to 669, and 6401 of this title] shall apply to taxable years beginning after December 31, 1968.

''(2) EXCEPTIONS.—

''(A) Amounts paid, credited, or required to be distributed by a trust (other than a foreign trust created by a United States person) on or before the last day of a taxable year of the trust beginning before January 1, 1974, shall not be deemed to be accumulation distributions to the extent that such amounts were accumulated by a trust in taxable years of such trust beginning before January 1, 1969, and would have been excepted from the definition of an accumulation distribution by reason of paragraph (1), (2), (3), or (4) of section 665(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as in effect on December 31, 1968, if they had been distributed on the last day of the last taxable year of the trust beginning before January 1, 1969.

''(B) For taxable years of a trust beginning before January 1, 1970, the first sentence of section 666(a) of the Internal Revenue Code of 1986 (as amended by this section) shall not apply, and the amount of the accumulation distribution of the trust for such taxable years shall be deemed to be an amount within the meaning of paragraph (2) of section 661(a) distributed on the last day of each of the preceding taxable years to the extent that such amount exceeds the total of any undistributed net income for any taxable years intervening between the taxable year with respect of which the accumulation distribution is determined and such preceding taxable year.

''(C) In the case of a trust which was in existence on December 31, 1969, section 669 of the Internal Revenue Code of 1986, as amended by this section, shall not apply to capital gain distributions made to a beneficiary before January 1, 1973. If the beneficiary receives capital gain distributions from more than one such trust before January 1, 1973, the preceding sentence shall apply to capital gain distributions from only one such trust, such one to be designated by the taxpayer in accordance with regulations prescribed by the Secretary or his delegate. For purposes of the preceding sentence, capital gain distributions received from a trust qualifying under section 2056(b)(5) of the Internal Revenue Code of 1986 by a surviving spouse (who is the beneficiary of only one such trust) shall be disregarded.''

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87–834 applicable with respect to distributions made after Dec. 31, 1962, see section 7(j) of Pub. L. 87–834, set out as a note under section 643 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 666. Accumulation distribution allocated to preceding years

(a) Amount allocated

In the case of a trust which is subject to subpart C, the amount of the accumulation distribution of such trust for a taxable year shall be deemed to be an amount within the meaning of paragraph (2) of section 661(a) distributed on the last day of each of the preceding taxable years, commencing with the earliest of such years, to the extent that such amount exceeds the total of any undistributed net income for all earlier preceding taxable years. The amount deemed to be distributed in any such preceding taxable year under the preceding sentence shall not exceed the undistributed net income for such preceding taxable year. For purposes of this subsection, undistributed net income for each of such preceding taxable years shall be computed without regard to such accumulation distribution and without regard to any accumulation distribution determined for any succeeding taxable year.

(b) Total taxes deemed distributed

If any portion of an accumulation distribution for any taxable year is deemed under subsection (a) to be an amount within the meaning of paragraph (2) of section 661(a) distributed on the last day of any preceding taxable year, and such portion of such distribution is not less than the undistributed net income for such preceding taxable year, the trust shall be deemed to have distributed on the last day of such preceding taxable year an additional amount within the meaning of paragraph (2) of section 661(a). Such additional amount shall be equal to the taxes (other than the tax imposed by section 55) imposed on the trust for such preceding taxable year attributable to the undistributed net income. For purposes of this subsection, the undistributed net income and the taxes imposed on the trust for such preceding taxable year attributable to such undistributed net income shall be computed without regard to such accumulation distribution and without regard to any accumulation distribution determined for any succeeding taxable year.

(c) Pro rata portion of taxes deemed distributed

If any portion of an accumulation distribution for any taxable year is deemed under subsection (a) to be an amount within the meaning of paragraph (2) of section 661(a) distributed on the last day of any preceding taxable year and such portion of the accumulation distribution is less

than the undistributed net income for such preceding taxable year, the trust shall be deemed to have distributed on the last day of such preceding taxable year an additional amount within the meaning of paragraph (2) of section 661(a). Such additional amount shall be equal to the taxes (other than the tax imposed by section 55) imposed on the trust for such taxable year attributable to the undistributed net income multiplied by the ratio of the portion of the accumulation distribution to the undistributed net income of the trust for such year. For purposes of this subsection, the undistributed net income and the taxes imposed on the trust for such preceding taxable year attributable to such undistributed net income shall be computed without regard to the accumulation distribution and without regard to any accumulation distribution determined for any succeeding taxable year.

(d) Rule when information is not available

If adequate records are not available to determine the proper application of this subpart to an amount distributed by a trust, such amount shall be deemed to be an accumulation distribution consisting of undistributed net income earned during the earliest preceding taxable year of the trust in which it can be established that the trust was in existence.

(e) Denial of refund to trusts and beneficiaries

No refund or credit shall be allowed to a trust or a beneficiary of such trust for any preceding taxable year by reason of a distribution deemed to have been made by such trust in such year under this section.

(Aug. 16, 1954, ch. 736, 68A Stat. 224; Pub. L. 87–834, § 7(c), Oct. 16, 1962, 76 Stat. 986; Pub. L. 91–172, title III, § 331(a), Dec. 30, 1969, 83 Stat. 593; Pub. L. 94–455, title VII, § 701(a)(2), Oct. 4, 1976, 90 Stat. 1577; Pub. L. 95–600, title IV, § 421(d), Nov. 6, 1978, 92 Stat. 2875; Pub. L. 96–222, title I, § 104(a)(4)(H)(vi), Apr. 1, 1980, 94 Stat. 218.)

AMENDMENTS

1980—Subsec. (c). Pub. L. 96–222 inserted ''(other than the tax imposed by section 55)'' after ''equal to the taxes''.

1978—Subsec. (b). Pub. L. 95–600 inserted ''(other than the tax imposed by section 55)'' after ''equal to the taxes''.

1976—Subsec. (e). Pub. L. 94–455 added subsec. (e).

1969—Subsec. (a). Pub. L. 91–172 substituted in first sentence ''In the case of a trust which is subject to subpart (C)'' for ''In the case of a trust (other than a foreign trust created by a United States person) which for a taxable year beginning after December 31, 1953, is subject to subpart (C)'', ''for a taxable year'' for ''for such taxable year'', and ''undistributed net income for all earlier preceding taxable years'' for ''undistributed net incomes for any taxable years intervening between the taxable year with respect to which the accumulation distribution is determined and such preceding taxable year'' and in second sentence ''for such'' for ''of such'', inserted in first sentence '', commencing with the earliest of such years,'' after ''preceding taxable years'', struck out ''5'' before ''preceding taxable years'' in first and third sentences and last sentence which read as follows: ''In the case of a foreign trust created by a United States person, this subsection shall apply to the preceding taxable years of the trust without regard to any provision of the preceding sentences which would (but for this sentence) limit its application to the 5 preceding taxable years.''

Subsec. (b). Pub. L. 91–172 inserted ''attributable to the undistributed net income'' after ''taxable year'' in second sentence and ''attributable to such undistributed net income'' before ''shall be computed'' in third sentence.

Subsec. (c). Pub. L. 91–172 inserted ''attributable to the undistributed net income'' before ''multiplied by the ratio'' in second sentence and ''attributable to such undistributed net income'' before ''shall be computed'' in third sentence.

Subsec. (d). Pub. L. 91–172 added subsec. (d).

1962—Subsec. (a). Pub. L. 87–834 inserted ''(other than a foreign trust created by a United States person)'' after ''In the case of a trust'', and inserted sentence making this subsection applicable, in the case of a foreign trust created by a United States person, to the preceding taxable years of the trust without regard to any provision of the preceding sentences of this subsection which would (but for this sentence) limit its application to the 5 preceding taxable years.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 421(g) of Pub. L. 95–600, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable to distributions made in taxable years beginning after Dec. 31, 1975, see section 701(h) of Pub. L. 94–455, set out as a note under section 667 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1968, except that for taxable years of a trust beginning before Jan. 1, 1970, first sentence of subsec. (a) not applicable and amount of accumulation distribution stated, see section 331(d)(1), (2)(B) of Pub. L. 91–172, set out as a note under section 665 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable with respect to distributions made after Dec. 31, 1962, see section 7(j) of Pub. L. 87–834, set out as a note under section 643 of this title.

§ 667. Treatment of amounts deemed distributed by trust in preceding years

(a) General rule

The total of the amounts which are treated under section 666 as having been distributed by a trust in a preceding taxable year shall be included in the income of a beneficiary of the trust when paid, credited, or required to be distributed to the extent that such total would have been included in the income of such beneficiary under section 662(a)(2) (and, with respect to any tax-exempt interest to which section 103 applies, under section 662(b)) if such total had been paid to such beneficiary on the last day of such preceding taxable year. The tax imposed by this subtitle on a beneficiary for a taxable year in which any such amount is included in his income shall be determined only as provided in this section and shall consist of the sum of—

(1) a partial tax computed on the taxable income reduced by an amount equal to the total

of such amounts, at the rate and in the manner as if this section had not been enacted,

(2) a partial tax determined as provided in subsection (b) of this section, and

(3) in the case of a foreign trust, the interest charge determined as provided in section 668.

(b) Tax on distribution

(1) In general

The partial tax imposed by subsection (a)(2) shall be determined.

(A) by determining the number of preceding taxable years of the trust on the last day of which an amount is deemed under section 666(a) to have been distributed,

(B) by taking from the 5 taxable years immediately preceding the year of the accumulation distribution the 1 taxable year for which the beneficiary's taxable income was the highest and the 1 taxable year for which his taxable income was the lowest,

(C) by adding to the beneficiary's taxable income for each of the 3 taxable years remaining after the application of subparagraph (B) an amount determined by dividing the amount deemed distributed under section 666 and required to be included in income under subsection (a) by the number of preceding taxable years determined under subparagraph (A), and

(D) by determining the average increase in tax for the 3 taxable years referred to in subparagraph (C) resulting from the application of such subparagraph.

The partial tax imposed by subsection (a)(2) shall be the excess (if any) of the average increase in tax determined under subparagraph (D), multiplied by the number of preceding taxable years determined under subparagraph (A), over the amount of taxes (other than the amount of taxes described in section 665(d)(2)) deemed distributed to the beneficiary under sections 666(b) and (c).

(2) Treatment of loss years

For purposes of paragraph (1), the taxable income of the beneficiary for any taxable year shall be deemed to be not less than zero.

(3) Certain preceding taxable years not taken into account

For purposes of paragraph (1), if the amount of the undistributed net income deemed distributed in any preceding taxable year of the trust is less than 25 percent of the amount of the accumulation distribution divided by the number of preceding taxable years to which the accumulation distribution is allocated under section 666(a), the number of preceding taxable years of the trust with respect to which an amount is deemed distributed to a beneficiary under section 666(a) shall be determined without regard to such year.

(4) Effect of other accumulation distributions

In computing the partial tax under paragraph (1) for any beneficiary, the income of such beneficiary for each of his prior taxable years shall include amounts previously deemed distributed to such beneficiary in such year under section 666 as a result of prior accumulation distributions (whether from the same or another trust).

(5) Multiple distributions in the same taxable year

In the case of accumulation distributions made from more than one trust which are includible in the income of a beneficiary in the same taxable year, the distributions shall be deemed to have been made consecutively in whichever order the beneficiary shall determine.

(6) Adjustment in partial tax for estate and generation-skipping transfer taxes attributable to partial tax

(A) In general

The partial tax shall be reduced by an amount which is equal to the pre-death portion of the partial tax multiplied by a fraction—

(i) the numerator of which is that portion of the tax imposed by chapter 11 or 13, as the case may be, which is attributable (on a proportionate basis) to amounts included in the accumulation distribution, and

(ii) the denominator of which is the amount of the accumulation distribution which is subject to the tax imposed by chapter 11 or 13, as the case may be.

(B) Partial tax determined without regard to this paragraph

For purposes of this paragraph, the term ''partial tax'' means the partial tax imposed by subsection (a)(2) determined under this subsection without regard to this paragraph.

(C) Pre-death portion

For purposes of this paragraph, the pre-death portion of the partial tax shall be an amount which bears the same ratio to the partial tax as the portion of the accumulation distribution which is attributable to the period before the date of the death of the decedent or the date of the generation-skipping transfer bears to the total accumulation distribution.

(c) Special rule for multiple trusts

(1) In general

If, in the same prior taxable year of the beneficiary in which any part of the accumulation distribution from a trust (hereinafter in this paragraph referred to as ''third trust'') is deemed under section 666(a) to have been distributed to such beneficiary, some part of prior distributions by each of 2 or more other trusts is deemed under section 666(a) to have been distributed to such beneficiary, then subsections (b) and (c) of section 666 shall not apply with respect to such part of the accumulation distribution from such third trust.

(2) Accumulation distributions from trust not taken into account unless they equal or exceed $1,000

For purposes of paragraph (1), an accumulation distribution from a trust to a beneficiary shall be taken into account only if such distribution, when added to any prior accumulation distributions from such trust which are deemed under section 666(a) to have been distributed to such beneficiary for the same prior

taxable year of the beneficiary, equals or exceeds $1,000.

(d) Special rules for foreign trust

(1) Foreign tax deemed paid by beneficiary

(A) In general

In determining the increase in tax under subsection (b)(1)(D) for any computation year, the taxes described in section 665(d)(2) which are deemed distributed under section 666(b) or (c) and added under subsection (b)(1)(C) to the taxable income of the beneficiary for any computation year shall, except as provided in subparagraphs (B) and (C), be treated as a credit against the increase in tax for such computation year under subsection (b)(1)(D).

(B) Deduction in lieu of credit

If the beneficiary did not choose the benefits of subpart A of part III of subchapter N with respect to the computation year, the beneficiary may in lieu of treating the amounts described in subparagraph (A) (without regard to subparagraphs (C)) as a credit may treat such amounts as a deduction in computing the beneficiary's taxable income under subsection (b)(1)(C) for the computation year.

(C) Limitation on credit; retention of character

(i) Limitation on credit

For purposes of determining under subparagraph (A) the amount treated as a credit for any computation year, the limitations under subpart A of part III of subchapter N shall be applied separately with respect to amounts added under subsection (b)(1)(C) to the taxable income of the beneficiary for such computation year. For purposes of computing the increase in tax under subsection (b)(1)(D) for any computation year for which the beneficiary did not choose the benefits of subpart A of part III of subchapter N, the beneficiary shall be treated as having chosen such benefits for such computation year.

(ii) Retention of character

The items of income, deduction, and credit of the Trust shall retain their character (subject to the application of section 904(f)(5)) to the extent necessary to apply this paragraph.

(D) Computation year

For purposes of this paragraph, the term ''computation year'' means any of the three taxable years remaining after application of subsection (b)(1)(B).

(e) Retention of character of amounts distributed from accumulation trust to nonresident aliens and foreign corporations

In the case of a distribution from a trust to a nonresident alien individual or to a foreign corporation, the first sentence of subsection (a) shall be applied as if the reference to the determination of character under section 662(b) applied to all amounts instead of just to tax-exempt interest.

(Aug. 16, 1954, ch. 736, 68A Stat. 225; Pub. L. 91–172, title III, § 331(a), Dec. 30, 1969, 83 Stat. 594; Pub. L. 94–455, title VII, § 701(a)(1), title X, § 1014(a), Oct. 4, 1976, 90 Stat. 1575, 1617; Pub. L. 95–30, title I, § 102(b)(8), May 23, 1977, 91 Stat. 138; Pub. L. 95–600, title VII, §§ 701(q)(1)(B), (C), (r)(1), 702(*o*)(1), Nov. 6, 1978, 92 Stat. 2909, 2910, 2936; Pub. L. 99–514, title I, § 104(b)(10), Oct. 22, 1986, 100 Stat. 2105.)

AMENDMENTS

1986—Subsec. (b)(2). Pub. L. 99–514 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''For purposes of paragraph (1), the taxable income of the beneficiary for any taxable year shall be deemed to be not less than—

''(A) in the case of a beneficiary who is an individual, the zero bracket amount for such year, or

''(B) in the case of a beneficiary who is a corporation, zero.''

1978—Subsec. (b)(1). Pub. L. 95–600, § 701(q)(1)(C), inserted in last sentence ''(other than the amount of taxes described in section 665(d)(2))'' after ''taxes''.

Subsec. (b)(6). Pub. L. 95–600, § 702(*o*)(1), added par. (6).

Subsec. (d). Pub. L. 95–600, § 701(q)(1)(B), added subsec. (d).

Subsec. (e). Pub. L. 95–600, § 701(r)(1), added subsec. (e).

1977—Subsec. (b)(2). Pub. L. 95–30 substituted ''not less than (A) in the case of a beneficiary who is an individual, the zero bracket amount for such year, or (B) in the case of a beneficiary who is a corporation, zero'' for ''not less than zero''.

1976—Pub. L. 94–455, §§ 701(a)(1), 1014(a), substituted provisions relating to the treatment of amounts deemed distributed by trust in preceding years for provisions that no refund or credit be allowed to a trust for any preceding taxable year by reason of a distribution deemed to have been made by such trust in such year under section 666 or 669 and that there be allowed as a credit against the tax imposed by this subtitle on the beneficiary an amount equal to the amount of the taxes deemed distributed to such beneficiary by the trust under sections 666(b) and (c) and 669(d) and (e) during preceding taxable years of the trust on the last day of which the beneficiary was in being, reduced by the amount of the taxes deemed distributed to such beneficiary for such preceding taxable years to the extent that such taxes are taken into account under sections 668(b)(1) and 669(b) in determining the amount of the tax imposed by section 668. See section 666(e) of this title.

1969—Subsec. (a). Pub. L. 91–172 incorporated existing provisions of first sentence in provisions designated as subsec. (a), included distributions made under section 669 of this title, and struck out provisions for credit of taxes imposed on the trust against tax of beneficiary. See subsec. (b) of this section.

Subsec. (b). Pub. L. 91–172 incorporated provision of first sentence for credit of taxes imposed on the trust against tax of beneficiary, and provided for interest free credit and method of computation of its amount. The second sentence had provided that the amount of taxes which may not be refunded or credited to the trust shall be an amount equal to the excess of (1) the taxes imposed on the trust for any preceding taxable year (computed without regard to the accumulation distribution for the taxable year) over (2) the amount of taxes for such preceding taxable year imposed on the undistributed portion of distributable net income of the trust for such preceding taxable year after the application of this subpart on account of the accumulation distribution determined for such taxable year.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 701(q)(1)(B), (C) of Pub. L. 95–600 applicable to distributions made in taxable years beginning after Dec. 31, 1975, see section 701(q)(3)(A) of Pub. L. 95–600, set out as a note under section 665 of this title.

Pub. L. 95–600, title VII, § 702(*o*)(2), Nov. 6, 1978, 92 Stat. 2937, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply—

''(A) in the case of the tax imposed by chapter 11 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954, section 2001 et seq. of this title], to the estates of decedents dying after December 31, 1979, and

''(B) in the case of the tax imposed by chapter 13 [section 2601 et seq. of this title], to any generation-skipping transfer (within the meaning of section 2611(a) of such Code) made after June 11, 1976.''

Pub. L. 95–600, title VII, § 701(r)(2), Nov. 6, 1978, 92 Stat. 2911, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to distributions made in taxable years beginning after December 31, 1975.''

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title VII, § 701(h), Oct. 4, 1976, 90 Stat. 1580, provided that: ''The amendments made by subsections (a), (b), (c), (d), and (f) of this section [amending this section and sections 665, 666, 1302, and 6401 of this title and repealing sections 668 and 669 of this title] shall apply to distributions made in taxable years beginning after December 31, 1975. The amendments made by subsection (e) of this section [enacting section 644 of this title and amending section 641 of this title] shall apply to transfers in trust made after May 21, 1976.''

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1968, see section 331(d) of Pub. L. 91–172, set out as a note under section 665 of this title.

§ 668. Interest charge on accumulation distributions from foreign trusts

(a) General rule

For purposes of the tax determined under section 667(a)—

(1) Interest determined using underpayment rates

The interest charge determined under this section with respect to any distribution is the amount of interest which would be determined on the partial tax computed under section 667(b) for the period described in paragraph (2) using the rates and the method under section 6621 applicable to underpayments of tax.

(2) Period

For purposes of paragraph (1), the period described in this paragraph is the period which begins on the date which is the applicable number of years before the date of the distribution and which ends on the date of the distribution.

(3) Applicable number of years

For purposes of paragraph (2)—

(A) In general

The applicable number of years with respect to a distribution is the number determined by dividing—

(i) the sum of the products described in subparagraph (B) with respect to each undistributed income year, by

(ii) the aggregate undistributed net income.

The quotient determined under the preceding sentence shall be rounded under procedures prescribed by the Secretary.

(B) Product described

For purposes of subparagraph (A), the product described in this subparagraph with respect to any undistributed income year is the product of—

(i) the undistributed net income for such year, and

(ii) the sum of the number of taxable years between such year and the taxable year of the distribution (counting in each case the undistributed income year but not counting the taxable year of the distribution).

(4) Undistributed income year

For purposes of this subsection, the term ''undistributed income year'' means any prior taxable year of the trust for which there is undistributed net income, other than a taxable year during all of which the beneficiary receiving the distribution was not a citizen or resident of the United States.

(5) Determination of undistributed net income

Notwithstanding section 666, for purposes of this subsection, an accumulation distribution from the trust shall be treated as reducing proportionately the undistributed net income for undistributed income years.

(6) Periods before 1996

Interest for the portion of the period described in paragraph (2) which occurs before January 1, 1996, shall be determined—

(A) by using an interest rate of 6 percent, and

(B) without compounding until January 1, 1996.

(b) Limitation

The total amount of the interest charge shall not, when added to the total partial tax computed under section 667(b), exceed the amount of the accumulation distribution (other than the amount of tax deemed distributed by section 666(b) or (c)) in respect of which such partial tax was determined.

(c) Interest charge not deductible

The interest charge determined under this section shall not be allowed as a deduction for purposes of any tax imposed by this title.

(Added Pub. L. 94–455, title X, § 1014(b), Oct. 4, 1976, 90 Stat. 1617; amended Pub. L. 101–508, title XI, § 11802(f)(3), Nov. 5, 1990, 104 Stat. 1388–530; Pub. L. 104–188, title I, § 1906(a), Aug. 20, 1996, 110 Stat. 1914.)

PRIOR PROVISIONS

A prior section 668, acts Aug. 16, 1954, ch. 736, 68A Stat. 225; Oct. 16, 1962, Pub. L. 87–834, § 7(d), 76 Stat. 986;

Dec. 30, 1969, Pub. L. 91–172, title III, §331(a), 83 Stat. 594, related to treatment of amounts deemed distributed in preceding years, prior to repeal by Pub. L. 94–455, title VII, §701(a)(3), Oct. 4, 1976, 90 Stat. 1577. See section 667 of this title.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–188 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''For purposes of the tax determined under section 667(a), the interest charge is an amount equal to 6 percent of the partial tax computed under section 667(b) multiplied by a fraction—

''(1) the numerator of which is the sum of the number of taxable years between each taxable year to which the distribution is allocated under section 666(a) and the taxable year of the distribution (counting in each case the taxable year to which the distribution is allocated but not counting the taxable year of the distribution), and

''(2) the denominator of which is the number of taxable years to which the distribution is allocated under section 666(a).''

1990—Subsec. (c). Pub. L. 101–508 substituted heading for one which read ''Special rules'' and amended text generally, restating provisions of former par. (1) as entire subsection and striking out former par. (2) which provided that for purposes of this section, undistributed net income existing in a trust as of January 1, 1977, would be treated as allocated under section 666(a) to the first taxable year beginning after December 31, 1976.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1906(d)(1), Aug. 20, 1996, 110 Stat. 1916, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to distributions after the date of the enactment of this Act [Nov. 20, 1996].''

EFFECTIVE DATE

Pub. L. 94–455, title X, §1014(d), Oct. 4, 1976, 90 Stat. 1617, provided that: ''The amendments made by this section [enacting this section and amending section 667 of this title] shall apply to taxable years beginning after December 31, 1976.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

[§ 669. Repealed. Pub. L. 94–455, title VII, § 701(d)(1), Oct. 4, 1976, 90 Stat. 1578]

Section, acts Oct. 16, 1962, Pub. L. 87–834, §7(e), 76 Stat. 986; Dec. 30, 1969, Pub. L. 91–172, title III, §331(a), 83 Stat. 596, related to the treatment of capital gain deemed distributed in preceding years.

EFFECTIVE DATE OF REPEAL

Repeal applicable to distributions made in taxable years beginning after Dec. 31, 1975, see section 701(h) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 667 of this title.

SUBPART E—GRANTORS AND OTHERS TREATED AS SUBSTANTIAL OWNERS

Sec.
671. Trust income, deductions, and credits attributable to grantors and others as substantial owners.
672. Definitions and rules.
673. Reversionary interests.
674. Power to control beneficial enjoyment.
675. Administrative powers.
676. Power to revoke.
677. Income for benefit of grantor.
678. Person other than grantor treated as substantial owner.
679. Foreign trusts having one or more United States beneficiaries.

AMENDMENTS

1976—Pub. L. 94–455, title X, §1013(e)(1), Oct. 4, 1976, 90 Stat. 1616, added item 679.

§ 671. Trust income, deductions, and credits attributable to grantors and others as substantial owners

Where it is specified in this subpart that the grantor or another person shall be treated as the owner of any portion of a trust, there shall then be included in computing the taxable income and credits of the grantor or the other person those items of income, deductions, and credits against tax of the trust which are attributable to that portion of the trust to the extent that such items would be taken into account under this chapter in computing taxable income or credits against the tax of an individual. Any remaining portion of the trust shall be subject to subparts A through D. No items of a trust shall be included in computing the taxable income and credits of the grantor or of any other person solely on the grounds of his dominion and control over the trust under section 61 (relating to definition of gross income) or any other provision of this title, except as specified in this subpart.

(Aug. 16, 1954, ch. 736, 68A Stat. 226.)

CERTAIN ENTITIES NOT TREATED AS CORPORATIONS

Pub. L. 99–514, title VI, §646, Oct. 22, 1986, 100 Stat. 2292, as amended by Pub. L. 100–647, title I, §1006(k), Nov. 10, 1988, 102 Stat. 3411, provided that:

''(a) GENERAL RULE.—For purposes of the Internal Revenue Code of 1986, if the entity described in subsection (b) makes an election under subsection (c), such entity shall be treated as a trust to which subpart E of part 1 of subchapter J of chapter 1 of such Code applies.

''(b) ENTITY.—An entity is described in this subsection if—

''(1) such entity was created in 1906 as a common law trust and is governed by the trust laws of the State of Minnesota,

''(2) such entity is exclusively engaged in the leasing of mineral property and activities incidental thereto, and

''(3) income interests in such entity are publicly traded as of October 22, 1986, on a national stock exchange.

''(c) ELECTION.—

''(1) IN GENERAL.—An election under this subsection to have the provisions of this section apply—

''(A) shall be made by the board of trustees of the entity before January 1, 1991, and

''(B) shall not be valid unless accompanied by an agreement described in paragraph (2).

''(2) AGREEMENT.—

''(A) IN GENERAL.—The agreement described in this paragraph is a written agreement signed by the board of trustees of the entity which provides that the entity will not acquire any additional property other than property described in subparagraph (B).

''(B) PERMISSIBLE ACQUISITIONS.—Property is described in this paragraph if it is—

''(i) surface rights to property the acquisition of which—

''(I) is necessary to mine mineral rights held on October 22, 1986, and

''(II) is required by a written binding agreement between the entity and an unrelated person entered into on or before October 22, 1986,

''(ii) surface rights to property which are not described in clause (i) and which—

''(I) are acquired in an exchange to which section 1031 [probably means section 1031 of this title] applies, and

''(II) are necessary to mine mineral rights held on October 22, 1986,

''(iii) tangible personal property incidental to the leasing of mineral property and activities incidental thereto, or

''(iv) part of any required reserves of the entity.

''(3) BEGINNING OF PERIOD FOR WHICH ELECTION IS IN EFFECT.—The period during which an election is in effect under this subsection shall begin on the 1st day of the 1st taxable year beginning after the date of the enactment of this Act [Oct. 22, 1986] and following the taxable year in which the election is made.

''(4) MANNER OF ELECTION.—Any election under this subsection shall be made in such manner as the Secretary of the Treasury or his delegate may prescribe.

''(d) SPECIAL RULES FOR TAXATION OF TRUST.—

''(1) ELECTION TREATED AS A LIQUIDATION.—If an election is made under subsection (c) with respect to any entity—

''(A) such entity shall be treated as having been liquidated into a trust immediately before the period described in subsection (c)(3) in a liquidation to which section 333 of the Internal Revenue Code of 1954 (as in effect before the amendments made by this Act) applies, and

''(B) for purposes of section 333 of such Code (as so in effect)—

''(i) any person holding an income interest in such entity as of such time shall be treated as a qualified electing shareholder, and

''(ii) the earnings and profits, and the value of money or stock or securities, of such entity shall be apportioned ratably among persons described in clause (i).

The amendments made by subtitle D of this title [subtitle D (§§ 631–634) of title VI of Pub. L. 99–514, see Tables for classification] and section 1804 of this Act [see Tables for classification] shall not apply to any liquidation under this paragraph.

''(2) TERMINATION OF ELECTION.—If an entity ceases to be described in subsection (b) or violates any term of the agreement described in subsection (c)(2), the entity shall, for purposes of the Internal Revenue Code of 1986, be treated as a corporation for the taxable year in which such cessation or violation occurs and for all subsequent taxable years.

''(3) TRUST CEASING TO EXIST.—Paragraph (2) shall not apply if the trust ceases to be described in subsection (b) or violates the agreement in subsection (c)(2) because the trust ceases to exist.

''(e) SPECIAL RULE FOR PERSONS HOLDING INCOME INTERESTS.—In applying subpart E of part I of subchapter J of chapter 1 of the Internal Revenue Code of 1986 to any entity to which this section applies—

''(1) a reversionary interest shall not be taken into account until it comes into possession, and

''(2) all items of income, gain, loss, deduction, and credit shall be allocated to persons holding income interests for the period of the allocation.''

§ 672. Definitions and rules

(a) Adverse party

For purposes of this subpart, the term ''adverse party'' means any person having a substantial beneficial interest in the trust which would be adversely affected by the exercise or nonexercise of the power which he possesses respecting the trust. A person having a general power of appointment over the trust property shall be deemed to have a beneficial interest in the trust.

(b) Nonadverse party

For purposes of this subpart, the term ''nonadverse party'' means any person who is not an adverse party.

(c) Related or subordinate party

For purposes of this subpart, the term ''related or subordinate party'' means any nonadverse party who is—

(1) the grantor's spouse if living with the grantor;

(2) any one of the following: The grantor's father, mother, issue, brother or sister; an employee of the grantor; a corporation or any employee of a corporation in which the stock holdings of the grantor and the trust are significant from the viewpoint of voting control; a subordinate employee of a corporation in which the grantor is an executive.

For purposes of subsection (f) and sections 674 and 675, a related or subordinate party shall be presumed to be subservient to the grantor in respect of the exercise or nonexercise of the powers conferred on him unless such party is shown not to be subservient by a preponderance of the evidence.

(d) Rule where power is subject to condition precedent

A person shall be considered to have a power described in this subpart even though the exercise of the power is subject to a precedent giving of notice or takes effect only on the expiration of a certain period after the exercise of the power.

(e) Grantor treated as holding any power or interest of grantor's spouse

(1) In general

For purposes of this subpart, a grantor shall be treated as holding any power or interest held by—

(A) any individual who was the spouse of the grantor at the time of the creation of such power or interest, or

(B) any individual who became the spouse of the grantor after the creation of such power or interest, but only with respect to periods after such individual became the spouse of the grantor.

(2) Marital status

For purposes of paragraph (1)(A), an individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

(f) Subpart not to result in foreign ownership

(1) In general

Notwithstanding any other provision of this subpart, this subpart shall apply only to the extent such application results in an amount (if any) being currently taken into account (directly or through 1 or more entities) under this chapter in computing the income of a citizen or resident of the United States or a domestic corporation.

(2) Exceptions

(A) Certain revocable and irrevocable trusts

Paragraph (1) shall not apply to any portion of a trust if—

(i) the power to revest absolutely in the grantor title to the trust property to which such portion is attributable is exercisable solely by the grantor without the approval or consent of any other person or with the consent of a related or subordinate party who is subservient to the grantor, or

(ii) the only amounts distributable from such portion (whether income or corpus) during the lifetime of the grantor are amounts distributable to the grantor or the spouse of the grantor.

(B) Compensatory trusts

Except as provided in regulations, paragraph (1) shall not apply to any portion of a trust distributions from which are taxable as compensation for services rendered.

(3) Special rules

Except as otherwise provided in regulations prescribed by the Secretary—

(A) a controlled foreign corporation (as defined in section 957) shall be treated as a domestic corporation for purposes of paragraph (1), and

(B) paragraph (1) shall not apply for purposes of applying section 1297.

(4) Recharacterization of purported gifts

In the case of any transfer directly or indirectly from a partnership or foreign corporation which the transferee treats as a gift or bequest, the Secretary may recharacterize such transfer in such circumstances as the Secretary determines to be appropriate to prevent the avoidance of the purposes of this subsection.

(5) Special rule where grantor is foreign person

If—

(A) but for this subsection, a foreign person would be treated as the owner of any portion of a trust, and

(B) such trust has a beneficiary who is a United States person,

such beneficiary shall be treated as the grantor of such portion to the extent such beneficiary has made (directly or indirectly) transfers of property (other than in a sale for full and adequate consideration) to such foreign person. For purposes of the preceding sentence, any gift shall not be taken into account to the extent such gift would be excluded from taxable gifts under section 2503(b).

(6) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, including regulations providing that paragraph (1) shall not apply in appropriate cases.

(Aug. 16, 1954, ch. 736, 68A Stat. 226; Pub. L. 99–514, title XIV, § 1401(a), Oct. 22, 1986, 100 Stat. 2711; Pub. L. 100–647, title I, § 1014(a)(1), Nov. 10, 1988, 102 Stat. 3559; Pub. L. 101–508, title XI, § 11343(a), Nov. 5, 1990, 104 Stat. 1388–472; Pub. L. 104–188, title I, § 1904(a), Aug. 20, 1996, 110 Stat. 1910; Pub. L. 105–206, title VI, § 6011(c)(1), July 22, 1998, 112 Stat. 818.)

AMENDMENTS

1998—Subsec. (f)(3)(B). Pub. L. 105–206 substituted ''section 1297'' for ''section 1296''.

1996—Subsec. (c). Pub. L. 104–188, § 1904(a)(2), inserted ''subsection (f) and'' before ''sections 674'' in closing provisions.

Subsec. (f). Pub. L. 104–188, § 1904(a)(1), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: ''SPECIAL RULE WHERE GRANTOR IS FOREIGN PERSON.—

''(1) IN GENERAL.—If—

''(A) but for this subsection, a foreign person would be treated as the owner of any portion of a trust, and

''(B) such trust has a beneficiary who is a United States person,

such beneficiary shall be treated as the grantor of such portion to the extent such beneficiary has made transfers of property by gift (directly or indirectly) to such foreign person. For purposes of the preceding sentence, any gift shall not be taken into account to the extent such gift would be excluded from taxable gifts under section 2503(b).

''(2) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection.''

1990—Subsec. (f). Pub. L. 101–508 added subsec. (f).

1988—Subsec. (e). Pub. L. 100–647 amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''For purposes of this subpart, if a grantor's spouse is living with the grantor at the time of the creation of any power or interest held by such spouse, the grantor shall be treated as holding such power or interest.''

1986—Subsec. (e). Pub. L. 99–514 added subsec. (e).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective Aug. 20, 1996, with exception for certain trusts, see section 1904(d) of Pub. L. 104–188, set out as a note under section 643 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, § 11343(b), Nov. 5, 1990, 104 Stat. 1388–472, provided that: ''The amendments made by this section [amending this section] shall apply to—

''(1) any trust created after the date of the enactment of this Act [Nov. 5, 1990], and

''(2) any portion of a trust created on or before such date which is attributable to amounts contributed to the trust after such date.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XIV, § 1401(b), Oct. 22, 1986, 100 Stat. 2711, provided that: ''The amendment made by this section [amending this section] shall apply with respect to transfers in trust made after March 1, 1986.''

§ 673. Reversionary interests

(a) General rule

The grantor shall be treated as the owner of any portion of a trust in which he has a reversionary interest in either the corpus or the income therefrom, if, as of the inception of that portion of the trust, the value of such interest exceeds 5 percent of the value of such portion.

(b) Reversionary interest taking effect at death of minor lineal descendant beneficiary

In the case of any beneficiary who—

(1) is a lineal descendant of the grantor, and

(2) holds all of the present interests in any portion of a trust,

the grantor shall not be treated under subsection (a) as the owner of such portion solely by reason of a reversionary interest in such portion which takes effect upon the death of such beneficiary before such beneficiary attains age 21.

(c) Special rule for determining value of reversionary interest

For purposes of subsection (a), the value of the grantor's reversionary interest shall be determined by assuming the maximum exercise of discretion in favor of the grantor.

(d) Postponement of date specified for reacquisition

Any postponement of the date specified for the reacquisition of possession or enjoyment of the reversionary interest shall be treated as a new transfer in trust commencing with the date on which the postponement is effective and terminating with the date prescribed by the postponement. However, income for any period shall not be included in the income of the grantor by reason of the preceding sentence if such income would not be so includible in the absence of such postponement.

(Aug. 16, 1954, ch. 736, 68A Stat. 227; Pub. L. 91–172, title II, § 201(c), Dec. 30, 1969, 83 Stat. 560; Pub. L. 99–514, title XIV, § 1402(a), Oct. 22, 1986, 100 Stat. 2711; Pub. L. 100–647, title I, § 1014(b), Nov. 10, 1988, 102 Stat. 3559.)

AMENDMENTS

1988—Subsecs. (c), (d). Pub. L. 100–647 added subsecs. (c) and (d).

1986—Pub. L. 99–514 amended section generally, substituting ''the value of such interest exceeds 5 percent of the value of such portion'' for ''the interest will or may reasonably be expected to take effect in possession or enjoyment within 10 years commencing with the date of the transfer of that portion of the trust'' in subsec. (a), adding subsec. (b), striking out subsec. (c) which provided that the grantor not be treated under subsec. (a) as the owner of any portion of a trust where his reversionary interest in such portion was not to take effect in possession or enjoyment until the death of the persons to whom the income therefrom was payable, and subsec. (d) which provided that any postponement of the date specified for the reacquisition of possession or enjoyment of the reversionary interest be treated as a new transfer in trust commencing with the date on which the postponement was effected and terminating with the date prescribed by the postponement.

1969—Subsec. (b). Pub. L. 91–172 struck out provisions relating to trusts where the income was payable to a charitable beneficiary for at least a two-year period.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XIV, § 1402(c), Oct. 22, 1986, 100 Stat. 2712, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 674, 676, and 677 of this title] shall apply with respect to transfers in trust made after March 1, 1986.

''(2) TRANSFERS PURSUANT TO PROPERTY SETTLEMENT AGREEMENT.—The amendments made by this section shall not apply to any transfer in trust made after March 1, 1986, pursuant to a binding property settlement agreement entered into on or before March 1, 1986, which required the taxpayer to establish a grantor trust and for the transfer of a specified sum of money or property to the trust by the taxpayer. This paragraph shall apply only to the extent of the amount required to be transferred under the agreement described in the preceding sentence.''

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to transfers in trust made after April 22, 1969, see section 201(g)(3) of Pub. L. 91–172, set out as a note under section 170 of this title.

§ 674. Power to control beneficial enjoyment

(a) General rule

The grantor shall be treated as the owner of any portion of a trust in respect of which the beneficial enjoyment of the corpus or the income therefrom is subject to a power of disposition, exercisable by the grantor or a nonadverse party, or both, without the approval or consent of any adverse party.

(b) Exceptions for certain powers

Subsection (a) shall not apply to the following powers regardless of by whom held:

(1) Power to apply income to support of a dependent

A power described in section 677(b) to the extent that the grantor would not be subject to tax under that section.

(2) Power affecting beneficial enjoyment only after occurrence of event

A power, the exercise of which can only affect the beneficial enjoyment of the income for a period commencing after the occurrence of an event such that a grantor would not be treated as the owner under section 673 if the power were a reversionary interest; but the grantor may be treated as the owner after the occurrence of the event unless the power is relinquished.

(3) Power exercisable only by will

A power exercisable only by will, other than a power in the grantor to appoint by will the income of the trust where the income is accumulated for such disposition by the grantor or may be so accumulated in the discretion of the grantor or a nonadverse party, or both, without the approval or consent of any adverse party.

(4) Power to allocate among charitable beneficiaries

A power to determine the beneficial enjoyment of the corpus or the income therefrom if the corpus or income is irrevocably payable for a purpose specified in section 170(c) (relating to definition of charitable contributions) or to an employee stock ownership plan (as defined in section 4975(e)(7)) in a qualified gratuitous transfer (as defined in section 664(g)(1)).

(5) Power to distribute corpus

A power to distribute corpus either—

(A) to or for a beneficiary or beneficiaries or to or for a class of beneficiaries (whether or not income beneficiaries) provided that the power is limited by a reasonably definite standard which is set forth in the trust instrument; or

(B) to or for any current income beneficiary, provided that the distribution of corpus must be chargeable against the proportionate share of corpus held in trust for the payment of income to the beneficiary as if the corpus constituted a separate trust.

A power does not fall within the powers described in this paragraph if any person has a power to add to the beneficiary or beneficiaries or to a class of beneficiaries designated to receive the income or corpus, except where such action is to provide for after-born or after-adopted children.

(6) Power to withhold income temporarily

A power to distribute or apply income to or for any current income beneficiary or to accumulate the income for him, provided that any accumulated income must ultimately be payable—

(A) to the beneficiary from whom distribution or application is withheld, to his estate, or to his appointees (or persons named as alternate takers in default of appointment) provided that such beneficiary possesses a power of appointment which does not exclude from the class of possible appointees any person other than the beneficiary, his estate, his creditors, or the creditors of his estate, or

(B) on termination of the trust, or in conjunction with a distribution of corpus which is augmented by such accumulated income, to the current income beneficiaries in shares which have been irrevocably specified in the trust instrument.

Accumulated income shall be considered so payable although it is provided that if any beneficiary does not survive a date of distribution which could reasonably have been expected to occur within the beneficiary's lifetime, the share of the deceased beneficiary is to be paid to his appointees or to one or more designated alternate takers (other than the grantor or the grantor's estate) whose shares have been irrevocably specified. A power does not fall within the powers described in this paragraph if any person has a power to add to the beneficiary or beneficiaries or to a class of beneficiaries designated to receive the income or corpus except where such action is to provide for after-born or after-adopted children.

(7) Power to withhold income during disability of a beneficiary

A power exercisable only during—

(A) the existence of a legal disability of any current income beneficiary, or

(B) the period during which any income beneficiary shall be under the age of 21 years,

to distribute or apply income to or for such beneficiary or to accumulate and add the income to corpus. A power does not fall within the powers described in this paragraph if any person has a power to add to the beneficiary or beneficiaries or to a class of beneficiaries designated to receive the income or corpus, except where such action is to provide for after-born or after-adopted children.

(8) Power to allocate between corpus and income

A power to allocate receipts and disbursements as between corpus and income, even though expressed in broad language.

(c) Exception for certain powers of independent trustees

Subsection (a) shall not apply to a power solely exercisable (without the approval or consent of any other person) by a trustee or trustees, none of whom is the grantor, and no more than half of whom are related or subordinate parties who are subservient to the wishes of the grantor—

(1) to distribute, apportion, or accumulate income to or for a beneficiary or beneficiaries, or to, for, or within a class of beneficiaries; or

(2) to pay out corpus to or for a beneficiary or beneficiaries or to or for a class of beneficiaries (whether or not income beneficiaries).

A power does not fall within the powers described in this subsection if any person has a power to add to the beneficiary or beneficiaries or to a class of beneficiaries designated to receive the income or corpus, except where such action is to provide for after-born or after-adopted children. For periods during which an individual is the spouse of the grantor (within the meaning of section 672(e)(2)), any reference in this subsection to the grantor shall be treated as including a reference to such individual.

(d) Power to allocate income if limited by a standard

Subsection (a) shall not apply to a power solely exercisable (without the approval or consent of any other person) by a trustee or trustees, none of whom is the grantor or spouse living with the grantor, to distribute, apportion, or accumulate income to or for a beneficiary or beneficiaries, or to, for, or within a class of beneficiaries, whether or not the conditions of paragraph (6) or (7) of subsection (b) are satisfied, if such power is limited by a reasonably definite external standard which is set forth in the trust instrument. A power does not fall within the powers described in this subsection if any person has a power to add to the beneficiary or beneficiaries or to a class of beneficiaries designated to receive the income or corpus except where such action is to provide for after-born or after-adopted children.

(Aug. 16, 1954, ch. 736, 68A Stat. 227; Pub. L. 99–514, title XIV, § 1402(b)(1), Oct. 22, 1986, 100 Stat. 2712; Pub. L. 100–647, title I, § 1014(a)(3), Nov. 10, 1988, 102 Stat. 3559; Pub. L. 105–34, title XV, § 1530(c)(6), Aug. 5, 1997, 111 Stat. 1078.)

AMENDMENTS

1997—Subsec. (b)(4). Pub. L. 105–34 inserted before period ''or to an employee stock ownership plan (as defined in section 4975(e)(7)) in a qualified gratuitous transfer (as defined in section 664(g)(1))''.

1988—Subsec. (c). Pub. L. 100–647 inserted at end ''For periods during which an individual is the spouse of the grantor (within the meaning of section 672(e)(2)), any reference in this subsection to the grantor shall be treated as including a reference to such individual.''

1986—Subsec. (b)(2). Pub. L. 99–514 substituted ''occurrence of event'' for ''expiration of 10-year period'' in heading and in text substituted ''the occurrence of an event'' for ''the expiration of a period'' and ''the occurrence of the event'' for ''the expiration of the period''.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to transfers made by trusts to, or for the use of, an employee stock ownership plan after Aug. 5, 1997, see section 1530(d) of Pub. L. 105–34, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable with respect to transfers in trust made after Mar. 1, 1986, except for transfers pursuant to a certain binding property settlement agreement, see section 1402(c) of Pub. L. 99–514, set out as a note under section 673 of this title.

§ 675. Administrative powers

The grantor shall be treated as the owner of any portion of a trust in respect of which—

(1) Power to deal for less than adequate and full consideration

A power exercisable by the grantor or a non-adverse party, or both, without the approval or consent of any adverse party enables the grantor or any person to purchase, exchange, or otherwise deal with or dispose of the corpus or the income therefrom for less than an adequate consideration in money or money's worth.

(2) Power to borrow without adequate interest or security

A power exercisable by the grantor or a non-adverse party, or both, enables the grantor to borrow the corpus or income, directly or indirectly, without adequate interest or without adequate security except where a trustee (other than the grantor) is authorized under a general lending power to make loans to any person without regard to interest or security.

(3) Borrowing of the trust funds

The grantor has directly or indirectly borrowed the corpus or income and has not completely repaid the loan, including any interest, before the beginning of the taxable year. The preceding sentence shall not apply to a loan which provides for adequate interest and adequate security, if such loan is made by a trustee other than the grantor and other than a related or subordinate trustee subservient to the grantor. For periods during which an individual is the spouse of the grantor (within the meaning of section 672(e)(2)), any reference in this paragraph to the grantor shall be treated as including a reference to such individual.

(4) General powers of administration

A power of administration is exercisable in a nonfiduciary capacity by any person without the approval or consent of any person in a fiduciary capacity. For purposes of this paragraph, the term ''power of administration'' means any one or more of the following powers: (A) a power to vote or direct the voting of stock or other securities of a corporation in which the holdings of the grantor and the trust are significant from the viewpoint of voting control; (B) a power to control the investment of the trust funds either by directing investments or reinvestments, or by vetoing proposed investments or reinvestments, to the extent that the trust funds consist of stocks or securities of corporations in which the holdings of the grantor and the trust are significant from the viewpoint of voting control; or (C) a power to reacquire the trust corpus by substituting other property of an equivalent value.

(Aug. 16, 1954, ch. 736, 68A Stat. 229; Pub. L. 100–647, title I, § 1014(a)(2), Nov. 10, 1988, 102 Stat. 3559.)

AMENDMENTS

1988—Par. (3). Pub. L. 100–647 inserted at end ''For periods during which an individual is the spouse of the grantor (within the meaning of section 672(e)(2)), any reference in this paragraph to the grantor shall be treated as including a reference to such individual.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

§ 676. Power to revoke

(a) General rule

The grantor shall be treated as the owner of any portion of a trust, whether or not he is treated as such owner under any other provision of this part, where at any time the power to revest in the grantor title to such portion is exercisable by the grantor or a non-adverse party, or both.

(b) Power affecting beneficial enjoyment only after occurrence of event

Subsection (a) shall not apply to a power the exercise of which can only affect the beneficial enjoyment of the income for a period commencing after the occurrence of an event such that a grantor would not be treated as the owner under section 673 if the power were a reversionary interest. But the grantor may be treated as the owner after the occurrence of such event unless the power is relinquished.

(Aug. 16, 1954, ch. 736, 68A Stat. 230; Pub. L. 99–514, title XIV, § 1402(b)(2), Oct. 22, 1986, 100 Stat. 2712.)

AMENDMENTS

1986—Subsec. (b)(2). Pub. L. 99–514 substituted ''occurrence of event'' for ''expiration of 10-year period'' in heading and in text substituted ''the occurrence of an event'' for ''the expiration of a period'' and ''the occurrence of such event'' for ''the expiration of such period''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable with respect to transfers in trust made after Mar. 1, 1986, except for transfers pursuant to a certain binding property settlement agreement, see section 1402(c) of Pub. L. 99–514, set out as a note under section 673 of this title.

§ 677. Income for benefit of grantor

(a) General rule

The grantor shall be treated as the owner of any portion of a trust, whether or not he is treated as such owner under section 674, whose income without the approval or consent of any adverse party is, or, in the discretion of the grantor or a nonadverse party, or both, may be—

(1) distributed to the grantor or the grantor's spouse;

(2) held or accumulated for future distribution to the grantor or the grantor's spouse; or

(3) applied to the payment of premiums on policies of insurance on the life of the grantor or the grantor's spouse (except policies of insurance irrevocably payable for a purpose specified in section 170(c) (relating to definition of charitable contributions)).

This subsection shall not apply to a power the exercise of which can only affect the beneficial enjoyment of the income for a period commencing after the occurrence of an event such that the grantor would not be treated as the owner under section 673 if the power were a reversionary interest; but the grantor may be treated as the owner after the occurrence of the event unless the power is relinquished.

(b) Obligations of support

Income of a trust shall not be considered taxable to the grantor under subsection (a) or any other provision of this chapter merely because such income in the discretion of another person, the trustee, or the grantor acting as trustee or co-trustee, may be applied or distributed for the support or maintenance of a beneficiary (other than the grantor's spouse) whom the grantor is legally obligated to support or maintain, except to the extent that such income is so applied or distributed. In cases where the amounts so applied or distributed are paid out of corpus or out of other than income for the taxable year, such amounts shall be considered to be an amount paid or credited within the meaning of paragraph (2) of section 661(a) and shall be taxed to the grantor under section 662.

(Aug. 16, 1954, ch. 736, 68A Stat. 230; Pub. L. 91–172, title III, § 332(a), Dec. 30, 1969, 83 Stat. 599; Pub. L. 99–514, title XIV, § 1402(b)(3), Oct. 22, 1986, 100 Stat. 2712.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–514 substituted ''the occurrence of an event'' for ''the expiration of a period'' and ''the occurrence of the event'' for ''the expiration of the period'' in last sentence.

1969—Subsec. (a)(1) to (3). Pub. L. 91–172, § 332(a)(1), inserted ''or the grantor's spouse'' after ''the grantor'' in pars. (1), (2), and (3).

Subsec. (b). Pub. L. 91–172, § 332(a)(2), inserted ''(other than the grantor's spouse)'' after ''beneficiary''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable with respect to transfers in trust made after Mar. 1, 1986, except for transfers pursuant to a certain binding property settlement agreement, see section 1402(c) of Pub. L. 99–514, set out as a note under section 673 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title III, § 332(b), Dec. 30, 1969, 83 Stat. 599, provided that: ''The amendments made by subsection (a) [amending this section] shall apply in respect of property transferred in trust after October 9, 1969.''

§ 678. Person other than grantor treated as substantial owner

(a) General rule

A person other than the grantor shall be treated as the owner of any portion of a trust with respect to which:

(1) such person has a power exercisable solely by himself to vest the corpus or the income therefrom in himself, or

(2) such person has previously partially released or otherwise modified such a power and after the release or modification retains such control as would, within the principles of sections 671 to 677, inclusive, subject a grantor of a trust to treatment as the owner thereof.

(b) Exception where grantor is taxable

Subsection (a) shall not apply with respect to a power over income, as originally granted or thereafter modified, if the grantor of the trust or a transferor (to whom section 679 applies) is otherwise treated as the owner under the provisions of this subpart other than this section.

(c) Obligations of support

Subsection (a) shall not apply to a power which enables such person, in the capacity of trustee or cotrustee, merely to apply the income of the trust to the support or maintenance of a person whom the holder of the power is obligated to support or maintain except to the extent that such income is so applied. In cases where the amounts so applied or distributed are paid out of corpus or out of other than income of the taxable year, such amounts shall be considered to be an amount paid or credited within the meaning of paragraph (2) of section 661(a) and shall be taxed to the holder of the power under section 662.

(d) Effect of renunciation or disclaimer

Subsection (a) shall not apply with respect to a power which has been renounced or disclaimed within a reasonable time after the holder of the power first became aware of its existence.

(e) Cross reference

For provision under which beneficiary of trust is treated as owner of the portion of the trust which consists of stock in an S corporation, see section 1361(d).

(Aug. 16, 1954, ch. 736, 68A Stat. 231; Pub. L. 94–455, title X, § 1013(b), Oct. 4, 1976, 90 Stat. 1615;

Pub. L. 97–448, title I, §102(i)(2), Jan. 12, 1983, 96 Stat. 2373; Pub. L. 106–554, §1(a)(7) [title III, §319(8)(A)], Dec. 21, 2000, 114 Stat. 2763, 2763A–646.)

AMENDMENTS

2000—Subsec. (e). Pub. L. 106–554 substituted ''an S corporation'' for ''an electing small business corporation''.

1983—Subsec. (e). Pub. L. 97–448 added subsec. (e).

1976—Subsec. (b). Pub. L. 94–455 substituted ''if the grantor of the trust or a transferor (to whom section 679 applies) is otherwise treated as the owner under the provisions of this subpart other than this section'' for ''if the grantor of the trust is otherwise treated as the owner under sections 671 to 677, inclusive''.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment by Pub. L. 94–455, see section 1013(f)(1) of Pub. L. 94–455, set out as an Effective Date note under section 679 of this title.

§ 679. Foreign trusts having one or more United States beneficiaries

(a) Transferor treated as owner

(1) In general

A United States person who directly or indirectly transfers property to a foreign trust (other than a trust described in section 6048(a)(3)(B)(ii)) shall be treated as the owner for his taxable year of the portion of such trust attributable to such property if for such year there is a United States beneficiary of any portion of such trust.

(2) Exceptions

Paragraph (1) shall not apply—

(A) Transfers by reason of death

To any transfer by reason of the death of the transferor.

(B) Transfers at fair market value

To any transfer of property to a trust in exchange for consideration of at least the fair market value of the transferred property. For purposes of the preceding sentence, consideration other than cash shall be taken into account at its fair market value.

(3) Certain obligations not taken into account under fair market value exception

(A) In general

In determining whether paragraph (2)(B) applies to any transfer by a person described in clause (ii) or (iii) of subparagraph (C), there shall not be taken into account—

(i) except as provided in regulations, any obligation of a person described in subparagraph (C), and

(ii) to the extent provided in regulations, any obligation which is guaranteed by a person described in subparagraph (C).

(B) Treatment of principal payments on obligation

Principal payments by the trust on any obligation referred to in subparagraph (A) shall be taken into account on and after the date of the payment in determining the portion of the trust attributable to the property transferred.

(C) Persons described

The persons described in this subparagraph are—

(i) the trust,

(ii) any grantor, owner, or beneficiary of the trust, and

(iii) any person who is related (within the meaning of section 643(i)(2)(B)) to any grantor, owner, or beneficiary of the trust.

(4) Special rules applicable to foreign grantor who later becomes a United States person

(A) In general

If a nonresident alien individual has a residency starting date within 5 years after directly or indirectly transferring property to a foreign trust, this section and section 6048 shall be applied as if such individual transferred to such trust on the residency starting date an amount equal to the portion of such trust attributable to the property transferred by such individual to such trust in such transfer.

(B) Treatment of undistributed income

For purposes of this section, undistributed net income for periods before such individual's residency starting date shall be taken into account in determining the portion of the trust which is attributable to property transferred by such individual to such trust but shall not otherwise be taken into account.

(C) Residency starting date

For purposes of this paragraph, an individual's residency starting date is the residency starting date determined under section 7701(b)(2)(A).

(5) Outbound trust migrations

If—

(A) an individual who is a citizen or resident of the United States transferred property to a trust which was not a foreign trust, and

(B) such trust becomes a foreign trust while such individual is alive,

then this section and section 6048 shall be applied as if such individual transferred to such trust on the date such trust becomes a foreign trust an amount equal to the portion of such trust attributable to the property previously transferred by such individual to such trust. A rule similar to the rule of paragraph (4)(B) shall apply for purposes of this paragraph.

(b) Trusts acquiring United States beneficiaries

If—

(1) subsection (a) applies to a trust for the transferor's taxable year, and

(2) subsection (a) would have applied to the trust for his immediately preceding taxable year but for the fact that for such preceding taxable year there was no United States beneficiary for any portion of the trust,

then, for purposes of this subtitle, the transferor shall be treated as having income for the tax-

able year (in addition to his other income for such year) equal to the undistributed net income (at the close of such immediately preceding taxable year) attributable to the portion of the trust referred to in subsection (a).

(c) Trusts treated as having a United States beneficiary

(1) In general

For purposes of this section, a trust shall be treated as having a United States beneficiary for the taxable year unless—

(A) under the terms of the trust, no part of the income or corpus of the trust may be paid or accumulated during the taxable year to or for the benefit of a United States person, and

(B) if the trust were terminated at any time during the taxable year, no part of the income or corpus of such trust could be paid to or for the benefit of a United States person.

For purposes of subparagraph (A), an amount shall be treated as accumulated for the benefit of a United States person even if the United States person's interest in the trust is contingent on a future event.

(2) Attribution of ownership

For purposes of paragraph (1), an amount shall be treated as paid or accumulated to or for the benefit of a United States person if such amount is paid to or accumulated for a foreign corporation, foreign partnership, or foreign trust or estate, and—

(A) in the case of a foreign corporation, such corporation is a controlled foreign corporation (as defined in section 957(a)),

(B) in the case of a foreign partnership, a United States person is a partner of such partnership, or

(C) in the case of a foreign trust or estate, such trust or estate has a United States beneficiary (within the meaning of paragraph (1)).

(3) Certain United States beneficiaries disregarded

A beneficiary shall not be treated as a United States person in applying this section with respect to any transfer of property to foreign trust if such beneficiary first became a United States person more than 5 years after the date of such transfer.

(4) Special rule in case of discretion to identify beneficiaries

For purposes of paragraph (1)(A), if any person has the discretion (by authority given in the trust agreement, by power of appointment, or otherwise) of making a distribution from the trust to, or for the benefit of, any person, such trust shall be treated as having a beneficiary who is a United States person unless—

(A) the terms of the trust specifically identify the class of persons to whom such distributions may be made, and

(B) none of those persons are United States persons during the taxable year.

(5) Certain agreements and understandings treated as terms of the trust

For purposes of paragraph (1)(A), if any United States person who directly or indirectly transfers property to the trust is directly or indirectly involved in any agreement or understanding (whether written, oral, or otherwise) that may result in the income or corpus of the trust being paid or accumulated to or for the benefit of a United States person, such agreement or understanding shall be treated as a term of the trust.

(6) Uncompensated use of trust property treated as a payment

For purposes of this subsection, a loan of cash or marketable securities (or the use of any other trust property) directly or indirectly to or by any United States person (whether or not a beneficiary under the terms of the trust) shall be treated as paid or accumulated for the benefit of a United States person. The preceding sentence shall not apply to the extent that the United States person repays the loan at a market rate of interest (or pays the fair market value of the use of such property) within a reasonable period of time.

(d) Presumption that foreign trust has United States beneficiary

If a United States person directly or indirectly transfers property to a foreign trust (other than a trust described in section 6048(a)(3)(B)(ii)), the Secretary may treat such trust as having a United States beneficiary for purposes of applying this section to such transfer unless such person—

(1) submits such information to the Secretary as the Secretary may require with respect to such transfer, and

(2) demonstrates to the satisfaction of the Secretary that such trust satisfies the requirements of subparagraphs (A) and (B) of subsection (c)(1).

(e) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

(Added Pub. L. 94–455, title X, § 1013(a), Oct. 4, 1976, 90 Stat. 1614; amended Pub. L. 96–603, § 2(b), Dec. 28, 1980, 94 Stat. 3509; Pub. L. 104–188, title I, § 1903(a)–(f), Aug. 20, 1996, 110 Stat. 1909, 1910; Pub. L. 105–34, title XVI, § 1601(i)(2), Aug. 5, 1997, 111 Stat. 1093; Pub. L. 105–206, title VI, § 6018(g), July 22, 1998, 112 Stat. 823; Pub. L. 111–147, title V, §§ 531, 532(a), 533(c), Mar. 18, 2010, 124 Stat. 113, 114.)

AMENDMENTS

2010—Subsec. (c)(1). Pub. L. 111–147, § 531(a), inserted concluding provisions.

Subsec. (c)(4), (5). Pub. L. 111–147, § 531(b), (c), added pars. (4) and (5).

Subsec. (c)(6). Pub. L. 111–147, § 533(c), added par. (6).

Subsecs. (d), (e). Pub. L. 111–147, § 532(a), added subsec. (d) and redesignated former subsec. (d) as (e).

1998—Subsec. (a)(1). Pub. L. 105–206 provided that the amendment made by section 1903(b) of Pub. L. 104–188 shall be applied as if ''or'' in the material proposed to be stricken were capitalized. See 1996 Amendment note below.

1997—Subsec. (a)(3)(C)(ii), (iii). Pub. L. 105–34 inserted '', owner,'' after ''grantor''.

1996—Subsec. (a)(1). Pub. L. 104–188, § 1903(b), which directed that subsec. (a) of this section be amended by substituting ''section 6048(a)(3)(B)(ii)'' for ''section

404(a)(4) or 404A'', was executed to par. (1) by making the substitution for ''section 404(a)(4) Or section 404A'' to reflect the probable intent of Congress. See 1998 Amendment note above.

Subsec. (a)(2)(B). Pub. L. 104–188, §1903(a)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''TRANSFERS WHERE GAIN IS RECOGNIZED TO TRANSFEROR.—To any sale or exchange of the property at its fair market value in a transaction in which all of the gain to the transferor is realized at the time of the transfer and is recognized either at such time or is returned as provided in section 453.''

Subsec. (a)(3). Pub. L. 104–188, §1903(a)(2), added par. (3).

Subsec. (a)(4), (5). Pub. L. 104–188, §1903(c), added pars. (4) and (5).

Subsec. (c)(2)(A). Pub. L. 104–188, §1903(e), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''in the case of a foreign corporation, more than 50 percent of the total combined voting power of all classes of stock entitled to vote of such corporation is owned (within the meaning of section 958(a)) or is considered to be owned (within the meaning of section 958(b)) by United States shareholders (as defined in section 951(b)),''.

Subsec. (c)(3). Pub. L. 104–188, §1903(d), added par. (3).

Subsec. (d). Pub. L. 104–188, §1903(f), added subsec. (d).

1980—Subsec. (a)(1). Pub. L. 96–603 inserted ''Or section 404A'' after ''section 404(a)(4)''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–147, title V, §532(b), Mar. 18, 2010, 124 Stat. 114, provided that: ''The amendments made by this section [amending this section] shall apply to transfers of property after the date of the enactment of this Act [Mar. 18, 2010].''

Amendment by section 533(c) of Pub. L. 111–147 applicable to loans made, and uses of property, after Mar. 18, 2010, see section 533(e) of Pub. L. 111–147, set out as a note under section 643 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 6018 of Pub. L. 105–206 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which such amendment relates, see section 6018(h) of Pub. L. 105–206, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1903(g), Aug. 20, 1996, 110 Stat. 1910, provided that: ''The amendments made by this section [amending this section] shall apply to transfers of property after February 6, 1995.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–603 applicable with respect to employer contributions or accruals for taxable years beginning after Dec. 31, 1979, election to apply amendments retroactively with respect to foreign subsidiaries, allowance or prior deductions in case of certain funded branch plans, and time and manner for making elections, see section 2(e) of Pub. L. 96–603, set out as an Effective Date note under section 404A of this title.

EFFECTIVE DATE

Pub. L. 94–455, title X, §1013(f)(1), Oct. 4, 1976, 90 Stat. 1616, provided that: ''The amendments made by this section (other than subsection (c)) [enacting this section and amending sections 643, 678, 6048, and 6678 of this title] shall apply to taxable years ending after December 31, 1975, but only in the case of—

''(A) foreign trusts created after May 21, 1974, and

''(B) transfers of property to foreign trusts after May 21, 1974.''

SUBPART F—MISCELLANEOUS

AMENDMENT OF ANALYSIS

Pub. L. 115–97, title I, §11051(b)(1)(C), (c), Dec. 22, 2017, 131 Stat. 2089, 2090, provided that, applicable to any divorce or separation instrument (as defined in former section 71(b)(2) of this title as in effect before Dec. 22, 2017) executed after Dec. 31, 2018, and to such instruments executed on or before Dec. 31, 2018, and modified after Dec. 31, 2018, if the modification expressly provides that the amendment made by section 11051 of Pub. L. 115–97 applies to such modification, this analysis is amended by striking item 682. See 2017 Amendment note below.

AMENDMENTS

2017—Pub. L. 115–97, title I, §11051(b)(1)(C), Dec. 22, 2017, 131 Stat. 2089, struck out item 682 ''Income of an estate or trust in case of divorce, etc.''

2010—Pub. L. 111–312, title III, §301(a), Dec. 17, 2010, 124 Stat. 3300, amended analysis to read as if amendment by Pub. L. 107–16, §542(e)(1)(D), had never been enacted. See 2001 Amendment note below.

2001—Pub. L. 107–16, title V, §542(e)(1)(D), June 7, 2001, 115 Stat. 85, inserted ''and nonresident aliens'' after ''estates'' in item 684.

1997—Pub. L. 105–34, title XI, §1131(c)(6), title XIII, §1309(b), Aug. 5, 1997, 111 Stat. 980, 1043, added items 684 and 685.

1976—Pub. L. 94–455, title XXI, §2131(e)(2), Oct. 4, 1976, 90 Stat. 1924, substituted ''Use of trust as an exchange fund'' for ''Applicability of provisions'' in item 683.

§ 681. Limitation on charitable deduction

(a) Trade or business income

In computing the deduction allowable under section 642(c) to a trust, no amount otherwise allowable under section 642(c) as a deduction shall be allowed as a deduction with respect to income of the taxable year which is allocable to its unrelated business income for such year. For purposes of the preceding sentence, the term ''unrelated business income'' means an amount equal to the amount which, if such trust were exempt from tax under section 501(a) by reason of section 501(c)(3), would be computed as its unrelated business taxable income under section 512 (relating to income derived from certain business activities and from certain property acquired with borrowed funds).

(b) Cross reference

For disallowance of certain charitable, etc., deductions otherwise allowable under section 642(c), see sections 508(d) and 4948(c)(4).

(Aug. 16, 1954, ch. 736, 68A Stat. 232; Pub. L. 90–630, §6(b), Oct. 22, 1968, 82 Stat. 1330; Pub. L. 91–172, title I, §§101(j)(18), (19), 121(d)(2)(B), Dec. 30, 1969, 83 Stat. 528, 547.)

AMENDMENTS

1969—Subsec. (a). Pub. L. 91–172, § 121(d)(2)(B), substituted reference to certain property acquired with borrowed funds for reference to certain leases.

Subsec. (b). Pub. L. 91–172, § 101(j)(18), (19), redesignated subsec. (d) as (b) and substituted ''sections 518(d) and 4948(c)(4)'' for ''section 503(e)''. Former subsec. (b), dealing generally with the operation of trusts, was struck out.

Subsec. (c). Pub. L. 91–172, § 101(j)(18), struck out subsec. (c) dealing with accumulated income.

Subsec. (d). Pub. L. 91–172, § 101(j)(19), redesignated subsec. (d) as (b).

1968—Subsec. (c). Pub. L. 90–630 inserted provision that par. (1) does not apply to income attributable to property transferred to a trust before January 1, 1951, by the creator thereof if the trust was irrevocable on such date and if the income is required to be accumulated pursuant to the mandatory terms of the instrument creating the trust.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 101(j)(18), (19) of Pub. L. 91–172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

Amendment by section 121(d)(2)(B) of Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 121(g) of Pub. L. 91–172, set out as a note under section 511 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Pub. L. 90–630, § 6(c), Oct. 22, 1968, 82 Stat. 1330, provided that: ''The amendments made by subsection (a) [amending section 504 of this title] and (b) [amending this section] shall apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954. For purposes of sections 3814 and 162(g)(4) of the Internal Revenue Code of 1939, provisions having the same effect as such amendments shall be treated as included in such sections effective with respect to taxable years beginning after December 31, 1950.''

§ 682. Income of an estate or trust in case of divorce, etc.

(a) Inclusion in gross income of wife

There shall be included in the gross income of a wife who is divorced or legally separated under a decree of divorce or of separate maintenance (or who is separated from her husband under a written separation agreement) the amount of the income of any trust which such wife is entitled to receive and which, except for this section, would be includible in the gross income of her husband, and such amount shall not, despite any other provision of this subtitle, be includible in the gross income of such husband. This subsection shall not apply to that part of any such income of the trust which the terms of the decree, written separation agreement, or trust instrument fix, in terms of an amount of money or a portion of such income, as a sum which is payable for the support of minor children of such husband. In case such income is less than the amount specified in the decree, agreement, or instrument, for the purpose of applying the preceding sentence, such income, to the extent of such sum payable for such support, shall be considered a payment for such support.

(b) Wife considered a beneficiary

For purposes of computing the taxable income of the estate or trust and the taxable income of a wife to whom subsection (a) applies, such wife shall be considered as the beneficiary specified in this part.

(c) Cross reference

For definitions of "husband" and "wife", as used in this section, see section 7701(a)(17).

(Aug. 16, 1954, ch. 736, 68A Stat. 234; Pub. L. 98–369, div. A, title IV, § 422(d)(2), July 18, 1984, 98 Stat. 798.)

REPEAL OF SECTION

Pub. L. 115–97, title I, § 11051(b)(1)(C), (c), Dec. 22, 2017, 131 Stat. 2089, 2090, provided that, applicable to any divorce or separation instrument (as defined in former section 71(b)(2) of this title as in effect before Dec. 22, 2017) executed after Dec. 31, 2018, and to such instruments executed on or before Dec. 31, 2018, and modified after Dec. 31, 2018, if the modification expressly provides that the amendment made by section 11051 of Pub. L. 115–97 applies to such modification, this section is repealed.

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–369 struck out ''or section 71'' after ''subsection (a)'' and struck out provision that a periodic payment under section 71 to any portion of which this part applied shall be included in the gross income of the beneficiary in the taxable year in which under this part such portion is required to be included.

EFFECTIVE DATE OF REPEAL

Repeal applicable to any divorce or separation instrument (as defined in former section 71(b)(2) of this title as in effect before Dec. 22, 2017) executed after Dec. 31, 2018, and to such instruments executed on or before Dec. 31, 2018, and modified after Dec. 31, 2018, if the modification expressly provides that the amendment made by section 11051 of Pub. L. 115–97 applies to such modification, see section 11051(c) of Pub. L. 115–97, set out as an Effective Date of 2017 Amendment note under section 61 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable with respect to divorce or separation instruments executed after Dec. 31, 1984, or executed before Jan. 1, 1985, but modified on or after Jan. 1, 1985, with express provision for application of amendment to modification, see section 422(e)(1), (2) of Pub. L. 98–369, set out as a note under section 71 of this title.

§ 683. Use of trust as an exchange fund

(a) General rule

Except as provided in subsection (b), if property is transferred to a trust in exchange for an interest in other trust property and if the trust would be an investment company (within the meaning of section 351) if it were a corporation, then gain shall be recognized to the transferor.

(b) Exception for pooled income funds

Subsection (a) shall not apply to any transfer to a pooled income fund (within the meaning of section 642(c)(5)).

(Aug. 16, 1954, ch. 736, 68A Stat. 235; Pub. L. 94–455, title XXI, § 2131(e)(1), Oct. 4, 1976, 90 Stat. 1924.)

AMENDMENTS

1976—Pub. L. 94–455 substituted provisions relating to use of trust as an exchange fund for provisions setting forth rule that this part applies only to taxable years

beginning after Dec. 31, 1953, and ending after the date of the enactment of this title and exceptions thereto.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment of section by Pub. L. 94–455 effective on Apr. 8, 1976, in taxable years ending on or after such date, see section 2131(f)(6) of Pub. L. 94–455, set out as a note under section 584 of this title.

§ 684. Recognition of gain on certain transfers to certain foreign trusts and estates

(a) In general

Except as provided in regulations, in the case of any transfer of property by a United States person to a foreign estate or trust, for purposes of this subtitle, such transfer shall be treated as a sale or exchange for an amount equal to the fair market value of the property transferred, and the transferor shall recognize as gain the excess of—

(1) the fair market value of the property so transferred, over

(2) the adjusted basis (for purposes of determining gain) of such property in the hands of the transferor.

(b) Exception

Subsection (a) shall not apply to a transfer to a trust by a United States person to the extent that any person is treated as the owner of such trust under section 671.

(c) Treatment of trusts which become foreign trusts

If a trust which is not a foreign trust becomes a foreign trust, such trust shall be treated for purposes of this section as having transferred, immediately before becoming a foreign trust, all of its assets to a foreign trust.

(Added Pub. L. 105–34, title XI, § 1131(b), Aug. 5, 1997, 111 Stat. 978; amended Pub. L. 107–16, title V, § 542(e)(1)(A)–(C), June 7, 2001, 115 Stat. 84, 85; Pub. L. 111–312, title III, § 301(a), Dec. 17, 2010, 124 Stat. 3300.)

CODIFICATION

Another section 1131(b) of Pub. L. 105–34 amended sections 367, 721, and 1035 of this title.

AMENDMENTS

2010—Pub. L. 111–312 amended catchline, introductory provisions of subsec. (a), and subsec. (b) to read as if amendment by Pub. L. 107–16, § 542(e)(1)(A)–(C), had never been enacted. See 2001 Amendment note below. Prior to amendment, subsec. (b) read as follows: ''EXCEPTIONS.—

''(1) TRANSFERS TO CERTAIN TRUSTS.—Subsection (a) shall not apply to a transfer to a trust by a United States person to the extent that any United States person is treated as the owner of such trust under section 671.

''(2) LIFETIME TRANSFERS TO NONRESIDENT ALIENS.—Subsection (a) shall not apply to a lifetime transfer to a nonresident alien.''

2001—Pub. L. 107–16, § 542(e)(1)(A)–(C), amended section by inserting ''and nonresident aliens'' after ''estates'' in section catchline and ''or to a nonresident alien'' after ''or trust'' in introductory provisions of subsec. (a) and amending subsec. (b) generally. Prior to amendment, text of subsec. (b) read as follows: ''Subsection (a) shall not apply to a transfer to a trust by a United States person to the extent that any person is treated as the owner of such trust under section 671.''

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–312 applicable to estates of decedents dying, and transfers made after Dec. 31, 2009, except as otherwise provided, see section 301(e) of Pub. L. 111–312, set out as an Effective and Termination Dates of 2010 Amendment note under section 121 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to transfers after Dec. 31, 2009, see section 542(f)(2) of Pub. L. 107–16, set out as a note under section 121 of this title.

§ 685. Treatment of funeral trusts

(a) In general

In the case of a qualified funeral trust—

(1) subparts B, C, D, and E shall not apply, and

(2) no deduction shall be allowed by section 642(b).

(b) Qualified funeral trust

For purposes of this subsection, the term ''qualified funeral trust'' means any trust (other than a foreign trust) if—

(1) the trust arises as a result of a contract with a person engaged in the trade or business of providing funeral or burial services or property necessary to provide such services,

(2) the sole purpose of the trust is to hold, invest, and reinvest funds in the trust and to use such funds solely to make payments for such services or property for the benefit of the beneficiaries of the trust,

(3) the only beneficiaries of such trust are individuals with respect to whom such services or property are to be provided at their death under contracts described in paragraph (1),

(4) the only contributions to the trust are contributions by or for the benefit of such beneficiaries,

(5) the trustee elects the application of this subsection, and

(6) the trust would (but for the election described in paragraph (5)) be treated as owned under subpart E by the purchasers of the contracts described in paragraph (1).

A trust shall not fail to be treated as meeting the requirement of paragraph (6) by reason of the death of an individual but only during the 60-day period beginning on the date of such death.

(c) Application of rate schedule

Section 1(e) shall be applied to each qualified funeral trust by treating each beneficiary's interest in each such trust as a separate trust.

(d) Treatment of amounts refunded to purchaser on cancellation

No gain or loss shall be recognized to a purchaser of a contract described in subsection (b)(1) by reason of any payment from such trust to such purchaser by reason of cancellation of such contract. If any payment referred to in the preceding sentence consists of property other than money, the basis of such property in the hands of such purchaser shall be the same as the trust's basis in such property immediately before the payment.

(e) Simplified reporting

The Secretary may prescribe rules for simplified reporting of all trusts having a single

trustee and of trusts terminated during the year.

(Added Pub. L. 105–34, title XIII, § 1309(a), Aug. 5, 1997, 111 Stat. 1042; amended Pub. L. 105–206, title VI, § 6013(b), July 22, 1998, 112 Stat. 820; Pub. L. 110–317, § 9(a), (b), Aug. 29, 2008, 122 Stat. 3530.)

AMENDMENTS

2008—Subsecs. (c) to (f). Pub. L. 110–317 redesignated subsecs. (d) to (f) as (c) to (e), respectively, and struck out former subsec. (c), which related to dollar limitation on contributions to qualified funeral trusts.

1998—Subsec. (b). Pub. L. 105–206, § 6013(b)(1), inserted concluding provisions.

Subsec. (f). Pub. L. 105–206, § 6013(b)(2), inserted ''and of trusts terminated during the year'' before period at end.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–317, § 9(c), Aug. 29, 2008, 122 Stat. 3530, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 29, 2008].''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE

Pub. L. 105–34, title XIII, § 1309(c), Aug. 5, 1997, 111 Stat. 1043, provided that: ''The amendments made by this section [enacting this section] shall apply to taxable years ending after the date of the enactment of this Act [Aug. 5, 1997].''

PART II—INCOME IN RESPECT OF DECEDENTS

AMENDMENTS

2003—Pub. L. 108–121, title I, § 110(a)(3)(B), Nov. 11, 2003, 117 Stat. 1342, inserted '', astronauts,'' after ''Forces'' in item 692.

2002—Pub. L. 107–134, title I, § 101(c)(2), Jan. 23, 2002, 115 Stat. 2429, substituted ''Income taxes of members of Armed Forces and victims of certain terrorist attacks on death'' for ''Income taxes of members of Armed Forces on death'' in item 692.

§ 691. Recipients of income in respect of decedents

(a) Inclusion in gross income

(1) General rule

The amount of all items of gross income in respect of a decedent which are not properly includible in respect of the taxable period in which falls the date of his death or a prior period (including the amount of all items of gross income in respect of a prior decedent, if the right to receive such amount was acquired by reason of the death of the prior decedent or by bequest, devise, or inheritance from the prior decedent) shall be included in the gross income, for the taxable year when received, of:

(A) the estate of the decedent, if the right to receive the amount is acquired by the decedent's estate from the decedent;

(B) the person who, by reason of the death of the decedent, acquires the right to receive the amount, if the right to receive the amount is not acquired by the decedent's estate from the decedent; or

(C) the person who acquires from the decedent the right to receive the amount by bequest, devise, or inheritance, if the amount is received after a distribution by the decedent's estate of such right.

(2) Income in case of sale, etc.

If a right, described in paragraph (1), to receive an amount is transferred by the estate of the decedent or a person who received such right by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent, there shall be included in the gross income of the estate or such person, as the case may be, for the taxable period in which the transfer occurs, the fair market value of such right at the time of such transfer plus the amount by which any consideration for the transfer exceeds such fair market value. For purposes of this paragraph, the term ''transfer'' includes sale, exchange, or other disposition, or the satisfaction of an installment obligation at other than face value, but does not include transmission at death to the estate of the decedent or a transfer to a person pursuant to the right of such person to receive such amount by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent.

(3) Character of income determined by reference to decedent

The right, described in paragraph (1), to receive an amount shall be treated, in the hands of the estate of the decedent or any person who acquired such right by reason of the death of the decedent, or by bequest, devise, or inheritance from the decedent, as if it had been acquired by the estate or such person in the transaction in which the right to receive the income was originally derived and the amount includible in gross income under paragraph (1) or (2) shall be considered in the hands of the estate or such person to have the character which it would have had in the hands of the decedent if the decedent had lived and received such amount.

(4) Installment obligations acquired from decedent

In the case of an installment obligation reportable by the decedent on the installment method under section 453, if such obligation is acquired by the decedent's estate from the decedent or by any person by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent—

(A) an amount equal to the excess of the face amount of such obligation over the basis of the obligation in the hands of the decedent (determined under section 453B) shall, for the purpose of paragraph (1), be considered as an item of gross income in respect of the decedent; and

(B) such obligation shall, for purposes of paragraphs (2) and (3), be considered a right to receive an item of gross income in respect

of the decedent, but the amount includible in gross income under paragraph (2) shall be reduced by an amount equal to the basis of the obligation in the hands of the decedent (determined under section 453B).

(5) Other rules relating to installment obligations

(A) In general

In the case of an installment obligation reportable by the decedent on the installment method under section 453, for purposes of paragraph (2)—

(i) the second sentence of paragraph (2) shall be applied by inserting ''(other than the obligor)'' after ''or a transfer to a person'',

(ii) any cancellation of such an obligation shall be treated as a transfer, and

(iii) any cancellation of such an obligation occurring at the death of the decedent shall be treated as a transfer by the estate of the decedent (or, if held by a person other than the decedent before the death of the decedent, by such person).

(B) Face amount treated as fair market value in certain cases

In any case to which the first sentence of paragraph (2) applies by reason of subparagraph (A), if the decedent and the obligor were related persons (within the meaning of section 453(f)(1)), the fair market value of the installment obligation shall be treated as not less than its face amount.

(C) Cancellation includes becoming unenforceable

For purposes of subparagraph (A), an installment obligation which becomes unenforceable shall be treated as if it were canceled.

(b) Allowance of deductions and credit

The amount of any deduction specified in section 162, 163, 164, 212, or 611 (relating to deductions for expenses, interest, taxes, and depletion) or credit specified in section 27 (relating to foreign tax credit), in respect of a decedent which is not properly allowable to the decedent in respect of the taxable period in which falls the date of his death, or a prior period, shall be allowed:

(1) Expenses, interest, and taxes

In the case of a deduction specified in section 162, 163, 164, or 212 and a credit specified in section 27, in the taxable year when paid—

(A) to the estate of the decedent; except that

(B) if the estate of the decedent is not liable to discharge the obligation to which the deduction or credit relates, to the person who, by reason of the death of the decedent or by bequest, devise, or inheritance acquires, subject to such obligation, from the decedent an interest in property of the decedent.

(2) Depletion

In the case of the deduction specified in section 611, to the person described in subsection (a)(1)(A), (B), or (C) who, in the manner described therein, receives the income to which the deduction relates, in the taxable year when such income is received.

(c) Deduction for estate tax

(1) Allowance of deduction

(A) General rule

A person who includes an amount in gross income under subsection (a) shall be allowed, for the same taxable year, as a deduction an amount which bears the same ratio to the estate tax attributable to the net value for estate tax purposes of all the items described in subsection (a)(1) as the value for estate tax purposes of the items of gross income or portions thereof in respect of which such person included the amount in gross income (or the amount included in gross income, whichever is lower) bears to the value for estate tax purposes of all the items described in subsection (a)(1).

(B) Estates and trusts

In the case of an estate or trust, the amount allowed as a deduction under subparagraph (A) shall be computed by excluding from the gross income of the estate or trust the portion (if any) of the items described in subsection (a)(1) which is properly paid, credited, or to be distributed to the beneficiaries during the taxable year.

(2) Method of computing deduction

For purposes of paragraph (1)—

(A) The term ''estate tax'' means the tax imposed on the estate of the decedent or any prior decedent under section 2001 or 2101, reduced by the credits against such tax.

(B) The net value for estate tax purposes of all the items described in subsection (a)(1) shall be the excess of the value for estate tax purposes of all the items described in subsection (a)(1) over the deductions from the gross estate in respect of claims which represent the deductions and credit described in subsection (b). Such net value shall be determined with respect to the provisions of section 421(c)(2), relating to the deduction for estate tax with respect to stock options to which part II of subchapter D applies.

(C) The estate tax attributable to such net value shall be an amount equal to the excess of the estate tax over the estate tax computed without including in the gross estate such net value.

(3) Special rule for generation-skipping transfers

In the case of any tax imposed by chapter 13 on a taxable termination or a direct skip occurring as a result of the death of the transferor, there shall be allowed a deduction (under principles similar to the principles of this subsection) for the portion of such tax attributable to items of gross income of the trust which were not properly includible in the gross income of the trust for periods before the date of such termination.

(4) Coordination with capital gain provisions

For purposes of sections 1(h), 1202, and 1211, the amount taken into account with respect to

any item described in subsection (a)(1) shall be reduced (but not below zero) by the amount of the deduction allowable under paragraph (1) of this subsection with respect to such item.

(d) Amounts received by surviving annuitant under joint and survivor annuity contract

(1) Deduction for estate tax

For purposes of computing the deduction under subsection (c)(1)(A), amounts received by a surviving annuitant—

(A) as an annuity under a joint and survivor annuity contract where the decedent annuitant died after the annuity starting date (as defined in section 72(c)(4)), and

(B) during the surviving annuitant's life expectancy period,

shall, to the extent included in gross income under section 72, be considered as amounts included in gross income under subsection (a).

(2) Net value for estate tax purposes

In determining the net value for estate tax purposes under subsection (c)(2)(B) for purposes of this subsection, the value for estate tax purposes of the items described in paragraph (1) of this subsection shall be computed—

(A) by determining the excess of the value of the annuity at the date of the death of the deceased annuitant over the total amount excludable from the gross income of the surviving annuitant under section 72 during the surviving annuitant's life expectancy period, and

(B) by multiplying the figure so obtained by the ratio which the value of the annuity for estate tax purposes bears to the value of the annuity at the date of the death of the deceased.

(3) Definitions

For purposes of this subsection—

(A) The term ''life expectancy period'' means the period beginning with the first day of the first period for which an amount is received by the surviving annuitant under the contract and ending with the close of the taxable year with or in which falls the termination of the life expectancy of the surviving annuitant. For purposes of this subparagraph, the life expectancy of the surviving annuitant shall be determined, as of the date of the death of the deceased annuitant, with reference to actuarial tables prescribed by the Secretary.

(B) The surviving annuitant's expected return under the contract shall be computed, as of the death of the deceased annuitant, with reference to actuarial tables prescribed by the Secretary.

(e) Cross reference

For application of this section to income in respect of a deceased partner, see section 753.

(Aug. 16, 1954, ch. 736, 68A Stat. 235; Pub. L. 88–272, title II, § 221(c)(2), Feb. 26, 1964, 78 Stat. 75; Pub. L. 88–570, § 1, Sept. 2, 1964, 78 Stat. 854; Pub. L. 94–455, title XIX, §§ 1901(a)(91), 1906(b)(13)(A), 1951(b)(10)(A), title XX, §§ 2005(a)(4), 2006(b)(3), Oct. 4, 1976, 90 Stat. 1779, 1834, 1839, 1876, 1889; Pub. L. 95–600, title VII, § 702(b)(1), Nov. 6, 1978, 92 Stat. 2925; Pub. L. 96–222, title I, § 101(a)(8)(A), Apr. 1, 1980, 94 Stat. 201; Pub. L. 96–223, title IV, § 401(a), Apr. 2, 1980, 94 Stat. 299; Pub. L. 96–471, §§ 2(b)(5), 3, Oct. 19, 1980, 94 Stat. 2254; Pub. L. 97–34, title IV, § 403(a)(2)(C), Aug. 13, 1981, 95 Stat. 301; Pub. L. 98–369, div. A, title IV, § 474(r)(18), July 18, 1984, 98 Stat. 843; Pub. L. 99–514, title III, § 301(b)(8), title XIV, § 1432(a)(3), Oct. 22, 1986, 100 Stat. 2217, 2729; Pub. L. 100–203, title X, § 10202(c)(3), Dec. 22, 1987, 101 Stat. 1330–392; Pub. L. 100–647, title I, § 1011A(g)(10), Nov. 10, 1988, 102 Stat. 3482; Pub. L. 101–239, title VII, § 7841(d)(3), Dec. 19, 1989, 103 Stat. 2428; Pub. L. 101–508, title XI, § 11101(d)(4), Nov. 5, 1990, 104 Stat. 1388–405; Pub. L. 102–318, title V, § 521(b)(27), July 3, 1992, 106 Stat. 312; Pub. L. 103–66, title XIII, § 13113(d)(4), Aug. 10, 1993, 107 Stat. 430; Pub. L. 104–188, title I, §§ 1401(b)(9), 1704(t)(73), Aug. 20, 1996, 110 Stat. 1789, 1891; Pub. L. 105–34, title X, § 1073(b)(1), Aug. 5, 1997, 111 Stat. 948; Pub. L. 108–311, title IV, § 402(a)(4), Oct. 4, 2004, 118 Stat. 1184; Pub. L. 113–295, div. A, title II, § 221(a)(66), Dec. 19, 2014, 128 Stat. 4048; Pub. L. 115–97, title I, § 13001(b)(2)(F), Dec. 22, 2017, 131 Stat. 2096.)

AMENDMENTS

2017—Subsec. (c)(4). Pub. L. 115–97 struck out ''1201,'' after ''1(h),''.

2014—Subsec. (d)(1)(A). Pub. L. 113–295 struck out ''after December 31, 1953, and'' after ''annuitant died''.

2004—Subsec. (c)(4). Pub. L. 108–311 struck out ''of any gain'' before ''taken into account''.

1997—Subsec. (c)(1)(C). Pub. L. 105–34 struck out heading and text of subpar. (C). Text read as follows: ''For purposes of this subsection, no deduction shall be allowed for the portion of the estate tax attributable to the increase in such tax under section 4980A(d).''

1996—Subsec. (c)(5). Pub. L. 104–188, § 1704(t)(73), provided that section 521(b)(27) of Pub. L. 102–318 shall be applied as if ''Section 691(c)(5)'' appeared instead of ''Section 691(c)''. See 1992 Amendment note below.

Pub. L. 104–188, § 1401(b)(9), struck out par. (5) which read as follows:

''(5) COORDINATION WITH SECTION 402(d).—For purposes of section 402(d) (other than paragraph (1)(C) thereof), the total taxable amount of any lump sum distribution shall be reduced by the amount of the deduction allowable under paragraph (1) of this subsection which is attributable to the total taxable amount (determined without regard to this paragraph).''

1993—Subsec. (c)(4). Pub. L. 103–66 inserted ''1202,'' after ''1201,''.

1992—Subsec. (c)(5). Pub. L. 102–318, which directed that section 691(c) be amended ''in the text and heading'' by substituting ''402(d)'' for ''402(e)'', was executed by making the substitution in subsec. (c)(5). See 1996 Amendment note above.

1990—Subsec. (c)(4). Pub. L. 101–508 substituted ''1(h)'' for ''1(j)''.

1989—Subsec. (c)(5). Pub. L. 101–239 substituted ''paragraph (1)(C)'' for ''paragraph (1)(D)''.

1988—Subsec. (c)(1)(C). Pub. L. 100–647 added subpar. (C).

1987—Subsec. (a)(4), (5)(A). Pub. L. 100–203 struck out ''or 453A'' after ''section 453''.

1986—Subsec. (c)(3). Pub. L. 99–514, § 1432(a)(3), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''For purposes of this section—

''(A) the tax imposed by section 2601 or any State inheritance tax described in section 2602(c)(5)(B) on any generation-skipping transfer shall be treated as a tax imposed by section 2001 on the estate of the deemed transferor (as defined in section 2612(a));

''(B) any property transferred in such a transfer shall be treated as if it were included in the gross es-

tate of the deemed transferor at the value of such property taken into account for purposes of the tax imposed by section 2601; and

''(C) under regulations prescribed by the Secretary, any item of gross income subject to the tax imposed under section 2601 shall be treated as income described in subsection (a) if such item is not properly includible in the gross income of the trust on or before the date of the generation-skipping transfer (within the meaning of section 2611(a)) and if such transfer occurs at or after the death of the deemed transferor (as so defined).''

Subsec. (c)(4). Pub. L. 99–514, §301(b)(8), substituted ''capital gain provisions'' for ''capital gain deduction, etc.'' in heading and in text substituted ''1(j), 1201, and 1211'' for ''1201, 1202, and 1211, and for purposes of section 57(a)(9)''.

1984—Subsec. (b). Pub. L. 98–369 substituted ''section 27'' for ''section 33'' in provisions preceding par. (1) and in provisions of par. (1) preceding subpar. (A).

1981—Subsec. (c)(3)(A). Pub. L. 97–34 substituted ''section 2602(c)(5)(B)'' for ''section 2602(c)(5)(C)''.

1980—Subsec. (a)(4). Pub. L. 96–471, §2(b)(5), substituted ''reportable by the decedent on the installment method under section 453 or 453A'' for ''received by a decedent on the sale or other disposition of property, the income from which was properly reportable by the decedent on the installment basis under section 453'' in text preceding subpar. (A) and ''section 453B'' for ''section 453(d)'' in subpars. (A) and (B).

Subsec. (a)(5). Pub. L. 96–471, §3, added par. (5).

Subsec. (c)(2)(A), (C). Pub. L. 96–223 repealed the amendments made by Pub. L. 94–455, §2005(a)(4). See 1976 Amendment notes below.

Subsec. (c)(5). Pub. L. 96–222 added par. (5).

1978—Subsec. (c)(4). Pub. L. 95–600 added par. (4).

1976—Subsec. (c)(1)(B). Pub. L. 94–455, §1901(a)(91), struck out provision that this subparagraph applies to same taxable years, and to same extent, as is provided in section 683 of this title.

Subsec. (c)(2)(A). Pub. L. 94–455, §2005(a)(4)(A), substituted ''Federal and State estate taxes (within the meaning of section 1023(f)(3))'' for ''the tax imposed on the estate of the decedent or any prior decedent under section 2001 or 2101, reduced by the credits against such tax''. See Repeals note below.

Subsec. (c)(2)(C). Pub. L. 94–455, §2005(a)(4)(B), substituted ''which bears the same ratio to the estate tax as such net value bears to the value of the gross estate'' for ''equal to the excess of the estate tax over the estate tax computed without including in the gross estate such net value''. See Repeals note below.

Subsec. (c)(3). Pub. L. 94–455, §2006(b)(3), added par. (3).

Subsec. (d)(3)(A), (B). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsecs. (e), (f). Pub. L. 94–455, §1951(b)(10)(A), redesignated subsec. (f) as (e) and struck out former subsec. (e) relating to certain installment obligations transmitted at death.

1964—Subsec. (c)(2)(B). Pub. L. 88–272 substituted ''421(c)(2), relating to the deduction for estate tax with respect to stock options to which part II of subchapter D applies'' for ''421(d)(6)(B), relating to the deduction for estate tax with respect to restricted stock options''.

Subsecs. (e), (f). Pub. L. 88–570 added subsec. (e) and redesignated former subsec. (e) as (f).

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–97 applicable to taxable years beginning after Dec. 31, 2017, see section 13001(c)(1) of Pub. L. 115–97, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113–295, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 effective as if included in section 302 of the Jobs and Growth Tax Relief Reconciliation Act of 2003, Pub. L. 108–27, see section 402(b) of Pub. L. 108–311, set out a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to estates of decedents dying after Dec. 31, 1996, see section 1073(c) of Pub. L. 105–34, set out as an Effective Date of Repeal note under section 4980A of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1401(b)(9) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1999, with retention of certain transition rules, see section 1401(c) of Pub. L. 104–188, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to stock issued after Aug. 10, 1993, see section 13113(e) of Pub. L. 103–66, set out as a note under section 53 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102–318, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11101(e) of Pub. L. 101–508, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to dispositions in taxable years beginning after Dec. 31, 1987, with special rules for non-dealers and coordination with Tax Reform Act of 1986, see section 10202(e)(1), (3), (5) of Pub. L. 100–203, set out as a note under section 453 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 301(b)(8) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 301(c) of Pub. L. 99–514, set out as a note under section 62 of this title.

Amendment by section 1432(a)(3) of Pub. L. 99–514 applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99–514, set out as an Effective Date note under section 2601 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to estates of decedents dying after Dec. 31, 1981, but inapplicable under certain conditions under will executed before date which is 30 days after Aug. 13, 1981, or under trust created by such date, see section 403(e) of Pub. L. 97–34, set out as a note under section 2056 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS AND REVIVAL OF PRIOR LAW

For effective date of amendment by section 2(b)(5) of Pub. L. 96–471, see section 6(a)(1) of Pub. L. 96–471, set

out as an Effective Date note under section 453 of this title.

Pub. L. 96–471, § 6(b), Oct. 19, 1980, 94 Stat. 2256, provided: ''The amendment made by section 3 [amending this section] shall apply in the case of decedents dying after the date of the enactment of this Act [Oct. 19, 1980].''

Amendment by Pub. L. 96–223 (repealing section 2005(a)(4) of Pub. L. 94–455 and the amendments made thereby, which had amended this section) applicable in respect of decedents dying after Dec. 31, 1976, and except for certain elections, this title to be applied and administered as if those repealed provisions had not been enacted, see section 401(b), (e) of Pub. L. 96–223, set out as a note under section 1023 of this title.

Pub. L. 96–222, title I, § 101(b)(1)(D), Apr. 1, 1980, 94 Stat. 205, provided that: ''The amendment made by subsection (a)(7) [probably means subsection (a)(8), which amended this section and section 2039 of this title] shall apply with respect to the estates of decedents dying after the date of the enactment of this Act [Apr. 1, 1980].''

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title VII, § 702(b)(2), Nov. 6, 1978, 92 Stat. 2925, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to decedents dying after the date of the enactment of this Act [Nov. 6, 1978].''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(91) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 1951(b)(10)(A) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1951(d) of Pub. L. 94–455, set out as a note under section 72 of this title.

Amendment by section 2005(a)(4)(A), (B) of Pub. L. 94–455 applicable in respect of decedents dying after Dec. 31, 1979, see section 2005(f)(1) of Pub. L. 94–455, set out as a note under section 1015 of this title.

For effective date of amendment by section 2006(b)(3) of Pub. L. 94–455, see section 2006(c) of Pub. L. 94–455, set out as an Effective Date note under section 2601 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to taxable years ending after Dec. 31, 1963, see section 221(e) of Pub. L. 88–272, set out as a note under section 421 of this title.

REPEALS

Pub. L. 94–455, § 2005(a)(4), cited as a credit to this section, and the amendments made thereby, were repealed by Pub. L. 96–223, title IV, § 401(a), 94 Stat. 299, resulting in the text of this section reading as it read prior to enactment of section 2005(a)(4). See Effective Date of 1980 Amendments and Revival of Prior Law note above.

SAVINGS PROVISION

Pub. L. 94–455, title XIX, § 1951(b)(10)(B), Oct. 4, 1976, 90 Stat. 1839, provided that: ''Notwithstanding subparagraph (A) [amending this section], any election made under section 691(e) to have subsection (a)(4) of such section apply in the case of an installment obligation shall continue to be effective with respect to taxable years beginning after December 31, 1976. Section 691(c) shall not apply in respect of any amount included in gross income by reason of the preceding sentence. The liability under bond filed under section 44(d) of the Internal Revenue Code of 1939 (or corresponding provisions of prior law) in respect of which such an election applies is hereby released with respect to taxable years to which such election applies.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§ 1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§ 521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

§ 692. Income taxes of members of Armed Forces, astronauts, and victims of certain terrorist attacks on death

(a) General rule

In the case of any individual who dies while in active service as a member of the Armed Forces of the United States, if such death occurred while serving in a combat zone (as determined under section 112) or as a result of wounds, disease, or injury incurred while so serving—

(1) any tax imposed by this subtitle shall not apply with respect to the taxable year in which falls the date of his death, or with respect to any prior taxable year ending on or after the first day he so served in a combat zone; and

(2) any tax under this subtitle and under the corresponding provisions of prior revenue laws for taxable years preceding those specified in paragraph (1) which is unpaid at the date of his death (including interest, additions to the tax, and additional amounts) shall not be assessed, and if assessed the assessment shall be abated, and if collected shall be credited or refunded as an overpayment.

(b) Individuals in missing status

For purposes of this section, in the case of an individual who was in a missing status within the meaning of section 6013(f)(3)(A), the date of his death shall be treated as being not earlier than the date on which a determination of his death is made under section 556 of title 37 of the United States Code. Except in the case of the combat zone designated for purposes of the Vietnam conflict, the preceding sentence shall not cause subsection (a)(1) to apply for any taxable year beginning more than 2 years after the date designated under section 112 as the date of termination of combatant activities in a combat zone.

(c) Certain military or civilian employees of the United States dying as a result of injuries

(1) In general

In the case of any individual who dies while a military or civilian employee of the United States, if such death occurs as a result of wounds or injury which was incurred while the individual was a military or civilian employee of the United States and which was incurred in a terroristic or military action, any tax imposed by this subtitle shall not apply—

(A) with respect to the taxable year in which falls the date of his death, and

(B) with respect to any prior taxable year in the period beginning with the last taxable year ending before the taxable year in which the wounds or injury were incurred.

(2) Terroristic or military action

For purposes of paragraph (1), the term ''terroristic or military action'' means—

(A) any terroristic activity which a preponderance of the evidence indicates was directed against the United States or any of its allies, and

(B) any military action involving the Armed Forces of the United States and resulting from violence or aggression against the United States or any of its allies (or threat thereof).

For purposes of the preceding sentence, the term ''military action'' does not include training exercises.

(3) Treatment of multinational forces

For purposes of paragraph (2), any multinational force in which the United States is participating shall be treated as an ally of the United States.

(d) Individuals dying as a result of certain attacks

(1) In general

In the case of a specified terrorist victim, any tax imposed by this chapter shall not apply—

(A) with respect to the taxable year in which falls the date of death, and

(B) with respect to any prior taxable year in the period beginning with the last taxable year ending before the taxable year in which the wounds, injury, or illness referred to in paragraph (3) were incurred.

(2) $10,000 minimum benefit

If, but for this paragraph, the amount of tax not imposed by paragraph (1) with respect to a specified terrorist victim is less than $10,000, then such victim shall be treated as having made a payment against the tax imposed by this chapter for such victim's last taxable year in an amount equal to the excess of $10,000 over the amount of tax not so imposed.

(3) Taxation of certain benefits

Subject to such rules as the Secretary may prescribe, paragraph (1) shall not apply to the amount of any tax imposed by this chapter which would be computed by only taking into account the items of income, gain, or other amounts attributable to—

(A) deferred compensation which would have been payable after death if the individual had died other than as a specified terrorist victim, or

(B) amounts payable in the taxable year which would not have been payable in such taxable year but for an action taken after September 11, 2001.

(4) Specified terrorist victim

For purposes of this subsection, the term ''specified terrorist victim'' means any decedent—

(A) who dies as a result of wounds or injury incurred as a result of the terrorist attacks against the United States on April 19, 1995, or September 11, 2001, or

(B) who dies as a result of illness incurred as a result of an attack involving anthrax occurring on or after September 11, 2001, and before January 1, 2002.

Such term shall not include any individual identified by the Attorney General to have been a participant or conspirator in any such attack or a representative of such an individual.

(5) Relief with respect to astronauts

The provisions of this subsection shall apply to any astronaut whose death occurs in the line of duty, except that paragraph (3)(B) shall be applied by using the date of the death of the astronaut rather than September 11, 2001.

(Aug. 16, 1954, ch. 736, 68A Stat. 238; Pub. L. 93–597, §4(a), Jan. 2, 1975, 88 Stat. 1952; Pub. L. 94–455, title XIX, §1901(a)(92), Oct. 4, 1976, 90 Stat. 1780; Pub. L. 94–569, §3(c), Oct. 20, 1976, 90 Stat. 2699; Pub. L. 97–448, title III, §307(b), Jan. 12, 1983, 96 Stat. 2407; Pub. L. 98–259, §1(a), Apr. 10, 1984, 98 Stat. 142; Pub. L. 98–369, div. A, title VII, §722(g)(2), (3), July 18, 1984, 98 Stat. 974; Pub. L. 99–514, title XVII, §1708(a)(2), Oct. 22, 1986, 100 Stat. 2782; Pub. L. 107–134, title I, §§101(a), (c)(1), 113(b), Jan. 23, 2002, 115 Stat. 2428, 2435; Pub. L. 108–121, title I, §110(a)(1), (3)(A), Nov. 11, 2003, 117 Stat. 1342; Pub. L. 113–295, div. A, title II, §221(a)(67), Dec. 19, 2014, 128 Stat. 4048.)

AMENDMENTS

2014—Subsec. (a)(1). Pub. L. 113–295 struck out ''after June 24, 1950'' after ''combat zone''.

2003—Pub. L. 108–121, §110(a)(3)(A), inserted '', astronauts,'' after ''Forces'' in section catchline.

Subsec. (d)(5). Pub. L. 108–121, §110(a)(1), added par. (5).

2002—Pub. L. 107–134, §101(c)(1), amended section catchline generally. Prior to amendment, catchline read as follows: ''Income taxes on members of Armed Forces on death''.

Subsec. (c). Pub. L. 107–134, §113(b)(2), struck out ''sustained overseas'' after ''injuries'' in heading.

Subsec. (c)(1). Pub. L. 107–134, §113(b)(1), struck out ''outside the United States'' before ''in a terroristic or military action'' in introductory provisions.

Subsec. (d). Pub. L. 107–134, §101(a), added subsec. (d).

1986—Subsec. (b). Pub. L. 99–514 amended last sentence generally. Prior to amendment, sentence read as follows: ''The preceding sentence shall not cause subsection (a)(1) to apply for any taxable year beginning—

''(1) after December 31, 1982, in the case of service in the combat zone designated for purposes of the Vietnam conflict, or

''(2) more than 2 years after the date designated under section 112 as the date of termination of combatant activities in that zone, in the case of any combat zone other than that referred to in paragraph (1).''

1984—Subsec. (c). Pub. L. 98–259 added subsec. (c).

Subsec. (c)(1). Pub. L. 98–369, §722(g)(2), which directed amendment of par. (1) of this section by substituting ''as a result of wounds or injury which was incurred while the individual was a military or civilian employee of the United States and which was incurred'' for ''as a result of wounds or injury incurred'' was executed to par. (1) of subsec. (c) to reflect the probable intent of Congress.

Subsec. (c)(2)(A). Pub. L. 98–369, §722(g)(3), inserted ''which a preponderance of the evidence indicates was''.

1983—Subsec. (b)(1). Pub. L. 97–448 substituted ''December 31, 1982'' for ''January 2, 1978''.

1976—Subsec. (b). Pub. L. 94–569 substituted ''to apply for any taxable year beginning'' for ''to apply for any taxable year beginning more than 2 years after'' in provisions preceding par. (1), substituted ''after January 2, 1978'' for ''the date of enactment of this subsection'' in par. (1), and substituted ''more than 2 years after the date designated'' for ''the date designated'' in par. (2).

Pub. L. 94–455 substituted ''of members'' for ''on members'' in heading.

1975—Subsec. (a). Pub. L. 93–597, §4(a)(1), (2), designated existing provisions as subsec. (a), added heading, and in subsec. (a) as so designated, struck out ''during an induction period (as defined in section 112(c)(5))'', respectively.

Subsec. (b). Pub. L. 93–597, §4(a)(3), added subsec. (b).

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113–295, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–121 applicable with respect to any astronaut whose death occurs after Dec. 31, 2002, see section 110(a)(4) of Pub. L. 108–121, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–134, title I, §101(d), Jan. 23, 2002, 115 Stat. 2429, provided that:

''(1) EFFECTIVE DATE.—The amendments made by this section [amending this section and sections 5 and 6013 of this title] shall apply to taxable years ending before, on, or after September 11, 2001.

''(2) WAIVER OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from the amendments made by this section is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this Act [Jan. 23, 2002] by the operation of any law or rule of law (including res judicata), such refund or credit may nevertheless be made or allowed if claim therefor is filed before the close of such period.''

Amendment by section 113(b) of Pub. L. 107–134 applicable to taxable years ending on or after Sept. 11, 2001, see section 113(c) of Pub. L. 107–134, set out as a note under section 104 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1982, see section 1708(b) of Pub. L. 99–514, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title VII, §722(g)(5), July 18, 1984, 98 Stat. 975, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(A) IN GENERAL.—The amendments made by this subsection [amending this section and enacting and amending provisions set out below] shall take effect as if they were included in the amendments made by section 1 of Public Law 98–259 [amending this section and enacting provisions set out below].

''(B) STATUTE OF LIMITATIONS WAIVED.—Notwithstanding section 6511 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the time for filing a claim for credit or refund of any overpayment of tax resulting from the amendments made by this subsection shall not expire before the date 1 year after the date of the enactment of this Act [July 18, 1984].''

Pub. L. 98–259, §1(b), Apr. 10, 1984, 98 Stat. 143, as amended by Pub. L. 98–369, div. A, title VII, §722(g)(1), July 18, 1984, 98 Stat. 974; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply with respect to all taxable years (whether beginning before, on, or after the date of enactment of this Act [Apr. 10, 1984]) of individuals dying after November 17, 1978, as a result of wounds or injuries incurred after such date.

''(2) STATUTE OF LIMITATIONS WAIVED.—Notwithstanding section 6511 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the time for filing a claim for credit or refund of any overpayment of tax resulting from the amendment made by subsection (a) shall not expire before the date 1 year after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 93–597, §4(b), Jan. 2, 1975, 88 Stat. 1952, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to taxable years ending on or after February 28, 1961.''

REFUNDS AND CREDITS OF OVERPAYMENTS FOR TAXABLE YEARS ENDING ON OR AFTER FEBRUARY 28, 1961, RESULTING FROM APPLICATION OF PROVISIONS

Pub. L. 93–597, §4(c), Jan. 2, 1975, 88 Stat. 1952, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''If the refund or credit of any overpayment for any taxable year ending on or after February 28, 1961, resulting from the application of section 692 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by subsection (a) of this section) is prevented at any time before the expiration of one year after the date of the enactment of this Act [Jan. 2, 1975] by the operation of any law or rule of law, but would not have been so prevented if claim for refund or credit therefor were made on the due date for the return for the taxable year of his death (or any later year), refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed before the expiration of such one-year period.''

TREATMENT OF DIRECTOR GENERAL OF MULTINATIONAL FORCE IN SINAI

Pub. L. 98–369, div. A, title VII, §722(g)(4), July 18, 1984, 98 Stat. 974, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''For purposes of section 692(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the Director General of the Multinational Force and Observers in the Sinai who died on February 15, 1984, shall be treated as if he were a civilian employee of the United States while he served as such Director General.''

Subchapter K—Partners and Partnerships

AMENDMENTS

2015—Pub. L. 114–74, title XI, §1101(b)(1), Nov. 2, 2015, 129 Stat. 625, struck out item for part IV ''Special rules for electing large partnerships''.

1997—Pub. L. 105–34, title XII, §1221(b), Aug. 5, 1997, 111 Stat. 1008, added item for part IV.

PART I—DETERMINATION OF TAX LIABILITY

AMENDMENTS

1976—Pub. L. 94–455, title II, §213(b)(2), title XIX, §1901(b)(23), Oct. 4, 1976, 90 Stat. 1547, 1798, struck out part IV ''Effective date for subchapter'' in table of parts of subchapter K of chapter 1 and added item 709.

§ 701. Partners, not partnership, subject to tax

A partnership as such shall not be subject to the income tax imposed by this chapter. Persons carrying on business as partners shall be liable for income tax only in their separate or individual capacities.

(Aug. 16, 1954, ch. 736, 68A Stat. 239.)

§ 702. Income and credits of partner

(a) General rule

In determining his income tax, each partner shall take into account separately his distributive share of the partnership's—

(1) gains and losses from sales or exchanges of capital assets held for not more than 1 year,

(2) gains and losses from sales or exchanges of capital assets held for more than 1 year,

(3) gains and losses from sales or exchanges of property described in section 1231 (relating to certain property used in a trade or business and involuntary conversions),

(4) charitable contributions (as defined in section 170(c)),

(5) dividends with respect to which section 1(h)(11) or part VIII of subchapter B applies,

(6) taxes, described in section 901, paid or accrued to foreign countries and to possessions of the United States,

(7) other items of income, gain, loss, deduction, or credit, to the extent provided by regulations prescribed by the Secretary, and

(8) taxable income or loss, exclusive of items requiring separate computation under other paragraphs of this subsection.

(b) Character of items constituting distributive share

The character of any item of income, gain, loss, deduction, or credit included in a partner's distributive share under paragraphs (1) through (7) of subsection (a) shall be determined as if such item were realized directly from the source from which realized by the partnership, or incurred in the same manner as incurred by the partnership.

(c) Gross income of a partner

In any case where it is necessary to determine the gross income of a partner for purposes of this title, such amount shall include his distributive share of the gross income of the partnership.

(d) Cross reference

For rules relating to procedures for determining the tax treatment of partnership items see subchapter C of chapter 63 (section 6221 and following).

(Aug. 16, 1954, ch. 736, 68A Stat. 239; Pub. L. 88–272, title II, §201(d)(7), Feb. 26, 1964, 78 Stat. 32; Pub. L. 94–455, title XIV, §1402(b)(1)(L), (2), title XIX, §§1901(b)(1)(I)(i), (ii), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1732, 1791, 1834; Pub. L. 96–223, title IV, §404(b)(5), Apr. 2, 1980, 94 Stat. 307; Pub. L. 97–34, title III, §301(b)(5), (6)(C), Aug. 13, 1981, 95 Stat. 270; Pub. L. 97–248, title IV, §402(c)(1), Sept. 3, 1982, 96 Stat. 667; Pub. L. 97–448, title I, §103(a)(4), Jan. 12, 1983, 96 Stat. 2375; Pub. L. 98–369, div. A, title X, §1001(b)(9), (e), July 18, 1984, 98 Stat. 1011, 1012; Pub. L. 99–514, title VI, §612(b)(5), Oct. 22, 1986, 100 Stat. 2250; Pub. L. 108–27, title III, §302(e)(8), May 28, 2003, 117 Stat. 764.)

AMENDMENTS

2003—Subsec. (a)(5). Pub. L. 108–27 amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''dividends with respect to which there is a deduction under part VIII of subchapter B,''.

1986—Subsec. (a)(5). Pub. L. 99–514 amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''dividends or interest with respect to which there is an exclusion under section 116 or 128, or a deduction under part VIII of subchapter B,''.

1984—Subsec. (a)(1), (2). Pub. L. 98–369 substituted ''6 months'' for ''1 year'', applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

1983—Subsec. (a)(5). Pub. L. 97–448 substituted ''an exclusion under section 116 or 128,'' for ''provided an exclusion under section 116 or 128''.

1982—Subsec. (d). Pub. L. 97–248 added subsec. (d).

1981—Subsec. (a)(5). Pub. L. 97–34, §301(b)(6)(C), inserted reference to ''interest'' in heading and text which continued the amendment made by Pub. L. 96–223.

Pub. L. 97–34, §301(b)(5), inserted ''or 128'' after ''section 116''.

1980—Subsec. (a)(5). Pub. L. 96–223 inserted ''or interest'' after ''dividends''.

1976—Subsec. (a)(1), (2). Pub. L. 94–455, §1402(b)(2), provided that ''9 months'' would be changed to ''1 year''.

Pub. L. 94–455, §1402(b)(1)(L), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

Subsec. (a)(7) to (9). Pub. L. 94–455, §§1901(b)(1)(I)(i), 1906(b)(13)(A), redesignated pars. (8) and (9) as (7) and (8), respectively, and in par. (7), as so redesignated, struck out ''or his delegate'' after ''Secretary''. Former par. (7), which related to partially tax-exempt interest on obligations of the United States or its instrumentalities, was struck out.

Subsec. (b). Pub. L. 94–455, §1901(b)(1)(I)(ii), substituted ''paragraphs (1) through (7)'' for ''paragraphs (1) through (8)''.

1964—Subsec. (a)(5). Pub. L. 88–272 struck out ''a credit under section 34,'' before ''an exclusion''.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–27 applicable, except as otherwise provided, to taxable years beginning after Dec. 31, 2002, see section 302(f) of Pub. L. 108–27, set out as an Effective and Termination Dates of 2003 Amendment note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 612(c) of Pub. L. 99–514, set out as a note under section 301 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title IV, § 407(a), Sept. 3, 1982, 96 Stat. 670, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) Except as provided in paragraph (2), the amendments made by sections 402, 403, and 404 [enacting sections 6221 to 6234 of this title and section 1508 of Title 28, Judiciary and Judicial Procedure, amending this section and sections 6031, 6213, 6216, 6422, 6501, 6504, 6511, 6512, 6515, 7422, 7451, 7456, 7459, 7482, and 7485 of this title and section 1346 of Title 28, and enacting provisions set out as a note under section 6031 of this title] shall apply to partnership taxable years beginning after the date of the enactment of this Act [Sept. 3, 1982].

''(2) [Former] Section 6232 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall apply to periods after December 31, 1982.

''(3) The amendments made by sections 402, 403, and 404 shall apply to any partnership taxable year (or in the case of [former] section 6232 of such Code, to any period) ending after the date of the enactment of this Act [Sept. 3, 1982] if the partnership, each partner, and each indirect partner requests such application and the Secretary of the Treasury or his delegate consents to such application.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 301(b)(5) of Pub. L. 97–34 applicable to taxable years ending after Sept. 30, 1981, and amendment by section 301(b)(6)(C) of Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 301(d) of Pub. L. 97–34, set out as a note under section 265 of this title.

EFFECTIVE AND TERMINATION DATES OF 1980 AMENDMENT

Amendment by Pub. L. 96–223 applicable with respect to taxable years beginning after Dec. 31, 1980, and before Jan. 1, 1982, see section 404(c) of Pub. L. 96–223, set out as a note under section 265 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XIV, § 1402(b)(1), Oct. 4, 1976, 90 Stat. 1731, provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Pub. L. 94–455, title XIV, § 1402(b)(2), Oct. 4, 1976, 90 Stat. 1732, provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

Amendment by section 1901(b)(1)(I)(i), (ii) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable with respect to dividends received after Dec. 31, 1964, in taxable years ending after such date, see section 201(e) of Pub. L. 88–272, set out as a note under section 22 of this title.

§ 703. Partnership computations

(a) Income and deductions

The taxable income of a partnership shall be computed in the same manner as in the case of an individual except that—

(1) the items described in section 702(a) shall be separately stated, and

(2) the following deductions shall not be allowed to the partnership:

(A) the deductions for personal exemptions provided in section 151,

(B) the deduction for taxes provided in section 164(a) with respect to taxes, described in section 901, paid or accrued to foreign countries and to possessions of the United States,

(C) the deduction for charitable contributions provided in section 170,

(D) the net operating loss deduction provided in section 172,

(E) the additional itemized deductions for individuals provided in part VII of subchapter B (sec. 211 and following), and

(F) the deduction for depletion under section 611 with respect to oil and gas wells.

(b) Elections of the partnership

Any election affecting the computation of taxable income derived from a partnership shall be made by the partnership, except that any election under—

(1) subsection (b)(5) or (c)(3) of section 108 (relating to income from discharge of indebtedness),

(2) section 617 (relating to deduction and recapture of certain mining exploration expenditures), or

(3) section 901 (relating to taxes of foreign countries and possessions of the United States),

shall be made by each partner separately.

(Aug. 16, 1954, ch. 736, 68A Stat. 240; Pub. L. 89–570, § 2(b), Sept. 12, 1966, 80 Stat. 764; Pub. L. 91–172, title V, § 504(c)(3), Dec. 30, 1969, 83 Stat. 633; Pub. L. 92–178, title III, § 304(c), Dec. 10, 1971, 85 Stat. 523; Pub. L. 94–12, title V, § 501(b)(3), Mar. 29, 1975, 89 Stat. 53; Pub. L. 94–455, title XIX, § 1901(b)(21)(F), title XXI, § 2115(c)(2), Oct. 4, 1976, 90 Stat. 1798, 1909; Pub. L. 95–30, title I, § 101(d)(10), May 23, 1977, 91 Stat. 134; Pub. L. 96–589, § 2(e)(1), Dec. 24, 1980, 94 Stat. 3396; Pub. L. 99–514, title V, § 511(d)(2)(B), title VII, § 701(e)(4)(E), Oct. 22, 1986, 100 Stat. 2249, 2343; Pub. L. 100–647, title I, § 1008(i), Nov. 10, 1988, 102 Stat. 3445; Pub. L. 103–66, title XIII, § 13150(c)(9), Aug. 10, 1993, 107 Stat. 448.)

AMENDMENTS

1993—Subsec. (b)(1). Pub. L. 103–66 substituted ''subsection (b)(5) or (c)(3)'' for ''subsection (b)(5)''.

1988—Subsec. (b)(1). Pub. L. 100–647 substituted ''subsection (b)(5)'' for ''subsection (b)(5) or (d)(4)''.

1986—Subsec. (b). Pub. L. 99–514 struck out former pars. (1) and (3) which related to elections under sections 57(c) and 163(d), respectively, and redesignated former pars. (2), (4), and (5), as pars. (1), (2), and (3), respectively.

1980—Subsec. (b). Pub. L. 96–589 inserted reference to section 108(b)(5) and (d)(4).

1977—Subsec. (a)(2). Pub. L. 95–30 struck out subpar. (A) which made reference to the standard deduction provided in section 141, and redesignated subpars. (B) to (G) as (A) to (F), respectively.

1976—Subsec. (a)(2)(G). Pub. L. 94–455, § 2115(c)(2), substituted ''wells'' for ''production subject to the provisions of section 613A(c)''.

Subsec. (b). Pub. L. 94–455, § 1901(b)(21)(F), struck out ''under section 615 (relating to pre-1970 exploration expenditures),'' after ''of the United States, and any election''.

1975—Subsec. (a)(2)(G). Pub. L. 94–12 added subpar. (G).

1971—Subsec. (b). Pub. L. 92–178 substituted ‘‘,’’ for ‘‘or’’ after ‘‘(relating to pre-1970 exploration expenditures)’’ and inserted ‘‘under section 57(c) (relating to definition of net lease), or under section 163(d) (relating to limitation on interest on investment indebtedness)’’ after ‘‘(relating to deduction and recapture of certain mining exploration expenditures)’’.

1969—Subsec. (b). Pub. L. 91–172 substituted ‘‘(relating to pre-1970 exploration expenditures) or under section 617 (relating to deduction and recapture of certain mining exploration expenditures)’’ for ‘‘(relating to exploration expenditures) or under section 617 (relating to additional exploration expenditures in the case of domestic mining)’’.

1966—Subsec. (b). Pub. L. 89–570 provided for election under section 615 (relating to exploration expenditures) or under section 617 (relating to additional exploration expenditures in the case of domestic mining).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to discharges after Dec. 31, 1992, in taxable years ending after such date, see section 13150(d) of Pub. L. 103–66, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 511(d)(2)(B) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 511(e) of Pub. L. 99–514, set out as a note under section 163 of this title.

Amendment by section 701(e)(4)(E) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–589 applicable to transactions which occur after Dec. 31, 1980, other than transactions which occur in a proceeding in a bankruptcy case or similar judicial proceeding or in a proceeding under Title 11 commencing on or after Dec. 31, 1980, with an exception permitting the debtor to make the amendment applicable to transactions occurring after Sept. 30, 1979; in a specified manner, see section 7(a)(1), (f) of Pub. L. 96–589, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(b)(21)(F) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 2115(c)(2) of Pub. L. 94–455 effective on Jan. 1, 1975 and applicable to taxable years ending after Dec. 31, 1974, see section 2115(f) of Pub. L. 94–455, set out as a note under section 613A of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–12 effective Jan. 1, 1975, to apply to taxable years ending after Dec. 31, 1974, see section 501(c) of Pub. L. 94–12, set out as an Effective Date note under section 613A of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to exploration expenditures paid or incurred after Dec. 31, 1969, see section 504(d)(1) of Pub. L. 91–172, set out as an Effective Date note under section 243 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–570 applicable to taxable years ending after Sept. 12, 1966, but only in respect of expenditures paid or incurred after such date, see section 3 of Pub. L. 89–570, set out as an Effective Date note under section 617 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(e)(4)(E) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

§ 704. Partner’s distributive share

(a) Effect of partnership agreement

A partner’s distributive share of income, gain, loss, deduction, or credit shall, except as otherwise provided in this chapter, be determined by the partnership agreement.

(b) Determination of distributive share

A partner’s distributive share of income, gain, loss, deduction, or credit (or item thereof) shall be determined in accordance with the partner’s interest in the partnership (determined by taking into account all facts and circumstances), if—

(1) the partnership agreement does not provide as to the partner’s distributive share of income, gain, loss, deduction, or credit (or item thereof), or

(2) the allocation to a partner under the agreement of income, gain, loss, deduction, or credit (or item thereof) does not have substantial economic effect.

(c) Contributed property

(1) In general

Under regulations prescribed by the Secretary—

(A) income, gain, loss, and deduction with respect to property contributed to the partnership by a partner shall be shared among the partners so as to take account of the variation between the basis of the property to the partnership and its fair market value at the time of contribution,

(B) if any property so contributed is distributed (directly or indirectly) by the partnership (other than to the contributing partner) within 7 years of being contributed—

(i) the contributing partner shall be treated as recognizing gain or loss (as the case may be) from the sale of such property in an amount equal to the gain or loss which would have been allocated to such partner under subparagraph (A) by reason of the variation described in subparagraph (A) if the property had been sold at its fair market value at the time of the distribution,

(ii) the character of such gain or loss shall be determined by reference to the

character of the gain or loss which would have resulted if such property had been sold by the partnership to the distributee, and

(iii) appropriate adjustments shall be made to the adjusted basis of the contributing partner's interest in the partnership and to the adjusted basis of the property distributed to reflect any gain or loss recognized under this subparagraph, and

(C) if any property so contributed has a built-in loss—

(i) such built-in loss shall be taken into account only in determining the amount of items allocated to the contributing partner, and

(ii) except as provided in regulations, in determining the amount of items allocated to other partners, the basis of the contributed property in the hands of the partnership shall be treated as being equal to its fair market value at the time of contribution.

For purposes of subparagraph (C), the term ''built-in loss'' means the excess of the adjusted basis of the property (determined without regard to subparagraph (C)(ii)) over its fair market value at the time of contribution.

(2) Special rule for distributions where gain or loss would not be recognized outside partnerships

Under regulations prescribed by the Secretary, if—

(A) property contributed by a partner (hereinafter referred to as the ''contributing partner'') is distributed by the partnership to another partner, and

(B) other property of a like kind (within the meaning of section 1031) is distributed by the partnership to the contributing partner not later than the earlier of—

(i) the 180th day after the date of the distribution described in subparagraph (A), or

(ii) the due date (determined with regard to extensions) for the contributing partner's return of the tax imposed by this chapter for the taxable year in which the distribution described in subparagraph (A) occurs,

then to the extent of the value of the property described in subparagraph (B), paragraph (1)(B) shall be applied as if the contributing partner had contributed to the partnership the property described in subparagraph (B).

(3) Other rules

Under regulations prescribed by the Secretary, rules similar to the rules of paragraph (1) shall apply to contributions by a partner (using the cash receipts and disbursements method of accounting) of accounts payable and other accrued but unpaid items. Any reference in paragraph (1) or (2) to the contributing partner shall be treated as including a reference to any successor of such partner.

(d) Limitation on allowance of losses

(1) In general

A partner's distributive share of partnership loss (including capital loss) shall be allowed only to the extent of the adjusted basis of such partner's interest in the partnership at the end of the partnership year in which such loss occurred.

(2) Carryover

Any excess of such loss over such basis shall be allowed as a deduction at the end of the partnership year in which such excess is repaid to the partnership.

(3) Special rules

(A) In general

In determining the amount of any loss under paragraph (1), there shall be taken into account the partner's distributive share of amounts described in paragraphs (4) and (6) of section 702(a).

(B) Exception

In the case of a charitable contribution of property whose fair market value exceeds its adjusted basis, subparagraph (A) shall not apply to the extent of the partner's distributive share of such excess.

(e) Partnership interests created by gift

(1) Distributive share of donee includible in gross income

In the case of any partnership interest created by gift, the distributive share of the donee under the partnership agreement shall be includible in his gross income, except to the extent that such share is determined without allowance of reasonable compensation for services rendered to the partnership by the donor, and except to the extent that the portion of such share attributable to donated capital is proportionately greater than the share of the donor attributable to the donor's capital. The distributive share of a partner in the earnings of the partnership shall not be diminished because of absence due to military service.

(2) Purchase of interest by member of family

For purposes of this subsection, an interest purchased by one member of a family from another shall be considered to be created by gift from the seller, and the fair market value of the purchased interest shall be considered to be donated capital. The ''family'' of any individual shall include only his spouse, ancestors, and lineal descendants, and any trusts for the primary benefit of such persons.

(f) Cross reference

For rules in the case of the sale, exchange, liquidation, or reduction of a partner's interest, see section 706(c)(2).

(Aug. 16, 1954, ch. 736, 68A Stat. 240; Pub. L. 94–455, title II, § 213(c)(2), (3)(A), (d), (e), title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1548, 1834; Pub. L. 95–600, title II, § 201(b)(1), Nov. 6, 1978, 92 Stat. 2816; Pub. L. 98–369, div. A, title I, § 71(a), July 18, 1984, 98 Stat. 589; Pub. L. 101–239, title VII, § 7642(a), Dec. 19, 1989, 103 Stat. 2379; Pub. L. 102–486, title XIX, § 1937(b)(1), Oct. 24, 1992, 106 Stat. 3033; Pub. L. 105–34, title X, § 1063(a), Aug. 5, 1997, 111 Stat. 947; Pub. L. 108–357, title VIII, § 833(a), Oct. 22, 2004, 118 Stat. 1589; Pub. L. 114–74, title XI, § 1102(b), Nov. 2,

2015, 129 Stat. 639; Pub. L. 115–97, title I, §13503(a), Dec. 22, 2017, 131 Stat. 2141.)

AMENDMENTS

2017—Subsec. (d). Pub. L. 115–97 designated first and second sentences of existing provisions as pars. (1) and (2), respectively, inserted headings, and added par. (3).

2015—Subsec. (e). Pub. L. 114–74 substituted ''Partnership interests created by gift'' for ''Family partnerships'' in heading, redesignated pars. (2) and (3) as (1) and (2), respectively, substituted ''this subsection'' for ''this section'' in par. (2), and struck out former par. (1). Prior to amendment, text of par. (1) read as follows: ''A person shall be recognized as a partner for purposes of this subtitle if he owns a capital interest in a partnership in which capital is a material income-producing factor, whether or not such interest was derived by purchase or gift from any other person.''

2004—Subsec. (c)(1)(C). Pub. L. 108–357 added subpar. (C).

1997—Subsec. (c)(1)(B). Pub. L. 105–34 substituted ''7 years'' for ''5 years'' in introductory provisions.

1992—Subsec. (c)(1)(B). Pub. L. 102–486 substituted ''is distributed (directly or indirectly)'' for ''is distributed''.

1989—Subsec. (c). Pub. L. 101–239 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''Under regulations prescribed by the Secretary, income, gain, loss, and deduction with respect to property contributed to the partnership by a partner shall be shared among partners so as to take account of the variation between the basis of the property to the partnership and its fair market value at the time of contribution. Under regulations prescribed by the Secretary, rules similar to the rules of the preceding sentence shall apply to contributions by a partner (using the cash receipts and disbursements method of accounting) of accounts payable and other accrued but unpaid items.''

1984—Subsec. (c). Pub. L. 98–369 amended subsec. (c) generally, substituting provisions directing that, under regulations prescribed by the Secretary, income, gain, loss, and deduction with respect to property contributed to the partnership by a partner be shared among partners so as to take account of the variation between the basis of the property to the partnership and its fair market value at the time of contribution, and that similar rules apply to contributions by a partner (using the cash receipts and disbursements method of accounting) of accounts payable and other accrued but unpaid items for provisions which had directed that, if the partnership agreement so provided, depreciation, depletion, or gain or loss with respect to property contributed to the partnership by a partner would under regulations prescribed by the Secretary, be shared among the partners so as to take account of the variation between the basis of the property to the partnership and its fair market value at the time of contribution, and struck out provisions which had directed that in determining a partner's distributive share of items described in section 702(a), depreciation, depletion, or gain or loss with respect to property contributed to the partnership by a partner would, except to the extent otherwise provided, be allocated among the partners in the same manner as if such property had been purchased by the partnership and that if the partnership agreement did not provide otherwise, depreciation, depletion, or gain or loss with respect to undivided interests in property contributed to a partnership would be determined as though such undivided interests had not been contributed to the partnership.

1978—Subsec. (d). Pub. L. 95–600 struck out provisions relating to adjusted basis of a partner's interest.

1976—Subsec. (a). Pub. L. 94–455, §213(c)(2), substituted ''except as otherwise provided in this chapter'' for ''except as otherwise provided in this section''.

Subsec. (b). Pub. L. 94–455, §213(d), among other changes, substituted ''Determination of distributive share'' for ''Distributive share determined by income or loss ratio'' in heading, in provisions preceding par. (1) ''the partner's interest in the partnership (determined by taking into account all facts and circumstances)'' for ''his distributive share of taxable income or loss of the partnership, as described in section 702(a)(9), for the taxable year'', and in par. (2) provision relating to a lack of substantial economic effect in a partnership agreement for provisions relating to the partnership agreement's purpose being the avoidance or evasion of taxes.

Subsec. (c)(2). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (d). Pub. L. 94–455, §213(e), inserted provision relating to the determination of the adjusted basis of a partner's liability where there is no personal liability and the applicability of such determination where section 465 of this title applies or the principal activity of the partnership is real estate investment.

Subsec. (f). Pub. L. 94–455, §213(c)(3)(A), added subsec. (f).

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–97, title I, §13503(b), Dec. 22, 2017, 131 Stat. 2141, provided that: ''The amendments made by this section [amending this section] shall apply to partnership taxable years beginning after December 31, 2017.''

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114–74, title XI, §1102(c), Nov. 2, 2015, 129 Stat. 639, provided that: ''The amendments made by this section [amending this section and section 761 of this title] shall apply to partnership taxable years beginning after December 31, 2015.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §833(d)(1), Oct. 22, 2004, 118 Stat. 1592, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to contributions made after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title X, §1063(b), Aug. 5, 1997, 111 Stat. 947, provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section and section 737 of this title] shall apply to property contributed to a partnership after June 8, 1997.

''(2) BINDING CONTRACTS.—The amendment made by subsection (a) shall not apply to any property contributed pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before such contribution if such contract provides for the contribution of a fixed amount of property.''

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–486, title XIX, §1937(c), Oct. 24, 1992, 106 Stat. 3033, provided that: ''The amendments made by this section [enacting section 737 of this title and amending this section and section 731 of this title] shall apply to distributions on or after June 25, 1992.''

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7642(b), Dec. 19, 1989, 103 Stat. 2381, provided that: ''The amendment made by subsection (a) [amending this section] shall apply in the case of property contributed to the partnership after October 3, 1989, in taxable years ending after such date.''

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §71(c), July 18, 1984, 98 Stat. 589, provided that: ''The amendments made by this section [amending this section and sections 613A and 743 of this title] shall apply with respect to property contributed to the partnership after March 31, 1984, in taxable years ending after such date.''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 and enactment of provision set out as a note under this section by section

201(b)(2) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 204(a) of Pub. L. 95–600, set out as a note under section 465 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 213(c)(2), (c)(3)(A), (d) of Pub. L. 94–455 applicable in the case of partnership taxable years beginning after Dec. 31, 1975, see section 213(f)(1) of Pub. L. 94–455, set out as an Effective Date note under section 709 of this title.

Amendment by section 213(e) of Pub. L. 94–455 applicable to liabilities incurred after Dec. 31, 1976, see section 213(f)(2) of Pub. L. 94–455, set out as an Effective Date note under section 709 of this title.

TRANSITIONAL RULE FOR LIMITATION ON ALLOWANCE OF LOSSES

Pub. L. 95–600, title II, § 201(b)(2), Nov. 6, 1978, 92 Stat. 2816, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In the case of a loss which was not allowed for any taxable year by reason of the last 2 sentences of section 704(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect before the date of the enactment of this Act [Nov. 6, 1978]), such loss shall be treated as a deduction (subject to section 465(a) of such Code) for the first taxable year beginning after December 31, 1978. Section 465(a) of such Code (as amended by this section) shall not apply with respect to partnership liabilities to which the last 2 sentences of section 704(d) of such Code (as in effect on the day before the date of enactment of this Act) did not apply because of the provisions of section 213(f)(2) of the Tax Reform Act of 1976 [set out as a note under section 709 of this title].''

§ 705. Determination of basis of partner's interest

(a) General rule

The adjusted basis of a partner's interest in a partnership shall, except as provided in subsection (b), be the basis of such interest determined under section 722 (relating to contributions to a partnership) or section 742 (relating to transfers of partnership interests)—

(1) increased by the sum of his distributive share for the taxable year and prior taxable years of—

(A) taxable income of the partnership as determined under section 703(a),

(B) income of the partnership exempt from tax under this title, and

(C) the excess of the deductions for depletion over the basis of the property subject to depletion;

(2) decreased (but not below zero) by distributions by the partnership as provided in section 733 and by the sum of his distributive share for the taxable year and prior taxable years of—

(A) losses of the partnership, and

(B) expenditures of the partnership not deductible in computing its taxable income and not properly chargeable to capital account; and

(3) decreased (but not below zero) by the amount of the partner's deduction for depletion for any partnership oil and gas property to the extent such deduction does not exceed the proportionate share of the adjusted basis of such property allocated to such partner under section 613A(c)(7)(D).

(b) Alternative rule

The Secretary shall prescribe by regulations the circumstances under which the adjusted basis of a partner's interest in a partnership may be determined by reference to his proportionate share of the adjusted basis of partnership property upon a termination of the partnership.

(Aug. 16, 1954, ch. 736, 68A Stat. 242; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), title XXI, § 2115(c)(3), Oct. 4, 1976, 90 Stat. 1834, 1909; Pub. L. 98–369, div. A, title VII, § 722(e)(1), July 18, 1984, 98 Stat. 974.)

AMENDMENTS

1984—Subsec. (a)(3). Pub. L. 98–369 substituted ''for any partnership oil and gas property to the extent such deduction does not exceed the proportionate share of the adjusted basis of such property allocated to such partner under section 613A(c)(7)(D)'' for ''under section 611 with respect to oil and gas wells''.

1976—Subsec. (a)(3). Pub. L. 94–455, § 2115(c)(3), added par. (3).

Subsec. (b). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title VII, § 722(e)(3)(A), July 18, 1984, 98 Stat. 974, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on January 1, 1975.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 2115(c)(3) of Pub. L. 94–455 effective on Jan. 1, 1975, and applicable to taxable years ending after Dec. 31, 1974, see section 2115(f) of Pub. L. 94–455, set out as a note under section 613A of this title.

§ 706. Taxable years of partner and partnership

(a) Year in which partnership income is includible

In computing the taxable income of a partner for a taxable year, the inclusions required by section 702 and section 707(c) with respect to a partnership shall be based on the income, gain, loss, deduction, or credit of the partnership for any taxable year of the partnership ending within or with the taxable year of the partner.

(b) Taxable year

(1) Partnership's taxable year

(A) Partnership treated as taxpayer

The taxable year of a partnership shall be determined as though the partnership were a taxpayer.

(B) Taxable year determined by reference to partners

Except as provided in subparagraph (C), a partnership shall not have a taxable year other than—

(i) the majority interest taxable year (as defined in paragraph (4)),

(ii) if there is no taxable year described in clause (i), the taxable year of all the principal partners of the partnership, or

(iii) if there is no taxable year described in clause (i) or (ii), the calendar year unless the Secretary by regulations prescribes another period.

(C) Business purpose

A partnership may have a taxable year not described in subparagraph (B) if it establishes, to the satisfaction of the Secretary, a

business purpose therefor. For purposes of this subparagraph, any deferral of income to partners shall not be treated as a business purpose.

(2) Partner's taxable year

A partner may not change to a taxable year other than that of a partnership in which he is a principal partner unless he establishes, to the satisfaction of the Secretary, a business purpose therefor.

(3) Principal partner

For the purpose of this subsection, a principal partner is a partner having an interest of 5 percent or more in partnership profits or capital.

(4) Majority interest taxable year; limitation on required changes

(A) Majority interest taxable year defined

For purposes of paragraph (1)(B)(i)—

(i) In general

The term ''majority interest taxable year'' means the taxable year (if any) which, on each testing day, constituted the taxable year of 1 or more partners having (on such day) an aggregate interest in partnership profits and capital of more than 50 percent.

(ii) Testing days

The testing days shall be—

(I) the 1st day of the partnership taxable year (determined without regard to clause (i)), or

(II) the days during such representative period as the Secretary may prescribe.

(B) Further change not required for 3 years

Except as provided in regulations necessary to prevent the avoidance of this section, if, by reason of paragraph (1)(B)(i), the taxable year of a partnership is changed, such partnership shall not be required to change to another taxable year for either of the 2 taxable years following the year of change.

(5) Application with other sections

Except as provided in regulations, for purposes of determining the taxable year to which a partnership is required to change by reason of this subsection, changes in taxable years of other persons required by this subsection, section 441(i), section 584(h),[1] section 644, or section 1378(a) shall be taken into account.

(c) Closing of partnership year

(1) General rule

Except in the case of a termination of a partnership and except as provided in paragraph (2) of this subsection, the taxable year of a partnership shall not close as the result of the death of a partner, the entry of a new partner, the liquidation of a partner's interest in the partnership, or the sale or exchange of a partner's interest in the partnership.

(2) Treatment of dispositions

(A) Disposition of entire interest

The taxable year of a partnership shall close with respect to a partner whose entire interest in the partnership terminates (whether by reason of death, liquidation, or otherwise).

(B) Disposition of less than entire interest

The taxable year of a partnership shall not close (other than at the end of a partnership's taxable year as determined under subsection (b)(1)) with respect to a partner who sells or exchanges less than his entire interest in the partnership or with respect to a partner whose interest is reduced (whether by entry of a new partner, partial liquidation of a partner's interest, gift, or otherwise).

(d) Determination of distributive share when partner's interest changes

(1) In general

Except as provided in paragraphs (2) and (3), if during any taxable year of the partnership there is a change in any partner's interest in the partnership, each partner's distributive share of any item of income, gain, loss, deduction, or credit of the partnership for such taxable year shall be determined by the use of any method prescribed by the Secretary by regulations which takes into account the varying interests of the partners in the partnership during such taxable year.

(2) Certain cash basis items prorated over period to which attributable

(A) In general

If during any taxable year of the partnership there is a change in any partner's interest in the partnership, then (except to the extent provided in regulations) each partner's distributive share of any allocable cash basis item shall be determined—

(i) by assigning the appropriate portion of such item to each day in the period to which it is attributable, and

(ii) by allocating the portion assigned to any such day among the partners in proportion to their interests in the partnership at the close of such day.

(B) Allocable cash basis item

For purposes of this paragraph, the term ''allocable cash basis item'' means any of the following items with respect to which the partnership uses the cash receipts and disbursements method of accounting:

(i) Interest.

(ii) Taxes.

(iii) Payments for services or for the use of property.

(iv) Any other item of a kind specified in regulations prescribed by the Secretary as being an item with respect to which the application of this paragraph is appropriate to avoid significant misstatements of the income of the partners.

(C) Items attributable to periods not within taxable year

If any portion of any allocable cash basis item is attributable to—

[1] See References in Text note below.

(i) any period before the beginning of the taxable year, such portion shall be assigned under subparagraph (A)(i) to the first day of the taxable year, or

(ii) any period after the close of the taxable year, such portion shall be assigned under subparagraph (A)(i) to the last day of the taxable year.

(D) Treatment of deductible items attributable to prior periods

If any portion of a deductible cash basis item is assigned under subparagraph (C)(i) to the first day of any taxable year—

(i) such portion shall be allocated among persons who are partners in the partnership during the period to which such portion is attributable in accordance with their varying interests in the partnership during such period, and

(ii) any amount allocated under clause (i) to a person who is not a partner in the partnership on such first day shall be capitalized by the partnership and treated in the manner provided for in section 755.

(3) Items attributable to interest in lower tier partnership prorated over entire taxable year

If—

(A) during any taxable year of the partnership there is a change in any partner's interest in the partnership (hereinafter in this paragraph referred to as the ''upper tier partnership''), and

(B) such partnership is a partner in another partnership (hereinafter in this paragraph referred to as the ''lower tier partnership''),

then (except to the extent provided in regulations) each partner's distributive share of any item of the upper tier partnership attributable to the lower tier partnership shall be determined by assigning the appropriate portion (determined by applying principles similar to the principles of subparagraphs (C) and (D) of paragraph (2)) of each such item to the appropriate days during which the upper tier partnership is a partner in the lower tier partnership and by allocating the portion assigned to any such day among the partners in proportion to their interests in the upper tier partnership at the close of such day.

(4) Taxable year determined without regard to subsection (c)(2)(A)

For purposes of this subsection, the taxable year of a partnership shall be determined without regard to subsection (c)(2)(A).

(Aug. 16, 1954, ch. 736, 68A Stat. 242; Pub. L. 94–455, title II, §213(c)(1), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1547, 1834; Pub. L. 98–369, div. A, title I, §72(a), (b), July 18, 1984, 98 Stat. 589, 591; Pub. L. 99–514, title VIII, §806(a), title XVIII, §1805(a), Oct. 22, 1986, 100 Stat. 2362, 2810; Pub. L. 100–647, title I, §1008(e)(1)–(3), Nov. 10, 1988, 102 Stat. 3439, 3440; Pub. L. 105–34, title V, §507(b)(2), title XII, §1246(a), (b), Aug. 5, 1997, 111 Stat. 857, 1030.)

REFERENCES IN TEXT

Section 584(h), referred to in subsec. (b)(5), was redesignated section 584(i) by Pub. L. 104–188, title I, §1805(a), 110 Stat. 1894.

AMENDMENTS

1997—Subsec. (b)(5). Pub. L. 105–34, §507(b)(2), substituted ''section 644'' for ''section 645''.

Subsec. (c)(2). Pub. L. 105–34, §1246(b), substituted ''Treatment of dispositions'' for ''Partner who retires or sells interest in partnership'' as heading.

Subsec. (c)(2)(A). Pub. L. 105–34, §1246(a), amended heading and text of subpar. (A) generally. Prior to amendment, text read as follows: ''The taxable year of a partnership shall close—

''(i) with respect to a partner who sells or exchanges his entire interest in a partnership, and

''(ii) with respect to a partner whose interest is liquidated, except that the taxable year of a partnership with respect to a partner who dies shall not close prior to the end of the partnership's taxable year.''

1988—Subsec. (b)(1)(B)(i). Pub. L. 100–647, §1008(e)(1)(A), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''the taxable year of 1 or more of its partners who have an aggregate interest in partnership profits and capital of greater than 50 percent,''.

Subsec. (b)(1)(B)(iii). Pub. L. 100–647, §1008(e)(2), substituted ''unless the Secretary by regulations prescribes another period'' for ''or such other period as the Secretary may prescribe in regulations''.

Subsec. (b)(4). Pub. L. 100–647, §1008(e)(1)(B), substituted ''Majority interest taxable year; limitation on required changes'' for ''Application of majority interest rule'' in heading and amended text generally. Prior to amendment, text read as follows: ''Clause (i) of paragraph (1)(B) shall not apply to any taxable year of a partnership unless the period which constitutes the taxable year of 1 or more of its partners who have an aggregate interest in partnership profits and capital of greater than 50 percent has been the same for—

''(A) the 3-taxable year period of such partner or partners ending on or before the beginning of such taxable year of the partnership, or

''(B) if the partnership has not been in existence during all of such 3-taxable year period, the taxable years of such partner or partners ending with or within the period of existence.

This paragraph shall apply without regard to whether the same partners or interests are taken into account in determining the 50 percent interest during any period.''

Subsec. (b)(5). Pub. L. 100–647, §1008(e)(3), added par. (5).

1986—Subsec. (b). Pub. L. 99–514, §806(a)(3), struck out ''Adoption of'' before ''taxable year'' in heading.

Subsec. (b)(1). Pub. L. 99–514, §806(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The taxable year of a partnership shall be determined as though the partnership were a taxpayer. A partnership may not change to, or adopt, a taxable year other than that of all its principal partners unless it establishes, to the satisfaction of the Secretary, a business purpose therefor.''

Subsec. (b)(4). Pub. L. 99–514, §806(a)(2), added par. (4).

Subsec. (d)(2)(A)(i). Pub. L. 99–514, §1805(a)(1)(A), substituted ''such item'' for ''each such item''.

Subsec. (d)(2)(B). Pub. L. 99–514, §1805(a)(1)(B), in introductory provisions, struck out ''which are described in paragraph (1) and'' after ''the following items''.

Subsec. (d)(2)(C)(i). Pub. L. 99–514, §1805(a)(2), substituted ''the first day of the taxable year'' for ''the first day of such taxable year''.

1984—Subsec. (c)(2)(A). Pub. L. 98–369, §72(b)(1), struck out last sentence providing that such partner's distributive share of item described in section 702(a) for such year shall be determined, under regulations prescribed by the Secretary, for the period ending with such sale, exchange, or liquidation.

Subsec. (c)(2)(B). Pub. L. 98–369, §72(b)(2), struck out '', but such partner's distributive share of items described in section 702(a) shall be determined by taking into account his varying interests in the partnership during the taxable year'' after ''otherwise)''.

Subsec. (d). Pub. L. 98–369, §72(a), added subsec. (d).

1976—Subsec. (b)(1), (2). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c)(2). Pub. L. 94–455, §§213(c)(1), 1906(b)(13)(A), substituted ''or with respect to a partner whose interest is reduced (whether by entry of a new partner, partial liquidation of a partner's interest, gift, or otherwise)'' for ''or with respect to a partner whose interest is reduced'', in par. (B), and struck out ''or his delegate'' after ''Secretary'' in par. (A).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 507(b)(2) of Pub. L. 105–34 applicable to sales or exchanges after Aug. 5, 1997, see section 507(c)(2) of Pub. L. 105–34, set out as a note under section 644 of this title.

Pub. L. 105–34, title XII, §1246(c), Aug. 5, 1997, 111 Stat. 1030, provided that: ''The amendments made by this section [amending this section] shall apply to partnership taxable years beginning after December 31, 1997.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 806(a) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with special provisions applicable to taxpayers who are required to change their accounting periods, see section 806(e) of Pub. L. 99–514, set out as a note under section 1378 of this title.

Amendment by section 1805(a) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §72(c), July 18, 1984, 98 Stat. 591, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [amending this section] shall apply—

''(1) in the case of items described in section 706(d)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)), to amounts attributable to periods after March 31, 1984, and

''(2) in the case of items described in section 706(d)(3) of such Code (as added by subsection (a)), to amounts paid or accrued by the other partnership after March 31, 1984.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 213(c)(1) of Pub. L. 94–455 applicable in the case of partnership taxable years beginning after Dec. 31, 1975, see section 213(f) of Pub. L. 94–455, set out as an Effective Date note under section 709 of this title.

CONSTRUCTION OF SECTION 806 OF PUB. L. 99–514

Nothing in section 806 of Pub. L. 99–514 or in any legislative history relating thereto to be construed as requiring the Secretary of the Treasury or his delegate to permit an automatic change of a taxable year, see section 1008(e)(9) of Pub. L. 100–647, set out as a note under section 1378 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 707. Transactions between partner and partnership

(a) Partner not acting in capacity as partner

(1) In general

If a partner engages in a transaction with a partnership other than in his capacity as a member of such partnership, the transaction shall, except as otherwise provided in this section, be considered as occurring between the partnership and one who is not a partner.

(2) Treatment of payments to partners for property or services

Under regulations prescribed by the Secretary—

(A) Treatment of certain services and transfers of property

If—

(i) a partner performs services for a partnership or transfers property to a partnership,

(ii) there is a related direct or indirect allocation and distribution to such partner, and

(iii) the performance of such services (or such transfer) and the allocation and distribution, when viewed together, are properly characterized as a transaction occurring between the partnership and a partner acting other than in his capacity as a member of the partnership,

such allocation and distribution shall be treated as a transaction described in paragraph (1).

(B) Treatment of certain property transfers

If—

(i) there is a direct or indirect transfer of money or other property by a partner to a partnership,

(ii) there is a related direct or indirect transfer of money or other property by the partnership to such partner (or another partner), and

(iii) the transfers described in clauses (i) and (ii), when viewed together, are properly characterized as a sale or exchange of property,

such transfers shall be treated either as a transaction described in paragraph (1) or as a transaction between 2 or more partners acting other than in their capacity as members of the partnership.

(b) Certain sales or exchanges of property with respect to controlled partnerships

(1) Losses disallowed

No deduction shall be allowed in respect of losses from sales or exchanges of property

(other than an interest in the partnership), directly or indirectly, between—

(A) a partnership and a person owning, directly or indirectly, more than 50 percent of the capital interest, or the profits interest, in such partnership, or

(B) two partnerships in which the same persons own, directly or indirectly, more than 50 percent of the capital interests or profits interests.

In the case of a subsequent sale or exchange by a transferee described in this paragraph, section 267(d) shall be applicable as if the loss were disallowed under section 267(a)(1). For purposes of section 267(a)(2), partnerships described in subparagraph (B) of this paragraph shall be treated as persons specified in section 267(b).

(2) Gains treated as ordinary income

In the case of a sale or exchange, directly or indirectly, of property, which in the hands of the transferee, is property other than a capital asset as defined in section 1221—

(A) between a partnership and a person owning, directly or indirectly, more than 50 percent of the capital interest, or profits interest, in such partnership, or

(B) between two partnerships in which the same persons own, directly or indirectly, more than 50 percent of the capital interests or profits interests,

any gain recognized shall be considered as ordinary income.

(3) Ownership of a capital or profits interest

For purposes of paragraphs (1) and (2) of this subsection, the ownership of a capital or profits interest in a partnership shall be determined in accordance with the rules for constructive ownership of stock provided in section 267(c) other than paragraph (3) of such section.

(c) Guaranteed payments

To the extent determined without regard to the income of the partnership, payments to a partner for services or the use of capital shall be considered as made to one who is not a member of the partnership, but only for the purposes of section 61(a) (relating to gross income) and, subject to section 263, for purposes of section 162(a) (relating to trade or business expenses).

(Aug. 16, 1954, ch. 736, 68A Stat. 243; Pub. L. 94–455, title II, §213(b)(3), title XIX, §1901(b)(3)(C), Oct. 4, 1976, 90 Stat. 1547, 1792; Pub. L. 98–369, div. A, title I, §73(a), July 18, 1984, 98 Stat. 591; Pub. L. 99–514, title VI, §642(a)(2), title XVIII, §§1805(b), 1812(c)(3)(A), (B), Oct. 22, 1986, 100 Stat. 2284, 2810, 2834.)

AMENDMENTS

1986—Subsec. (a)(2)(B)(iii). Pub. L. 99–514, §1805(b), substituted ''sale or exchange of property'' for ''sale of property''.

Subsec. (b)(1). Pub. L. 99–514, §1812(c)(3)(B), inserted at end ''For purposes of section 267(a)(2), partnerships described in subparagraph (B) of this paragraph shall be treated as persons specified in section 267(b).''

Subsec. (b)(1)(A). Pub. L. 99–514, §1812(c)(3)(A), substituted ''a person'' for ''a partner''.

Subsec. (b)(2)(A). Pub. L. 99–514, §1812(c)(3)(A), substituted ''a person'' for ''a partner''.

Pub. L. 99–514, §642(a)(2), substituted ''50 percent'' for ''80 percent''.

Subsec. (b)(2)(B). Pub. L. 99–514, §642(a)(2), substituted ''50 percent'' for ''80 percent''.

1984—Subsec. (a). Pub. L. 98–369 designated existing provisions as par. (1) and added par. (2).

1976—Subsec. (b)(2). Pub. L. 94–455, §1901(b)(3)(C), substituted ''as ordinary income'' for ''as gain from the sale or exchange of property other than a capital asset''.

Subsec. (c). Pub. L. 94–455, §213(b)(3), substituted ''and, subject to section 263, for purposes of section 162(a)'' for ''and section 162(a)''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 642(a)(2) of Pub. L. 99–514 applicable to sales after Oct. 22, 1986, in taxable years ending after such date, but not applicable to sales made after Aug. 14, 1986, which are made pursuant to a binding contract in effect on Aug. 14, 1986, and at all times thereafter, see section 642(c) of Pub. L. 99–514, set out as a note under section 1239 of this title.

Amendment by sections 1805(b) and 1812(c)(3)(B) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Pub. L. 99–514, title XVIII, §1812(c)(3)(A), Oct. 22, 1986, 100 Stat. 2834, provided that the amendment made by that section is effective with respect to sales or exchanges after Sept. 27, 1985.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §73(b), July 18, 1984, 98 Stat. 592, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply—

''(A) in the case of arrangements described in section 707(a)(2)(A) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by subsection (a)), to services performed or property transferred after February 29, 1984, and

''(B) in the case of transfers described in section 707(a)(2)(B) of such Code (as so amended), to property transferred after March 31, 1984.

''(2) BINDING CONTRACT EXCEPTION.—The amendment made by subsection (a) shall not apply to a transfer of property described in section 707(a)(2)(B)(i) if such transfer is pursuant to a binding contract in effect on March 31, 1984, and at all times thereafter before the transfer.

''(3) EXCEPTION FOR CERTAIN TRANSFERS.—The amendment made by subsection (a) shall not apply to a transfer of property described in section 707(a)(2)(B)(i) that is made before December 31, 1984, if—

''(A) such transfer was proposed in a written private offering memorandum circulated before February 28, 1984;

''(B) the out-of-pocket costs incurred with respect to such offering exceeded $250,000 as of February 28, 1984;

''(C) the encumbrances placed on such property in anticipation of such transfer all constitute obligations for which neither the partnership nor any partner is liable; and

''(D) the transferor of such property is the sole general partner of the partnership.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 213(b)(3) of Pub. L. 94–455 applicable in the case of partnership taxable years beginning after Dec. 31, 1975, see section 213(f)(1) of Pub. L. 94–455, set out as an Effective Date note under section 709 of this title.

Amendment by section 1901(b)(3)(C) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 708. Continuation of partnership

(a) General rule

For purposes of this subchapter, an existing partnership shall be considered as continuing if it is not terminated.

(b) Termination

(1) General rule

For purposes of subsection (a), a partnership shall be considered as terminated only if no part of any business, financial operation, or venture of the partnership continues to be carried on by any of its partners in a partnership.

(2) Special rules

(A) Merger or consolidation

In the case of the merger or consolidation of two or more partnerships, the resulting partnership shall, for purposes of this section, be considered the continuation of any merging or consolidating partnership whose members own an interest of more than 50 percent in the capital and profits of the resulting partnership.

(B) Division of a partnership

In the case of a division of a partnership into two or more partnerships, the resulting partnerships (other than any resulting partnership the members of which had an interest of 50 percent or less in the capital and profits of the prior partnership) shall, for purposes of this section, be considered a continuation of the prior partnership.

(Aug. 16, 1954, ch. 736, 68A Stat. 244; Pub. L. 115–97, title I, § 13504(a), Dec. 22, 2017, 131 Stat. 2141.)

AMENDMENTS

2017—Subsec. (b)(1). Pub. L. 115–97 struck out dash after ''only if'' and subpar. (A) designation before ''no part'' and struck out subpar. (B) which read as follows: ''within a 12-month period there is a sale or exchange of 50 percent or more of the total interest in partnership capital and profits''.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–97 applicable to partnership taxable years beginning after Dec. 31, 2017, see section 13504(c) of Pub. L. 115–97, set out as a note under section 168 of this title.

§ 709. Treatment of organization and syndication fees

(a) General rule

Except as provided in subsection (b), no deduction shall be allowed under this chapter to the partnership or to any partner for any amounts paid or incurred to organize a partnership or to promote the sale of (or to sell) an interest in such partnership.

(b) Deduction of organization fees

(1) Allowance of deduction

If a partnership elects the application of this subsection (in accordance with regulations prescribed by the Secretary) with respect to any organizational expenses—

(A) the partnership shall be allowed a deduction for the taxable year in which the partnership begins business in an amount equal to the lesser of—

(i) the amount of organizational expenses with respect to the partnership, or

(ii) $5,000, reduced (but not below zero) by the amount by which such organizational expenses exceed $50,000, and

(B) the remainder of such organizational expenses shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the partnership begins business.

(2) Dispositions before close of amortization period

In any case in which a partnership is liquidated before the end of the period to which paragraph (1)(B) applies, any deferred expenses attributable to the partnership which were not allowed as a deduction by reason of this section may be deducted to the extent allowable under section 165.

(3) Organizational expenses defined

The organizational expenses to which paragraph (1) applies, are expenditures which—

(A) are incident to the creation of the partnership;

(B) are chargeable to capital account; and

(C) are of a character which, if expended incident to the creation of a partnership having an ascertainable life, would be amortized over such life.

(Added Pub. L. 94–455, title II, § 213(b)(1), Oct. 4, 1976, 90 Stat. 1547; amended Pub. L. 108–357, title VIII, § 902(c), Oct. 22, 2004, 118 Stat. 1651; Pub. L. 109–135, title IV, § 403(*ll*), Dec. 21, 2005, 119 Stat. 2632.)

AMENDMENTS

2005—Subsec. (b)(1). Pub. L. 109–135 substituted ''partnership'' for ''taxpayer'' in introductory provisions and before ''shall be allowed'' in subpar. (A).

2004—Subsec. (b). Pub. L. 108–357 substituted ''Deduction'' for ''Amortization'' in heading, added par. (2), redesignated former par. (2) as (3), and amended heading and text of par. (1) generally. Prior to amendment, text of par. (1) read as follows: ''Amounts paid or incurred to organize a partnership may, at the election of the partnership (made in accordance with regulations prescribed by the Secretary), be treated as deferred expenses. Such deferred expenses shall be allowed as a deduction ratably over such period of not less than 60 months as may be selected by the partnership (beginning with the month in which the partnership begins business), or if the partnership is liquidated before the end of such 60-month period, such deferred expenses (to the extent not deducted under this section) may be deducted to the extent provided in section 165.''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to amounts paid or incurred after Oct. 22, 2004, see section 902(d) of Pub. L. 108–357, set out as a note under section 195 of this title.

EFFECTIVE DATE

Pub. L. 94–455, title II, §213(f), Oct. 4, 1976, 90 Stat. 1548, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting this section and amending sections 179, 704, 706, 707, and 761 of this title] shall apply in the case of partnership taxable years beginning after December 31, 1975.

''(2) SUBSECTION (e).—The amendment made by subsection (e) [amending section 704 of this title] shall apply to liabilities incurred after December 31, 1976.

''(3) SECTION 709(b) OF THE CODE.—Section 709(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by the amendment made by subsection (b)(1) of this section) shall apply in the case of amounts paid or incurred in taxable years beginning after December 31, 1976.''

PART II—CONTRIBUTIONS, DISTRIBUTIONS, AND TRANSFERS

SUBPART A—CONTRIBUTIONS TO A PARTNERSHIP

AMENDMENTS

1984—Pub. L. 98–369, div. A, title I, §74(c), July 18, 1984, 98 Stat. 593, added item 724.

§ 721. Nonrecognition of gain or loss on contribution

(a) General rule

No gain or loss shall be recognized to a partnership or to any of its partners in the case of a contribution of property to the partnership in exchange for an interest in the partnership.

(b) Special rule

Subsection (a) shall not apply to gain realized on a transfer of property to a partnership which would be treated as an investment company (within the meaning of section 351) if the partnership were incorporated.

(c) Regulations relating to certain transfers to partnerships

The Secretary may provide by regulations that subsection (a) shall not apply to gain realized on the transfer of property to a partnership if such gain, when recognized, will be includible in the gross income of a person other than a United States person.

(d) Transfers of intangibles

For regulatory authority to treat intangibles transferred to a partnership as sold, see section 367(d)(3).

(Aug. 16, 1954, ch. 736, 68A Stat. 245; Pub. L. 94–455, title XXI, §2131(b), Oct. 4, 1976, 90 Stat. 1924; Pub. L. 105–34, title XI, §1131(b)(3), (5)(B), Aug. 5, 1997, 111 Stat. 979, 980.)

CODIFICATION

Another section 1131(b) of Pub. L. 105–34 enacted section 684 of this title.

AMENDMENTS

1997—Subsec. (c). Pub. L. 105–34, §1131(b)(3), added subsec. (c).

Subsec. (d). Pub. L. 105–34, §1131(b)(5)(B), added subsec. (d).

1976—Pub. L. 94–455 designated existing provisions as subsec. (a), added subsec. (a) heading ''General rule'', and added subsec. (b).

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XXI, §2131(f)(3)–(5), Oct. 4, 1976, 90 Stat. 1924, 1925, provided that:

''(3) Except as provided in paragraph (4), the amendments made by subsections (b) and (c) [amending this section and sections 722 and 723 of this title] shall apply to transfers made after February 17, 1976, in taxable years ending after such date.

''(4) The amendments made by subsections (b) and (c) shall not apply to transfers to a partnership made on or before the 90th day after the date of the enactment of this Act [Oct. 4, 1976] if—

''(A) either—

''(i) a ruling request with respect to such transfers was filed with the Internal Revenue Service before March 27, 1976, or

''(ii) a registration statement with respect to such transfers was filed with the Securities and Exchange Commission before March 27, 1976,

''(B) the securities transferred were deposited on or before the 60th day after the date of the enactment of this Act [Oct. 4, 1976], and

''(C) either—

''(i) the aggregate value (determined as of the close of the 60th day referred to in subparagraph (B), or, if earlier, the close of the deposit period) of the securities so transferred does not exceed $100,000,000, or

''(ii) the securities transferred were all on deposit on February 29, 1976, pursuant to a registration statement referred to in subparagraph (A)(ii).

''(5) If no registration statement was required to be filed with the Securities and Exchange Commission with respect to the transfer of securities to any partnership, then paragraph (4) shall be applied to such transfers—

''(A) as if paragraph (4) did not contain subparagraph (A)(ii) thereof, and

''(B) by substituting '$25,000,000' for '$100,000,000' in subparagraph (C)(i) thereof.''

§ 722. Basis of contributing partner's interest

The basis of an interest in a partnership acquired by a contribution of property, including money, to the partnership shall be the amount of such money and the adjusted basis of such property to the contributing partner at the time of the contribution increased by the amount (if any) of gain recognized under section 721(b) to the contributing partner at such time.

(Aug. 16, 1954, ch. 736, 68A Stat. 245; Pub. L. 94–455, title XXI, §2131(c), Oct. 4, 1976, 90 Stat. 1924; Pub. L. 98–369, div. A, title VII, §722(f)(1), July 18, 1984, 98 Stat. 974.)

AMENDMENTS

1984—Pub. L. 98–369 inserted ''under section 721(b)'' after ''gain recognized''.

1976—Pub. L. 94–455 inserted ''increased by the amount (if any) of gain recognized to the contributing partner at such time'' after ''at the time of the contribution''.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title VII, § 722(f)(2), July 18, 1984, 98 Stat. 974, provided that: ''The amendments made by paragraph (1) [amending this section and section 723 of this title] shall take effect as if included in the amendments made by section 2131 of the Tax Reform Act of 1976 [Pub. L. 94–455].''

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment made by Pub. L. 94–455, see section 2131(f)(3)–(5) of Pub. L. 94–455, set out as a note under section 721 of this title.

§ 723. Basis of property contributed to partnership

The basis of property contributed to a partnership by a partner shall be the adjusted basis of such property to the contributing partner at the time of the contribution increased by the amount (if any) of gain recognized under section 721(b) to the contributing partner at such time.

(Aug. 16, 1954, ch. 736, 68A Stat. 245; Pub. L. 94–455, title XXI, § 2131(c), Oct. 4, 1976, 90 Stat. 1924; Pub. L. 98–369, div. A, title VII, § 722(f)(1), July 18, 1984, 98 Stat. 974.)

AMENDMENTS

1984—Pub. L. 98–369 inserted ''under section 721(b)'' after ''gain recognized''.

1976—Pub. L. 94–455 inserted ''increased by the amount (if any) of gain recognized to the contributing partner at such time'' after ''at the time of the contribution''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective as if included in amendments made by section 2131 of the Tax Reform Act of 1976, Pub. L. 94–455, see section 722(f)(2) of Pub. L. 98–369, set out as a note under section 722 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment made by Pub. L. 94–455, see section 2131(f)(3)–(5) of Pub. L. 94–455, set out as a note under section 721 of this title.

§ 724. Character of gain or loss on contributed unrealized receivables, inventory items, and capital loss property

(a) Contributions of unrealized receivables

In the case of any property which—

(1) was contributed to the partnership by a partner, and

(2) was an unrealized receivable in the hands of such partner immediately before such contribution,

any gain or loss recognized by the partnership on the disposition of such property shall be treated as ordinary income or ordinary loss, as the case may be.

(b) Contributions of inventory items

In the case of any property which—

(1) was contributed to the partnership by a partner, and

(2) was an inventory item in the hands of such partner immediately before such contribution,

any gain or loss recognized by the partnership on the disposition of such property during the 5-year period beginning on the date of such contribution shall be treated as ordinary income or ordinary loss, as the case may be.

(c) Contributions of capital loss property

In the case of any property which—

(1) was contributed by a partner to the partnership, and

(2) was a capital asset in the hands of such partner immediately before such contribution,

any loss recognized by the partnership on the disposition of such property during the 5-year period beginning on the date of such contribution shall be treated as a loss from the sale of a capital asset to the extent that, immediately before such contribution, the adjusted basis of such property in the hands of the partner exceeded the fair market value of such property.

(d) Definitions

For purposes of this section—

(1) Unrealized receivable

The term ''unrealized receivable'' has the meaning given such term by section 751(c) (determined by treating any reference to the partnership as referring to the partner).

(2) Inventory item

The term ''inventory item'' has the meaning given such term by section 751(d) (determined by treating any reference to the partnership as referring to the partner and by applying section 1231 without regard to any holding period therein provided).

(3) Substituted basis property

(A) In general

If any property described in subsection (a), (b), or (c) is disposed of in a nonrecognition transaction, the tax treatment which applies to such property under such subsection shall also apply to any substituted basis property resulting from such transaction. A similar rule shall also apply in the case of a series of non-recognition transactions.

(B) Exception for stock in C corporation

Subparagraph (A) shall not apply to any stock in a C corporation received in an exchange described in section 351.

(Added Pub. L. 98–369, div. A, title I, § 74(a), July 18, 1984, 98 Stat. 592; amended Pub. L. 104–188, title I, § 1704(t)(63), Aug. 20, 1996, 110 Stat. 1890; Pub. L. 105–34, title X, § 1062(b)(3), Aug. 5, 1997, 111 Stat. 947.)

AMENDMENTS

1997—Subsec. (d)(2). Pub. L. 105–34 substituted ''section 751(d)'' for ''section 751(d)(2)''.

1996—Subsec. (d)(3)(B). Pub. L. 104–188 substituted ''Subparagraph'' for ''Subparagaph''.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title X, § 1062(c), Aug. 5, 1997, 111 Stat. 947, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 731, 732, 735, and 751 of this title] shall apply to sales, exchanges, and distributions after the date of the enactment of this Act [Aug. 5, 1997].

''(2) BINDING CONTRACTS.—The amendments made by this section shall not apply to any sale or exchange pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before such sale or exchange.''

EFFECTIVE DATE

Pub. L. 98–369, div. A, title I, § 74(d)(1), July 18, 1984, 98 Stat. 594, provided that: ''The amendment made by subsection (a) [enacting this section] shall apply to property contributed to a partnership after March 31, 1984, in taxable years ending after such date.''

SUBPART B—DISTRIBUTIONS BY A PARTNERSHIP

Sec.

AMENDMENTS

2004—Pub. L. 108–357, title VIII, § 833(c)(5)(B), Oct. 22, 2004, 118 Stat. 1592, substituted ''Adjustment to basis of undistributed partnership property where section 754 election or substantial basis reduction'' for ''Optional adjustment to basis of undistributed partnership property'' in item 734.

1992—Pub. L. 102–486, title XIX, § 1937(b)(3), Oct. 24, 1992, 106 Stat. 3033, added item 737.

§ 731. Extent of recognition of gain or loss on distribution

(a) Partners

In the case of a distribution by a partnership to a partner—

(1) gain shall not be recognized to such partner, except to the extent that any money distributed exceeds the adjusted basis of such partner's interest in the partnership immediately before the distribution, and

(2) loss shall not be recognized to such partner, except that upon a distribution in liquidation of a partner's interest in a partnership where no property other than that described in subparagraph (A) or (B) is distributed to such partner, loss shall be recognized to the extent of the excess of the adjusted basis of such partner's interest in the partnership over the sum of—

(A) any money distributed, and

(B) the basis to the distributee, as determined under section 732, of any unrealized receivables (as defined in section 751(c)) and inventory (as defined in section 751(d)).

Any gain or loss recognized under this subsection shall be considered as gain or loss from the sale or exchange of the partnership interest of the distributee partner.

(b) Partnerships

No gain or loss shall be recognized to a partnership on a distribution to a partner of property, including money.

(c) Treatment of marketable securities

(1) In general

For purposes of subsection (a)(1) and section 737—

(A) the term ''money'' includes marketable securities, and

(B) such securities shall be taken into account at their fair market value as of the date of the distribution.

(2) Marketable securities

For purposes of this subsection:

(A) In general

The term ''marketable securities'' means financial instruments and foreign currencies which are, as of the date of the distribution, actively traded (within the meaning of section 1092(d)(1)).

(B) Other property

Such term includes—

(i) any interest in—

(I) a common trust fund, or

(II) a regulated investment company which is offering for sale or has outstanding any redeemable security (as defined in section 2(a)(32) of the Investment Company Act of 1940) of which it is the issuer,

(ii) any financial instrument which, pursuant to its terms or any other arrangement, is readily convertible into, or exchangeable for, money or marketable securities,

(iii) any financial instrument the value of which is determined substantially by reference to marketable securities,

(iv) except to the extent provided in regulations prescribed by the Secretary, any interest in a precious metal which, as of the date of the distribution, is actively traded (within the meaning of section 1092(d)(1)) unless such metal was produced, used, or held in the active conduct of a trade or business by the partnership,

(v) except as otherwise provided in regulations prescribed by the Secretary, interests in any entity if substantially all of the assets of such entity consist (directly or indirectly) of marketable securities, money, or both, and

(vi) to the extent provided in regulations prescribed by the Secretary, any interest in an entity not described in clause (v) but only to the extent of the value of such interest which is attributable to marketable securities, money, or both.

(C) Financial instrument

The term ''financial instrument'' includes stocks and other equity interests, evidences of indebtedness, options, forward or futures contracts, notional principal contracts, and derivatives.

(3) Exceptions

(A) In general

Paragraph (1) shall not apply to the distribution from a partnership of a marketable security to a partner if—

(i) the security was contributed to the partnership by such partner, except to the extent that the value of the distributed security is attributable to marketable securities or money contributed (directly or indirectly) to the entity to which the distributed security relates,

(ii) to the extent provided in regulations prescribed by the Secretary, the property was not a marketable security when acquired by such partnership, or

(iii) such partnership is an investment partnership and such partner is an eligible partner thereof.

(B) Limitation on gain recognized

In the case of a distribution of marketable securities to a partner, the amount taken into account under paragraph (1) shall be reduced (but not below zero) by the excess (if any) of—

(i) such partner's distributive share of the net gain which would be recognized if all of the marketable securities of the same class and issuer as the distributed securities held by the partnership were sold (immediately before the transaction to which the distribution relates) by the partnership for fair market value, over

(ii) such partner's distributive share of the net gain which is attributable to the marketable securities of the same class and issuer as the distributed securities held by the partnership immediately after the transaction, determined by using the same fair market value as used under clause (i).

Under regulations prescribed by the Secretary, all marketable securities held by the partnership may be treated as marketable securities of the same class and issuer as the distributed securities.

(C) Definitions relating to investment partnerships

For purposes of subparagraph (A)(iii):

(i) Investment partnership

The term ''investment partnership'' means any partnership which has never been engaged in a trade or business and substantially all of the assets (by value) of which have always consisted of—

(I) money,

(II) stock in a corporation,

(III) notes, bonds, debentures, or other evidences of indebtedness,

(IV) interest rate, currency, or equity notional principal contracts,

(V) foreign currencies,

(VI) interests in or derivative financial instruments (including options, forward or futures contracts, short positions, and similar financial instruments) in any asset described in any other subclause of this clause or in any commodity traded on or subject to the rules of a board of trade or commodity exchange,

(VII) other assets specified in regulations prescribed by the Secretary, or

(VIII) any combination of the foregoing.

(ii) Exception for certain activities

A partnership shall not be treated as engaged in a trade or business by reason of—

(I) any activity undertaken as an investor, trader, or dealer in any asset described in clause (i), or

(II) any other activity specified in regulations prescribed by the Secretary.

(iii) Eligible partner

(I) In general

The term ''eligible partner'' means any partner who, before the date of the distribution, did not contribute to the partnership any property other than assets described in clause (i).

(II) Exception for certain nonrecognition transactions

The term ''eligible partner'' shall not include the transferor or transferee in a nonrecognition transaction involving a transfer of any portion of an interest in a partnership with respect to which the transferor was not an eligible partner.

(iv) Look-thru of partnership tiers

Except as otherwise provided in regulations prescribed by the Secretary—

(I) a partnership shall be treated as engaged in any trade or business engaged in by, and as holding (instead of a partnership interest) a proportionate share of the assets of, any other partnership in which the partnership holds a partnership interest, and

(II) a partner who contributes to a partnership an interest in another partnership shall be treated as contributing a proportionate share of the assets of the other partnership.

If the preceding sentence does not apply under such regulations with respect to any interest held by a partnership in another partnership, the interest in such other partnership shall be treated as if it were specified in a subclause of clause (i).

(4) Basis of securities distributed

(A) In general

The basis of marketable securities with respect to which gain is recognized by reason of this subsection shall be—

(i) their basis determined under section 732, increased by

(ii) the amount of such gain.

(B) Allocation of basis increase

Any increase in basis attributable to the gain described in subparagraph (A)(ii) shall be allocated to marketable securities in proportion to their respective amounts of unrealized appreciation before such increase.

(5) Subsection disregarded in determining basis of partner's interest in partnership and of basis of partnership property

Sections 733 and 734 shall be applied as if no gain were recognized, and no adjustment were made to the basis of property, under this subsection.

(6) Character of gain recognized

In the case of a distribution of a marketable security which is an unrealized receivable (as

defined in section 751(c)) or an inventory item (as defined in section 751(d)), any gain recognized under this subsection shall be treated as ordinary income to the extent of any increase in the basis of such security attributable to the gain described in paragraph (4)(A)(ii).

(7) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, including regulations to prevent the avoidance of such purposes.

(d) Exceptions

This section shall not apply to the extent otherwise provided by section 736 (relating to payments to a retiring partner or a deceased partner's successor in interest), section 751 (relating to unrealized receivables and inventory items), and section 737 (relating to recognition of precontribution gain in case of certain distributions).

(Aug. 16, 1954, ch. 736, 68A Stat. 245; Pub. L. 102–486, title XIX, § 1937(b)(2), Oct. 24, 1992, 106 Stat. 3033; Pub. L. 103–465, title VII, § 741(a), Dec. 8, 1994, 108 Stat. 5006; Pub. L. 105–34, title X, § 1062(b)(3), Aug. 5, 1997, 111 Stat. 947.)

REFERENCES IN TEXT

Section 2(a)(32) of the Investment Company Act of 1940, referred to in subsec. (c)(2)(B)(i)(II), is classified to section 80a–2(a)(32) of Title 15, Commerce and Trade.

AMENDMENTS

1997—Subsecs. (a)(2)(B), (c)(6). Pub. L. 105–34 substituted ''section 751(d)'' for ''section 751(d)(2)''.

1994—Subsecs. (c), (d). Pub. L. 103–465 added subsec. (c) and redesignated former subsec. (c) as (d).

1992—Subsec. (c). Pub. L. 102–486 substituted '', section 751'' for ''and section 751'' and inserted before period at end '', and section 737 (relating to recognition of precontribution gain in case of certain distributions)''.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to sales, exchanges, and distributions after Aug. 5, 1997, but not applicable to any sale or exchange pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before such sale or exchange, see section 1062(c) of Pub. L. 105–34, set out as a note under section 724 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–465, title VII, § 741(c), Dec. 8, 1994, 108 Stat. 5009, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and section 737 of this title] shall apply to distributions after the date of the enactment of this Act [Dec. 8, 1994].

''(2) CERTAIN DISTRIBUTIONS BEFORE JANUARY 1, 1995.—The amendments made by this section shall not apply to any marketable security distributed before January 1, 1995, by the partnership which held such security on July 27, 1994.

''(3) DISTRIBUTIONS IN LIQUIDATION OF PARTNER'S INTEREST.—The amendments made by this section shall not apply to the distribution of a marketable security in liquidation of a partner's interest in a partnership if—

''(A) such liquidation is pursuant to a written contract which was binding on July 15, 1994, and at all times thereafter before the distribution, and

''(B) such contract provides for the purchase of such interest not later than a date certain for—

''(i) a fixed value of marketable securities that are specified in the contract, or

''(ii) other property.

The preceding sentence shall not apply if the partner has the right to elect that such distribution be made other than in marketable securities.

''(4) DISTRIBUTIONS IN COMPLETE LIQUIDATION OF PUBLICLY TRADED PARTNERSHIPS.—

''(A) IN GENERAL.—The amendments made by this section shall not apply to the distribution of a marketable security in a qualified partnership liquidation if—

''(i) the marketable securities were received by the partnership in a nonrecognition transaction in exchange for substantially all of the assets of the partnership,

''(ii) the marketable securities are distributed by the partnership within 90 days after their receipt by the partnership, and

''(iii) the partnership is liquidated before the beginning of the 1st taxable year of the partnership beginning after December 31, 1997.

''(B) QUALIFIED PARTNERSHIP LIQUIDATION.—For purposes of subparagraph (A), the term 'qualified partnership liquidation' means—

''(i) a complete liquidation of a publicly traded partnership (as defined in section 7704(b) of the Internal Revenue Code of 1986) which is an existing partnership (as defined in section 10211(c)(2) of the Revenue Act of 1987 [Pub. L. 100–203, set out as an Effective Date note under section 7704 of this title]), and

''(ii) a complete liquidation of a partnership which is related to a partnership described in clause (i) if such liquidation is related to a complete liquidation of the partnership described in clause (i).

''(5) MARKETABLE SECURITIES.—For purposes of this subsection, the term 'marketable securities' has the meaning given such term by section 731(c) of the Internal Revenue Code of 1986, as added by this section.''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–486 applicable to distributions on or after June 25, 1992, see section 1937(c) of Pub. L. 102–486, set out as a note under section 704 of this title.

§ 732. Basis of distributed property other than money

(a) Distributions other than in liquidation of a partner's interest

(1) General rule

The basis of property (other than money) distributed by a partnership to a partner other than in liquidation of the partner's interest shall, except as provided in paragraph (2), be its adjusted basis to the partnership immediately before such distribution.

(2) Limitation

The basis to the distributee partner of property to which paragraph (1) is applicable shall not exceed the adjusted basis of such partner's interest in the partnership reduced by any money distributed in the same transaction.

(b) Distributions in liquidation

The basis of property (other than money) distributed by a partnership to a partner in liquidation of the partner's interest shall be an amount equal to the adjusted basis of such partner's interest in the partnership reduced by any money distributed in the same transaction.

(c) Allocation of basis

(1) In general

The basis of distributed properties to which subsection (a)(2) or (b) is applicable shall be allocated—

(A)(i) first to any unrealized receivables (as defined in section 751(c)) and inventory items (as defined in section 751(d)) in an amount equal to the adjusted basis of each such property to the partnership, and

(ii) if the basis to be allocated is less than the sum of the adjusted bases of such properties to the partnership, then, to the extent any decrease is required in order to have the adjusted bases of such properties equal the basis to be allocated, in the manner provided in paragraph (3), and

(B) to the extent of any basis remaining after the allocation under subparagraph (A), to other distributed properties—

(i) first by assigning to each such other property such other property's adjusted basis to the partnership, and

(ii) then, to the extent any increase or decrease in basis is required in order to have the adjusted bases of such other distributed properties equal such remaining basis, in the manner provided in paragraph (2) or (3), whichever is appropriate.

(2) Method of allocating increase

Any increase required under paragraph (1)(B) shall be allocated among the properties—

(A) first to properties with unrealized appreciation in proportion to their respective amounts of unrealized appreciation before such increase (but only to the extent of each property's unrealized appreciation), and

(B) then, to the extent such increase is not allocated under subparagraph (A), in proportion to their respective fair market values.

(3) Method of allocating decrease

Any decrease required under paragraph (1)(A) or (1)(B) shall be allocated—

(A) first to properties with unrealized depreciation in proportion to their respective amounts of unrealized depreciation before such decrease (but only to the extent of each property's unrealized depreciation), and

(B) then, to the extent such decrease is not allocated under subparagraph (A), in proportion to their respective adjusted bases (as adjusted under subparagraph (A)).

(d) Special partnership basis to transferee

For purposes of subsections (a), (b), and (c), a partner who acquired all or a part of his interest by a transfer with respect to which the election provided in section 754 is not in effect, and to whom a distribution of property (other than money) is made with respect to the transferred interest within 2 years after such transfer, may elect, under regulations prescribed by the Secretary, to treat as the adjusted partnership basis of such property the adjusted basis such property would have if the adjustment provided in section 743(b) were in effect with respect to the partnership property. The Secretary may by regulations require the application of this subsection in the case of a distribution to a transferee partner, whether or not made within 2 years after the transfer, if at the time of the transfer the fair market value of the partnership property (other than money) exceeded 110 percent of its adjusted basis to the partnership.

(e) Exception

This section shall not apply to the extent that a distribution is treated as a sale or exchange of property under section 751(b) (relating to unrealized receivables and inventory items).

(f) Corresponding adjustment to basis of assets of a distributed corporation controlled by a corporate partner

(1) In general

If—

(A) a corporation (hereafter in this subsection referred to as the ''corporate partner'') receives a distribution from a partnership of stock in another corporation (hereafter in this subsection referred to as the ''distributed corporation''),

(B) the corporate partner has control of the distributed corporation immediately after the distribution or at any time thereafter, and

(C) 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 be applied to reduce (in accordance with subsection (c)) the basis of property held by the distributed corporation at such time (or, if the corporate partner does not control the distributed corporation at such time, at the time the corporate partner first has such control).

(2) Exception for certain distributions before control acquired

Paragraph (1) shall not apply to any distribution of stock in the distributed corporation if—

(A) the corporate partner does not have control of such corporation immediately after such distribution, and

(B) the corporate partner establishes to the satisfaction of the Secretary that such distribution was not part of a plan or arrangement to acquire control of the distributed corporation.

(3) Limitations on basis reduction

(A) In general

The amount of the reduction under paragraph (1) shall not exceed the amount by which the sum of the aggregate adjusted bases of the property and the amount of money of the distributed corporation exceeds the corporate partner's adjusted basis in the stock of the distributed corporation.

(B) Reduction not to exceed adjusted basis of property

No reduction under paragraph (1) in the basis of any property shall exceed the adjusted basis of such property (determined without regard to such reduction).

(4) Gain recognition where reduction limited

If the amount of any reduction under paragraph (1) (determined after the application of paragraph (3)(A)) exceeds the aggregate adjusted bases of the property of the distributed corporation—

(A) such excess shall be recognized by the corporate partner as long-term capital gain, and

(B) the corporate partner's adjusted basis in the stock of the distributed corporation shall be increased by such excess.

(5) Control

For purposes of this subsection, the term ''control'' means ownership of stock meeting the requirements of section 1504(a)(2).

(6) Indirect distributions

For purposes of paragraph (1), if a corporation acquires (other than in a distribution from a partnership) stock the basis of which is determined (by reason of being distributed from a partnership) in whole or in part by reference to subsection (a)(2) or (b), the corporation shall be treated as receiving a distribution of such stock from a partnership.

(7) Special rule for stock in controlled corporation

If the property held by a distributed corporation is stock in a corporation which the distributed corporation controls, this subsection shall be applied to reduce the basis of the property of such controlled corporation. This subsection shall be reapplied to any property of any controlled corporation which is stock in a corporation which it controls.

(8) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations to avoid double counting and to prevent the abuse of such purposes.

(Aug. 16, 1954, ch. 736, 68A Stat. 246; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 105–34, title X, §§ 1061(a), 1062(b)(3), Aug. 5, 1997, 111 Stat. 945, 947; Pub. L. 106–170, title V, § 538(a), Dec. 17, 1999, 113 Stat. 1939.)

AMENDMENTS

1999—Subsec. (f). Pub. L. 106–170 added subsec. (f).

1997—Subsec. (c). Pub. L. 105–34, § 1061(a), amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: ''The basis of distributed properties to which subsection (a)(2) or subsection (b) is applicable shall be allocated—

''(1) first to any unrealized receivables (as defined in section 751(c)) and inventory items (as defined in section 751(d)(2)) in an amount equal to the adjusted basis of each such property to the partnership (or if the basis to be allocated is less than the sum of the adjusted bases of such properties to the partnership, in proportion to such bases), and

''(2) to the extent of any remaining basis, to any other distributed properties in proportion to their adjusted bases to the partnership.''

Subsec. (c)(1)(A)(i). Pub. L. 105–34, § 1062(b)(3), substituted ''section 751(d)'' for ''section 751(d)(2)''.

1976—Subsec. (d). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title V, § 538(b), Dec. 17, 1999, 113 Stat. 1940, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by this section [amending this section] shall apply to distributions made after July 14, 1999.

''(2) PARTNERSHIPS IN EXISTENCE ON JULY 14, 1999.—In the case of a corporation which is a partner in a partnership as of July 14, 1999, the amendment made by this section shall apply to any distribution made (or treated as made) to such partner from such partnership after June 30, 2001, except that this paragraph shall not apply to any distribution after the date of the enactment of this Act [Dec. 17, 1999] unless the partner makes an election to have this paragraph apply to such distribution on the partner's return of Federal income tax for the taxable year in which such distribution occurs.''

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title X, § 1061(b), Aug. 5, 1997, 111 Stat. 946, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to distributions after the date of the enactment of this Act [Aug. 5, 1997].''

Amendment by section 1062(b)(3) of Pub. L. 105–34 applicable to sales, exchanges, and distributions after Aug. 5, 1997, but not applicable to any sale or exchange pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before such sale or exchange, see section 1062(c) of Pub. L. 105–34, set out as a note under section 724 of this title.

§ 733. Basis of distributee partner's interest

In the case of a distribution by a partnership to a partner other than in liquidation of a partner's interest, the adjusted basis to such partner of his interest in the partnership shall be reduced (but not below zero) by—

(1) the amount of any money distributed to such partner, and

(2) the amount of the basis to such partner of distributed property other than money, as determined under section 732.

(Aug. 16, 1954, ch. 736, 68A Stat. 247.)

§ 734. Adjustment to basis of undistributed partnership property where section 754 election or substantial basis reduction

(a) General rule

The basis of partnership property shall not be adjusted as the result of a distribution of property to a partner unless the election, provided in section 754 (relating to optional adjustment to basis of partnership property), is in effect with respect to such partnership or unless there is a substantial basis reduction with respect to such distribution.

(b) Method of adjustment

In the case of a distribution of property to a partner by a partnership with respect to which the election provided in section 754 is in effect or with respect to which there is a substantial basis reduction, the partnership shall—

(1) increase the adjusted basis of partnership property by—

(A) the amount of any gain recognized to the distributee partner with respect to such distribution under section 731(a)(1), and

(B) in the case of distributed property to which section 732(a)(2) or (b) applies, the excess of the adjusted basis of the distributed property to the partnership immediately before the distribution (as adjusted by section 732(d)) over the basis of the distributed property to the distributee, as determined under section 732, or

(2) decrease the adjusted basis of partnership property by—

(A) the amount of any loss recognized to the distributee partner with respect to such distribution under section 731(a)(2), and

(B) in the case of distributed property to which section 732(b) applies, the excess of the basis of the distributed property to the distributee, as determined under section 732, over the adjusted basis of the distributed property to the partnership immediately before such distribution (as adjusted by section 732(d)).

Paragraph (1)(B) shall not apply to any distributed property which is an interest in another partnership with respect to which the election provided in section 754 is not in effect.

(c) Allocation of basis

The allocation of basis among partnership properties where subsection (b) is applicable shall be made in accordance with the rules provided in section 755.

(d) Substantial basis reduction

(1) In general

For purposes of this section, there is a substantial basis reduction with respect to a distribution if the sum of the amounts described in subparagraphs (A) and (B) of subsection (b)(2) exceeds $250,000.

(2) Regulations

For regulations to carry out this subsection, see section 743(d)(2).

(e) Exception for securitization partnerships

For purposes of this section, a securitization partnership (as defined in section 743(f)) shall not be treated as having a substantial basis reduction with respect to any distribution of property to a partner.

(Aug. 16, 1954, ch. 736, 68A Stat. 247; Pub. L. 98–369, div. A, title I, §78(a), July 18, 1984, 98 Stat. 597; Pub. L. 108–357, title VIII, §833(c)(1)–(5)(A), Oct. 22, 2004, 118 Stat. 1591, 1592; Pub. L. 109–135, title IV, §403(bb), Dec. 21, 2005, 119 Stat. 2630.)

AMENDMENTS

2005—Subsec. (a). Pub. L. 109–135, §403(bb)(1), inserted ''with respect to such distribution'' before period at end.

Subsec. (b). Pub. L. 109–135, §403(bb)(2), reenacted heading without change and amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: ''In the case of a distribution of property to a partner, a partnership, with respect to which the election provided in section 754 is in effect or unless there is a substantial basis reduction, shall—''.

2004—Pub. L. 108–357, §833(c)(5)(A), substituted ''Adjustment to basis of undistributed partnership property where section 754 election or substantial basis reduction'' for ''Optional adjustment to basis of undistributed partnership property'' in section catchline.

Subsec. (a). Pub. L. 108–357, §833(c)(1), inserted ''or unless there is a substantial basis reduction'' before period at end.

Subsec. (b). Pub. L. 108–357, §833(c)(2), inserted ''or unless there is a substantial basis reduction'' after ''section 754 is in effect'' in introductory provisions.

Subsec. (d). Pub. L. 108–357, §833(c)(3), added subsec. (d).

Subsec. (e). Pub. L. 108–357, §833(c)(4), added subsec. (e).

1984—Subsec. (b). Pub. L. 98–369 inserted at end ''Paragraph (1)(B) shall not apply to any distributed property which is an interest in another partnership with respect to which the election provided in section 754 is not in effect.''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §833(d)(3), Oct. 22, 2004, 118 Stat. 1592, provided that: ''The amendments made by subsection (c) [amending this section] shall apply to distributions after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §78(b), July 18, 1984, 98 Stat. 597, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to distributions after March 1, 1984, in taxable years ending after such date.''

§ 735. Character of gain or loss on disposition of distributed property

(a) Sale or exchange of certain distributed property

(1) Unrealized receivables

Gain or loss on the disposition by a distributee partner of unrealized receivables (as defined in section 751(c)) distributed by a partnership, shall be considered as ordinary income or as ordinary loss, as the case may be.

(2) Inventory items

Gain or loss on the sale or exchange by a distributee partner of inventory items (as defined in section 751(d)) distributed by a partnership shall, if sold or exchanged within 5 years from the date of the distribution, be considered as ordinary income or as ordinary loss, as the case may be.

(b) Holding period for distributed property

In determining the period for which a partner has held property received in a distribution from a partnership (other than for purposes of subsection (a)(2)), there shall be included the holding period of the partnership, as determined under section 1223, with respect to such property.

(c) Special rules

(1) Waiver of holding periods contained in section 1231

For purposes of this section, section 751(d) (defining inventory item) shall be applied without regard to any holding period in section 1231(b).

(2) Substituted basis property

(A) In general

If any property described in subsection (a) is disposed of in a nonrecognition transaction, the tax treatment which applies to such property under such subsection shall also apply to any substituted basis property resulting from such transaction. A similar rule shall also apply in the case of a series of nonrecognition transactions.

(B) Exception for stock in C corporation

Subparagraph (A) shall not apply to any stock in a C corporation received in an exchange described in section 351.

(Aug. 16, 1954, ch. 763, 68A Stat. 247; Pub. L. 94–455, title XIX, § 1901(b)(3)(D), Oct. 4, 1976, 90 Stat. 1792; Pub. L. 98–369, div. A, title I, § 74(b), July 18, 1984, 98 Stat. 593; Pub. L. 105–34, title X, § 1062(b)(3), Aug. 5, 1997, 111 Stat. 947.)

AMENDMENTS

1997—Subsecs. (a)(2), (c)(1). Pub. L. 105–34 substituted ''section 751(d)'' for ''section 751(d)(2)''.

1984—Subsec. (c). Pub. L. 98–369 added subsec. (c).

1976—Subsec. (a)(1), (2). Pub. L. 94–455 substituted ''as ordinary income or as ordinary loss, as the case may be'' for ''gain or loss from the sale or exchange of property other than a capital asset''.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to sales, exchanges, and distributions after Aug. 5, 1997, but not applicable to any sale or exchange pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before such sale or exchange, see section 1062(c) of Pub. L. 105–34, set out as a note under section 724 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, § 74(d)(2), July 18, 1984, 98 Stat. 594, provided that: ''The amendment made by subsection (b) [amending this section] shall apply to property distributed after March 31, 1984, in taxable years ending after such date.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

§ 736. Payments to a retiring partner or a deceased partner's successor in interest

(a) Payments considered as distributive share or guaranteed payment

Payments made in liquidation of the interest of a retiring partner or a deceased partner shall, except as provided in subsection (b), be considered—

(1) as a distributive share to the recipient of partnership income if the amount thereof is determined with regard to the income of the partnership, or

(2) as a guaranteed payment described in section 707(c) if the amount thereof is determined without regard to the income of the partnership.

(b) Payments for interest in partnership

(1) General rule

Payments made in liquidation of the interest of a retiring partner or a deceased partner shall, to the extent such payments (other than payments described in paragraph (2)) are determined, under regulations prescribed by the Secretary, to be made in exchange for the interest of such partner in partnership property, be considered as a distribution by the partnership and not as a distributive share or guaranteed payment under subsection (a).

(2) Special rules

For purposes of this subsection, payments in exchange for an interest in partnership property shall not include amounts paid for—

(A) unrealized receivables of the partnership (as defined in section 751(c)), or

(B) good will of the partnership, except to the extent that the partnership agreement provides for a payment with respect to good will.

(3) Limitation on application of paragraph (2)

Paragraph (2) shall apply only if—

(A) capital is not a material income-producing factor for the partnership, and

(B) the retiring or deceased partner was a general partner in the partnership.

(Aug. 16, 1954, ch. 736, 68A Stat. 248; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–600, title VII, § 701(u)(13)(B), Nov. 6, 1978, 92 Stat. 2918; Pub. L. 103–66, title XIII, § 13262(a), (b)(2)(B), Aug. 10, 1993, 107 Stat. 541.)

AMENDMENTS

1993—Subsec. (b)(3). Pub. L. 103–66, § 13262(a), added par. (3).

Subsec. (c). Pub. L. 103–66, § 13262(b)(2)(B), struck out heading and text of subsec. (c). Text read as follows: ''For limitation on the tax attributable to certain gain connected with section 1248 stock, see section 751(e).''

1978—Subsec. (c). Pub. L. 95–600 added subsec. (c).

1976—Subsec. (b)(1). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, § 13262(c), Aug. 10, 1993, 107 Stat. 541, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 751 of this title] shall apply in the case of partners retiring or dying on or after January 5, 1993.

''(2) BINDING CONTRACT EXCEPTION.—The amendments made by this section shall not apply to any partner retiring on or after January 5, 1993, if a written contract to purchase such partner's interest in the partnership was binding on January 4, 1993, and at all times thereafter before such purchase.''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable to transfers beginning after Oct. 9, 1975, and to sales, exchanges, and distributions taking place after Oct. 9, 1975, see section 701(u)(13)(C) of Pub. L. 95–600, set out as a note under section 751 of this title.

§ 737. Recognition of precontribution gain in case of certain distributions to contributing partner

(a) General rule

In the case of any distribution by a partnership to a partner, such partner shall be treated as recognizing gain in an amount equal to the lesser of—

(1) the excess (if any) of (A) the fair market value of property (other than money) received in the distribution over (B) the adjusted basis of such partner's interest in the partnership immediately before the distribution reduced (but not below zero) by the amount of money received in the distribution, or

(2) the net precontribution gain of the partner.

Gain recognized under the preceding sentence shall be in addition to any gain recognized under section 731. The character of such gain shall be determined by reference to the proportionate character of the net precontribution gain.

(b) Net precontribution gain

For purposes of this section, the term ''net precontribution gain'' means the net gain (if any) which would have been recognized by the distributee partner under section 704(c)(1)(B) if all property which—

(1) had been contributed to the partnership by the distributee partner within 7 years of the distribution, and

(2) is held by such partnership immediately before the distribution,

had been distributed by such partnership to another partner.

(c) Basis rules

(1) Partner's interest

The adjusted basis of a partner's interest in a partnership shall be increased by the amount of any gain recognized by such partner under subsection (a). For purposes of determining the basis of the distributed property (other than money), such increase shall be treated as occurring immediately before the distribution.

(2) Partnership's basis in contributed property

Appropriate adjustments shall be made to the adjusted basis of the partnership in the contributed property referred to in subsection (b) to reflect gain recognized under subsection (a).

(d) Exceptions

(1) Distributions of previously contributed property

If any portion of the property distributed consists of property which had been contributed by the distributee partner to the partnership, such property shall not be taken into account under subsection (a)(1) and shall not be taken into account in determining the amount of the net precontribution gain. If the property distributed consists of an interest in an entity, the preceding sentence shall not apply to the extent that the value of such interest is attributable to property contributed to such entity after such interest had been contributed to the partnership.

(2) Coordination with section 751

This section shall not apply to the extent section 751(b) applies to such distribution.

(e) Marketable securities treated as money

For treatment of marketable securities as money for purposes of this section, see section 731(c).

(Added Pub. L. 102–486, title XIX, §1937(a), Oct. 24, 1992, 106 Stat. 3032; amended Pub. L. 103–465, title VII, §741(b), Dec. 8, 1994, 108 Stat. 5009; Pub. L. 104–188, title I, §1704(j)(8), Aug. 20, 1996, 110 Stat. 1882; Pub. L. 105–34, title X, §1063(a), Aug. 5, 1997, 111 Stat. 947.)

AMENDMENTS

1997—Subsec. (b)(1). Pub. L. 105–34 substituted ''7 years'' for ''5 years''.

1996—Pub. L. 104–188 provided that section 1937(a) of Pub. L. 102–486, shall be applied as if ''Subpart B'' appeared instead of ''Subpart C''. Section 1937(a) of Pub. L. 102–486 directed amendment of subpart C of this part by adding this section at the end thereof.

1994—Subsec. (c)(1). Pub. L. 103–465, §741(b)(1), amended last sentence generally. Prior to amendment, last sentence read as follows: ''Except for purposes of determining the amount recognized under subsection (a), such increase shall be treated as occurring immediately before the distribution.''

Subsec. (e). Pub. L. 103–465, §741(b)(2), added subsec. (e).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to property contributed to a partnership after June 8, 1997, but not applicable to any property contributed pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before such contribution if such contract provides for the contribution of a fixed amount of property, see section 1063(b) of Pub. L. 105–34, set out as a note under section 704 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 applicable to distributions after Dec. 8, 1994, and not applicable to certain distributions before Jan. 1, 1995, distributions in liquidation of partner's interest, or distributions in complete liquidation of publicly traded partnerships, see section 741(c) of Pub. L. 103–465, set out as a note under section 731 of this title.

EFFECTIVE DATE

Section applicable to distributions on or after June 25, 1992, see section 1937(c) of Pub. L. 102–486, set out as an Effective Date of 1992 Amendment note under section 704 of this title.

SUBPART C—TRANSFERS OF INTERESTS IN A PARTNERSHIP

AMENDMENTS

2004—Pub. L. 108–357, title VIII, §833(b)(6)(B), Oct. 22, 2004, 118 Stat. 1591, substituted ''Special rules where section 754 election or substantial built-in loss'' for ''Optional adjustment to basis of partnership property'' in item 743.

§ 741. Recognition and character of gain or loss on sale or exchange

In the case of a sale or exchange of an interest in a partnership, gain or loss shall be recognized to the transferor partner. Such gain or loss shall be considered as gain or loss from the sale or exchange of a capital asset, except as otherwise provided in section 751 (relating to unrealized receivables and inventory items).

(Aug. 16, 1954, ch. 736, 68A Stat. 248; Pub. L. 107–147, title IV, §417(12), Mar. 9, 2002, 116 Stat. 56.)

AMENDMENTS

2002—Pub. L. 107–147 struck out ''which have appreciated substantially in value'' after ''inventory items''.

§ 742. Basis of transferee partner's interest

The basis of an interest in a partnership acquired other than by contribution shall be determined under part II of subchapter O (sec. 1011 and following).

(Aug. 16, 1954, ch. 736, 68A Stat. 249.)

§ 743. Special rules where section 754 election or substantial built-in loss

(a) General rule

The basis of partnership property shall not be adjusted as the result of a transfer of an interest in a partnership by sale or exchange or on the death of a partner unless the election provided by section 754 (relating to optional adjustment to basis of partnership property) is in effect with respect to such partnership or unless the partnership has a substantial built-in loss immediately after such transfer.

(b) Adjustment to basis of partnership property

In the case of a transfer of an interest in a partnership by sale or exchange or upon the death of a partner, a partnership with respect to which the election provided in section 754 is in effect or which has a substantial built-in loss immediately after such transfer shall—

(1) increase the adjusted basis of the partnership property by the excess of the basis to the transferee partner of his interest in the partnership over his proportionate share of the adjusted basis of the partnership property, or

(2) decrease the adjusted basis of the partnership property by the excess of the transferee partner's proportionate share of the adjusted basis of the partnership property over the basis of his interest in the partnership.

Under regulations prescribed by the Secretary, such increase or decrease shall constitute an adjustment to the basis of partnership property with respect to the transferee partner only. A partner's proportionate share of the adjusted basis of partnership property shall be determined in accordance with his interest in partnership capital and, in the case of property contributed to the partnership by a partner, section 704(c) (relating to contributed property) shall apply in determining such share. In the case of an adjustment under this subsection to the basis of partnership property subject to depletion, any depletion allowable shall be determined separately for the transferee partner with respect to his interest in such property.

(c) Allocation of basis

The allocation of basis among partnership properties where subsection (b) is applicable shall be made in accordance with the rules provided in section 755.

(d) Substantial built-in loss

(1) In general

For purposes of this section, a partnership has a substantial built-in loss with respect to a transfer of an interest in the partnership if—

(A) the partnership's adjusted basis in the partnership property exceeds by more than $250,000 the fair market value of such property, or

(B) the transferee partner would be allocated a loss of more than $250,000 if the partnership assets were sold for cash equal to their fair market value immediately after such transfer.

(2) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of paragraph (1) and section 734(d), including regulations aggregating related partnerships and disregarding property acquired by the partnership in an attempt to avoid such purposes.

(e) Alternative rules for electing investment partnerships

(1) No adjustment of partnership basis

For purposes of this section, an electing investment partnership shall not be treated as having a substantial built-in loss with respect to any transfer occurring while the election under paragraph (6)(A) is in effect.

(2) Loss deferral for transferee partner

In the case of a transfer of an interest in an electing investment partnership, the transferee partner's distributive share of losses (without regard to gains) from the sale or exchange of partnership property shall not be allowed except to the extent that it is established that such losses exceed the loss (if any) recognized by the transferor (or any prior transferor to the extent not fully offset by a prior disallowance under this paragraph) on the transfer of the partnership interest.

(3) No reduction in partnership basis

Losses disallowed under paragraph (2) shall not decrease the transferee partner's basis in the partnership interest.

(4) Certain basis reductions treated as losses

In the case of a transferee partner whose basis in property distributed by the partnership is reduced under section 732(a)(2), the amount of the loss recognized by the transferor on the transfer of the partnership interest which is taken into account under paragraph (2) shall be reduced by the amount of such basis reduction.

(5) Electing investment partnership

For purposes of this subsection, the term ''electing investment partnership'' means any partnership if—

(A) the partnership makes an election to have this subsection apply,

(B) the partnership would be an investment company under section 3(a)(1)(A) of the Investment Company Act of 1940 but for an exemption under paragraph (1) or (7) of section 3(c) of such Act,

(C) such partnership has never been engaged in a trade or business,

(D) substantially all of the assets of such partnership are held for investment,

(E) at least 95 percent of the assets contributed to such partnership consist of money,

(F) no assets contributed to such partnership had an adjusted basis in excess of fair market value at the time of contribution,

(G) all partnership interests of such partnership are issued by such partnership pursuant to a private offering before the date which is 24 months after the date of the first capital contribution to such partnership,

(H) the partnership agreement of such partnership has substantive restrictions on each partner's ability to cause a redemption of the partner's interest, and

(I) the partnership agreement of such partnership provides for a term that is not in excess of 15 years.

The election described in subparagraph (A), once made, shall be irrevocable except with the consent of the Secretary.

(6) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this subsection, including regulations for applying this subsection to tiered partnerships.

(f) Exception for securitization partnerships

(1) No adjustment of partnership basis

For purposes of this section, a securitization partnership shall not be treated as having a substantial built-in loss with respect to any transfer.

(2) Securitization partnership

For purposes of paragraph (1), the term ''securitization partnership'' means any partnership the sole business activity of which is to issue securities which provide for a fixed principal (or similar) amount and which are primarily serviced by the cash flows of a discrete pool (either fixed or revolving) of receivables or other financial assets that by their terms convert into cash in a finite period, but only if the sponsor of the pool reasonably believes that the receivables and other financial assets comprising the pool are not acquired so as to be disposed of.

(Aug. 16, 1954, ch. 736, 68A Stat. 249; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title I, §71(b), July 18, 1984, 98 Stat. 589; Pub. L. 108–357, title VIII, §833(b)(1)–(4)(A), (5), (6)(A), Oct. 22, 2004, 118 Stat. 1589, 1591; Pub. L. 115–97, title I, §§13502(a), 13504(b)(2), Dec. 22, 2017, 131 Stat. 2141, 2142.)

REFERENCES IN TEXT

Section 3(a)(1)(A), (c)(1), (7) of the Investment Company Act of 1940, referred to in subsec. (e)(5)(B), is classified to section 80a–3(a)(1)(A), (c)(1), (7) of Title 15, Commerce and Trade.

AMENDMENTS

2017—Subsec. (d)(1). Pub. L. 115–97, §13502(a), amended par. (1) generally. Prior to amendment, text read as follows: ''For purposes of this section, a partnership has a substantial built-in loss with respect to a transfer of an interest in a partnership if the partnership's adjusted basis in the partnership property exceeds by more than $250,000 the fair market value of such property.''

Subsec. (e)(4) to (7). Pub. L. 115–97, §13504(b)(2), redesignated pars. (5) to (7) as (4) to (6), respectively, and struck out former par. (4). Prior to amendment, text of par. (4) read as follows: ''This subsection shall be applied without regard to any termination of a partnership under section 708(b)(1)(B).''

2004—Pub. L. 108–357, §833(b)(6)(A), substituted ''Special rules where section 754 election or substantial built-in loss'' for ''Optional adjustment to basis of partnership property'' in section catchline.

Subsec. (a). Pub. L. 108–357, §833(b)(1), inserted ''or unless the partnership has a substantial built-in loss immediately after such transfer'' before period at end.

Subsec. (b). Pub. L. 108–357, §833(b)(2), inserted ''or which has a substantial built-in loss immediately after such transfer'' after ''section 754 is in effect'' in introductory provisions.

Subsec. (d). Pub. L. 108–357, §833(b)(3), added subsec. (d).

Subsec. (e). Pub. L. 108–357, §833(b)(4)(A), added subsec. (e).

Subsec. (f). Pub. L. 108–357, §833(b)(5), added subsec. (f).

1984—Subsec. (b). Pub. L. 98–369 substituted ''property contributed to the partnership by a partner, section 704(c) (relating to contributed property) shall apply in determining such share'' for ''an agreement described in section 704(c)(2) (relating to effect of partnership agreement on contributed property), such share shall be determined by taking such agreement into account'' in penultimate sentence.

1976—Subsec. (b). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–97, title I, §13502(b), Dec. 22, 2017, 131 Stat. 2141, provided that: ''The amendments made by this section [amending this section] shall apply to transfers of partnership interests after December 31, 2017.''

Amendment by section 13504(b)(2) of Pub. L. 115–97 applicable to partnership taxable years beginning after Dec. 31, 2017, see section 13504(c) of Pub. L. 115–97, set out as a note under section 168 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §833(d)(2), Oct. 22, 2004, 118 Stat. 1592, provided that:

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by subsection (b) [amending this section and section 6031 of this title] shall apply to transfers after the date of the enactment of this Act [Oct. 22, 2004].

''(B) TRANSITION RULE.—In the case of an electing investment partnership which is in existence on June 4, 2004, section 743(e)(6)(H) [now 743(e)(5)(H)] of the Internal Revenue Code of 1986, as added by this section, shall not apply to such partnership and section 743(e)(6)(I) [now 743(e)(5)(I)] of such Code, as so added, shall be applied by substituting '20 years' for '15 years'.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable with respect to property contributed to the partnership after Mar. 31, 1984, in taxable years ending after such date, see section 71(c) of Pub. L. 98–369, set out as a note under section 704 of this title.

SUBPART D—PROVISIONS COMMON TO OTHER SUBPARTS

§ 751. Unrealized receivables and inventory items

(a) Sale or exchange of interest in partnership

The amount of any money, or the fair market value of any property, received by a transferor partner in exchange for all or a part of his interest in the partnership attributable to—

(1) unrealized receivables of the partnership, or

(2) inventory items of the partnership,

shall be considered as an amount realized from the sale or exchange of property other than a capital asset.

(b) Certain distributions treated as sales or exchanges

(1) General rule

To the extent a partner receives in a distribution—

(A) partnership property which is—

(i) unrealized receivables, or

(ii) inventory items which have appreciated substantially in value,

in exchange for all or a part of his interest in other partnership property (including money), or

(B) partnership property (including money) other than property described in subparagraph (A)(i) or (ii) in exchange for all or a part of his interest in partnership property described in subparagraph (A)(i) or (ii),

such transactions shall, under regulations prescribed by the Secretary, be considered as a sale or exchange of such property between the distributee and the partnership (as constituted after the distribution).

(2) Exceptions

Paragraph (1) shall not apply to—

(A) a distribution of property which the distributee contributed to the partnership, or

(B) payments, described in section 736(a), to a retiring partner or successor in interest of a deceased partner.

(3) Substantial appreciation

For purposes of paragraph (1)—

(A) In general

Inventory items of the partnership shall be considered to have appreciated substantially in value if their fair market value exceeds 120 percent of the adjusted basis to the partnership of such property.

(B) Certain property excluded

For purposes of subparagraph (A), there shall be excluded any inventory property if a principal purpose for acquiring such property was to avoid the provisions of this subsection relating to inventory items.

(c) Unrealized receivables

For purposes of this subchapter, the term ''unrealized receivables'' includes, to the extent not previously includible in income under the method of accounting used by the partnership, any rights (contractual or otherwise) to payment for—

(1) goods delivered, or to be delivered, to the extent the proceeds therefrom would be treated as amounts received from the sale or exchange of property other than a capital asset, or

(2) services rendered, or to be rendered.

For purposes of this section and,[1] sections 731, 732, and 741 (but not for purposes of section 736), such term also includes mining property (as defined in section 617(f)(2)), stock in a DISC (as described in section 992(a)), section 1245 property (as defined in section 1245(a)(3)), stock in certain foreign corporations (as described in section 1248), section 1250 property (as defined in section 1250(c)), farm land (as defined in section 1252(a)), franchises, trademarks, or trade names (referred to in section 1253(a)), and an oil, gas, or geothermal property (described in section 1254) but only to the extent of the amount which would be treated as gain to which section 617(d)(1), 995(c), 1245(a), 1248(a), 1250(a), 1252(a), 1253(a), or 1254(a) would apply if (at the time of the transaction described in this section or section 731, 732, or 741, as the case may be) such property had been sold by the partnership at its fair market value. For purposes of this section and,[1] sections 731, 732, and 741 (but not for purposes of section 736), such term also includes any market discount bond (as defined in section 1278) and any short-term obligation (as defined in section 1283) but only to the extent of the amount which would be treated as ordinary income if (at the time of the transaction described in this section or section 731, 732, or 741, as the case may be) such property had been sold by the partnership.

(d) Inventory items

For purposes of this subchapter, the term ''inventory items'' means—

(1) property of the partnership of the kind described in section 1221(a)(1),

(2) any other property of the partnership which, on sale or exchange by the partnership, would be considered property other than a capital asset and other than property described in section 1231, and

(3) any other property held by the partnership which, if held by the selling or distributee partner, would be considered property of the type described in paragraph (1) or (2).

(e) Limitation on tax attributable to deemed sales of section 1248 stock

For purposes of applying this section and sections 731 and 741 to any amount resulting from the reference to section 1248(a) in the second sentence of subsection (c), in the case of an individual, the tax attributable to such amount shall be limited in the manner provided by subsection (b) of section 1248 (relating to gain from certain sales or exchanges of stock in certain foreign corporation).

(f) Special rules in the case of tiered partnerships, etc.

In determining whether property of a partnership is—

(1) an unrealized receivable, or

(2) an inventory item,

such partnership shall be treated as owning its proportionate share of the property of any other partnership in which it is a partner. Under regulations, rules similar to the rules of the preceding sentence shall also apply in the case of interests in trusts.

(Aug. 16, 1954, ch. 736, 68A Stat. 250; Pub. L. 87–834, §§ 13(f)(1), 14(b)(2), Oct. 16, 1962, 76 Stat. 1035, 1041; Pub. L. 88–272, title II, § 231(b)(6), Feb. 26, 1964, 78 Stat. 105; Pub. L. 89–570, § 1(c), Sept. 12, 1966, 80 Stat. 762; Pub. L. 91–172, title II, § 211(b)(6), Dec. 30, 1969, 83 Stat. 570; Pub. L. 94–455, title II, § 205(b), title X, § 1042(c)(2), title XI, § 1101(d)(2), title XIX, §§ 1901(a)(93), 1906(b)(13)(A), title XXI, § 2110(a), Oct. 4, 1976, 90

[1] So in original. The comma probably should not appear.

Stat. 1535, 1637, 1658, 1780, 1834, 1905; Pub. L. 95–600, title VII, §701(u)(13)(A), Nov. 6, 1978, 92 Stat. 2918; Pub. L. 95–618, title IV, §402(c)(5), Nov. 9, 1978, 92 Stat. 3202; Pub. L. 97–448, title I, §102(a)(6), Jan. 12, 1983, 96 Stat. 2368; Pub. L. 98–369, div. A, title I, §§43(c)(3), 76(a), title IV, §492(b)(4), July 18, 1984, 98 Stat. 558, 595, 854; Pub. L. 99–514, title II, §201(d)(10), title XVIII, §1899A(19), Oct. 22, 1986, 100 Stat. 2141, 2959; Pub. L. 103–66, title XIII, §§13206(e)(1), 13262(b)(1), (2)(A), Aug. 10, 1993, 107 Stat. 467, 541; Pub. L. 105–34, title X, §1062(a)–(b)(2), Aug. 5, 1997, 111 Stat. 946, 947; Pub. L. 105–206, title VI, §6010(m), July 22, 1998, 112 Stat. 816; Pub. L. 106–170, title V, §532(c)(2)(F), Dec. 17, 1999, 113 Stat. 1930; Pub. L. 108–357, title IV, §413(c)(11), Oct. 22, 2004, 118 Stat. 1507.)

AMENDMENTS

2004—Subsec. (d)(2) to (4). Pub. L. 108–357 inserted ''and'' at end of par. (2), redesignated par. (4) as (3) and substituted ''paragraph (1) or (2)'' for ''paragraph (1), (2), or (3)'', and struck out former par. (3) which read as follows: ''any other property of the partnership which, if sold or exchanged by the partnership, would result in a gain taxable under subsection (a) of section 1246 (relating to gain on foreign investment company stock), and''.

1999—Subsec. (d)(1). Pub. L. 106–170 substituted ''section 1221(a)(1)'' for ''section 1221(1)''.

1998—Subsec. (c). Pub. L. 105–206 substituted ''731, 732,'' for ''731'' wherever appearing in concluding provisions.

1997—Subsec. (a)(2). Pub. L. 105–34, §1062(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''inventory items of the partnership which have appreciated substantially in value,''.

Subsec. (b)(1). Pub. L. 105–34, §1062(b)(1)(A), added subpars. (A) and (B) and struck out former subpars. (A) and (B) which read as follows:

''(A) partnership property described in subsection (a)(1) or (2) in exchange for all or a part of his interest in other partnership property (including money), or

''(B) partnership property (including money) other than property described in subsection (a)(1) or (2) in exchange for all or a part of his interest in partnership property described in subsection (a)(1) or (2),''.

Subsec. (b)(3). Pub. L. 105–34, §1062(b)(1)(B), added par. (3).

Subsec. (d). Pub. L. 105–34, §1062(b)(2), amended heading and text of subsec. (d) generally. Prior to amendment, subsec. (d) consisted of pars. (1) and (2) relating to inventory items which have appreciated substantially in value.

1993—Subsec. (c). Pub. L. 103–66, §13262(b)(1), in concluding provisions, substituted ''section 731 or 741'' for ''section 731, 736, or 741'' in two places and '', sections 731 and 741 (but not for purposes of section 736)'' for ''sections 731, 736, and 741'' in two places.

Subsec. (d)(1). Pub. L. 103–66, §13206(e)(1), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: ''Inventory items of the partnership shall be considered to have appreciated substantially in value if their fair market value exceeds—

''(A) 120 percent of the adjusted basis to the partnership of such property, and

''(B) 10 percent of the fair market value of all partnership property, other than money.''

Subsec. (e). Pub. L. 103–66, §13262(b)(2)(A), substituted ''sections 731 and 741'' for ''sections 731, 736, and 741''.

1986—Subsec. (c). Pub. L. 99–514, §1899A(19), substituted ''section 617(f)(2)), stock'' for ''section 617(f)(2), stock'' in second sentence.

Pub. L. 99–514, §201(d)(10), struck out ''section 1245 recovery property (as defined in section 1245(a)(5)),'' before ''stock in certain foreign corporations'' in second sentence.

1984—Subsec. (c). Pub. L. 98–369, §492(b)(4), struck out ''farm recapture property (as defined in section 1251(e)(1)),'' before ''farm land'', and ''1251(c),'' after ''1250(a),'' in second sentence.

Pub. L. 98–369, §43(c)(3), inserted last sentence.

Subsec. (f). Pub. L. 98–369, §76(a), added subsec. (f).

1983—Subsec. (c). Pub. L. 97–448 inserted reference to section 1245 recovery property (as defined in section 1245(a)(5)) in second sentence.

1978—Subsec. (c). Pub. L. 95–618 substituted ''oil, gas, or geothermal property'' for ''oil or gas property'' in second sentence.

Subsec. (e). Pub. L. 95–600 added subsec. (e).

1976—Subsec. (b)(1). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c). Pub. L. 94–455, §§205(b), 1042(c)(2), 1101(d)(2), 1901(a)(93), 2110(a), in second sentence, inserted reference to stock in a DISC (as described in section 992(a)), reference to stock in certain foreign corporations (as described in section 1248), and reference to farm land (as defined in section 1252(a)), franchises, trademarks or trade names (referred to in section 1253(a)), and an oil or gas property (described in section 1254), substituted ''1252(a), 1253(a), or 1254(a)'' for ''or 1252(a)'', and inserted ''1248(a),'' after ''1245(a),'' and ''995(c),'' after ''617(d)(1),''.

1969—Subsec. (c). Pub. L. 91–172, in second sentence, substituted ''section 1250 property (as defined in section 1250(c)), farm recapture property (as defined in section 1251(e)(1)), and farm land (as defined in section 1252(a))'', and ''1250(a), 1251(c), or 1252(a)'', for ''and section 1250 property (as defined in section 1250(c))'' and ''1250(a)'', respectively.

1966—Subsec. (c). Pub. L. 89–570, in second sentence, inserted reference to mining property (as defined in section 617(f)(2)) and to section 617(d)(1).

1964—Subsec. (c). Pub. L. 88–272, in second sentence, inserted reference to section 1250.

1962—Subsec. (c). Pub. L. 87–834, §13(f)(1), defined ''unrealized receivables'' for purposes of this section and section 731, 736, and 741, as including section 1245 property, but only to the extent of the amount which would be treated as gain to which section 1245(a) would apply if (at the time of the transaction described in this section or section 731, 736, or 741, as the case may be) such property had been sold by the partnership at its fair market value.

Subsec. (d)(2). Pub. L. 87–834, §14(b)(2), added subpar. (C), redesignated former subpar. (C) as (D), and substituted ''subparagraph (A), (B), or (C)'' for ''subparagraph (A) or (B)''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to sales, exchanges, and distributions after Aug. 5, 1997, but not applicable to any sale or exchange pursuant to a writ-

ten binding contract in effect on June 8, 1997, and at all times thereafter before such sale or exchange, see section 1062(c) of Pub. L. 105–34, set out as a note under section 724 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, § 13206(e)(2), Aug. 10, 1993, 107 Stat. 467, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to sales, exchanges, and distributions after April 30, 1993.''

Amendment by section 13262(b)(1) and (2)(A) of Pub. L. 103–66 applicable in the case of partners retiring or dying on or after Jan. 5, 1993, with a binding contract exception, see section 13262(c) of Pub. L. 103–66, set out as a note under section 736 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 201(d)(10) of Pub. L. 99–514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, with exceptions, see sections 203 and 204 of Pub. L. 99–514, set out as a note under section 168 of this title.

Amendment by section 201(d)(10) of Pub. L. 99–514 not applicable to any property placed in service before Jan. 1, 1994, if such property placed in service as part of specified rehabilitations, and not applicable to certain additional rehabilitations, see section 251(d)(2), (3) of Pub. L. 99–514, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 43(c)(3) of Pub. L. 98–369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98–369, set out as an Effective Date note under section 1271 of this title.

Pub. L. 98–369, div. A, title I, § 76(b), July 18, 1984, 98 Stat. 595, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to distributions, sales, and exchanges made after March 31, 1984, in taxable years ending after such date.''

Amendment by section 492(b)(4) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 492(d) of Pub. L. 98–369, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95–618 applicable with respect to wells commenced on or after Oct. 1, 1978, in taxable years ending on or after such date, see section 402(e) of Pub. L. 95–618, set out as a note under section 263 of this title.

Pub. L. 95–600, title VII, § 701(u)(13)(C), Nov. 6, 1978, 92 Stat. 2918, provided that: ''The amendments made by this paragraph [amending this section and section 736 of this title] shall apply to transfers beginning after October 9, 1975, and to sales, exchanges, and distributions taking place after such date.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 205(b) of Pub. L. 94–455 effective for taxable years ending after Dec. 31, 1975, see section 205(e) of Pub. L. 94–455, set out as an Effective Date note under section 1254 of this title.

Amendment by section 1042(c)(2) of Pub. L. 94–455 applicable to transfers beginning after Oct. 9, 1975, and to sales, exchanges and distributions taking place after that date, see section 1042(e)(1) of Pub. L. 94–455, set out as a note under section 367 of this title.

Amendment by section 1101(d)(2) of Pub. L. 94–455 applicable to sales, exchanges, or other dispositions after Dec. 31, 1975, in taxable years ending after such date, see section 1101(g)(4) of Pub. L. 94–455, set out as a note under section 995 of this title.

Amendment by section 1901(a)(93) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Pub. L. 94–455, title XXI, § 2110(b), Oct. 4, 1976, 90 Stat. 1905, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Subsection (a) [amending this section] shall apply to transactions described in sections 731, 736, 741, or 751 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] which occur after December 31, 1976, in taxable years ending after that date.''

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 211(c) of Pub. L. 91–172, set out as a note under section 301 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–570 applicable to taxable years ending after Sept. 12, 1966, but only in respect of expenditures paid or incurred after such date see section 3 of Pub. L. 89–570, set out as an Effective Date note under section 617 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to dispositions after Dec. 31, 1963, in taxable years ending after such date, see section 231(c) of Pub. L. 88–272, set out as an Effective Date note under section 1250 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by section 13(f)(1) of Pub. L. 87–834 applicable to taxable years beginning after Dec. 31, 1962, see section 13(g) of Pub. L. 87–834, set out as an Effective Date note under section 1245 of this title.

Amendment by section 14(b)(2) of Pub. L. 87–834 applicable with respect to taxable years beginning after Dec. 31, 1962, see section 14(c) of Pub. L. 87–834, set out as a note under section 312 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 752. Treatment of certain liabilities

(a) Increase in partner's liabilities

Any increase in a partner's share of the liabilities of a partnership, or any increase in a partner's individual liabilities by reason of the assumption by such partner of partnership liabilities, shall be considered as a contribution of money by such partner to the partnership.

(b) Decrease in partner's liabilities

Any decrease in a partner's share of the liabilities of a partnership, or any decrease in a partner's individual liabilities by reason of the assumption by the partnership of such individual liabilities, shall be considered as a distribution of money to the partner by the partnership.

(c) Liability to which property is subject

For purposes of this section, a liability to which property is subject shall, to the extent of

the fair market value of such property, be considered as a liability of the owner of the property.

(d) Sale or exchange of an interest

In the case of a sale or exchange of an interest in a partnership, liabilities shall be treated in the same manner as liabilities in connection with the sale or exchange of property not associated with partnerships.

(Aug. 16, 1954, ch. 736, 68A Stat. 251.)

OVERRULING OF RAPHAN CASE

Pub. L. 98–369, div. A, title I, §79, July 18, 1984, 98 Stat. 597, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) GENERAL RULE.—Section 752 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (and the regulations prescribed thereunder) shall be applied without regard to the result reached in the case of Raphan vs the United States, 3 Cl. Ct. 457 (1983).

''(b) REGULATIONS.—In amending the regulations prescribed under section 752 of such Code to reflect subsection (a), the Secretary of the Treasury or his delegate shall prescribe regulations relating to liabilities, including the treatment of guarantees, assumptions, indemnity agreements, and similar arrangements.''

§ 753. Partner receiving income in respect of decedent

The amount includible in the gross income of a successor in interest of a deceased partner under section 736(a) shall be considered income in respect of a decedent under section 691.

(Aug. 16, 1954, ch. 736, 68A Stat. 251.)

§ 754. Manner of electing optional adjustment to basis of partnership property

If a partnership files an election, in accordance with regulations prescribed by the Secretary, the basis of partnership property shall be adjusted, in the case of a distribution of property, in the manner provided in section 734 and, in the case of a transfer of a partnership interest, in the manner provided in section 743. Such an election shall apply with respect to all distributions of property by the partnership and to all transfers of interests in the partnership during the taxable year with respect to which such election was filed and all subsequent taxable years. Such election may be revoked by the partnership, subject to such limitations as may be provided by regulations prescribed by the Secretary.

(Aug. 16, 1954, ch. 736, 68A Stat. 251; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary'' wherever appearing.

§ 755. Rules for allocation of basis

(a) General rule

Any increase or decrease in the adjusted basis of partnership property under section 734(b) (relating to the optional adjustment to the basis of undistributed partnership property) or section 743(b) (relating to the optional adjustment to the basis of partnership property in the case of a transfer of an interest in a partnership) shall, except as provided in subsection (b), be allocated—

(1) in a manner which has the effect of reducing the difference between the fair market value and the adjusted basis of partnership properties, or

(2) in any other manner permitted by regulations prescribed by the Secretary.

(b) Special rule

In applying the allocation rules provided in subsection (a), increases or decreases in the adjusted basis of partnership property arising from a distribution of, or a transfer of an interest attributable to, property consisting of—

(1) capital assets and property described in section 1231(b), or

(2) any other property of the partnership,

shall be allocated to partnership property of a like character except that the basis of any such partnership property shall not be reduced below zero. If, in the case of a distribution, the adjustment to basis of property described in paragraph (1) or (2) is prevented by the absence of such property or by insufficient adjusted basis for such property, such adjustment shall be applied to subsequently acquired property of a like character in accordance with regulations prescribed by the Secretary.

(c) No allocation of basis decrease to stock of corporate partner

In making an allocation under subsection (a) of any decrease in the adjusted basis of partnership property under section 734(b)—

(1) no allocation may be made to stock in a corporation (or any person related (within the meaning of sections 267(b) and 707(b)(1)) to such corporation) which is a partner in the partnership, and

(2) any amount not allocable to stock by reason of paragraph (1) shall be allocated under subsection (a) to other partnership property.

Gain shall be recognized to the partnership to the extent that the amount required to be allocated under paragraph (2) to other partnership property exceeds the aggregate adjusted basis of such other property immediately before the allocation required by paragraph (2).

(Aug. 16, 1954, ch. 736, 68A Stat. 252; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 108–357, title VIII, §834(a), Oct. 22, 2004, 118 Stat. 1592.)

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–357 added subsec. (c).

1976—Subsecs. (a), (b). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary'' wherever appearing.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §834(b), Oct. 22, 2004, 118 Stat. 1592, provided that: ''The amendment made by this section [amending this section] shall apply to distributions after the date of the enactment of this Act [Oct. 22, 2004].''

PART III—DEFINITIONS

Sec.
761. Terms defined.

§ 761. Terms defined

(a) Partnership

For purposes of this subtitle, the term ''partnership'' includes a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a corporation or a trust or estate. Under regulations the Secretary may, at the election of all the members of an unincorporated organization, exclude such organization from the application of all or part of this subchapter, if it is availed of—

(1) for investment purposes only and not for the active conduct of a business,

(2) for the joint production, extraction, or use of property, but not for the purpose of selling services or property produced or extracted, or

(3) by dealers in securities for a short period for the purpose of underwriting, selling, or distributing a particular issue of securities,

if the income of the members of the organization may be adequately determined without the computation of partnership taxable income.

(b) Partner

For purposes of this subtitle, the term ''partner'' means a member of a partnership. In the case of a capital interest in a partnership in which capital is a material income-producing factor, whether a person is a partner with respect to such interest shall be determined without regard to whether such interest was derived by gift from any other person.

(c) Partnership agreement

For purposes of this subchapter, a partnership agreement includes any modifications of the partnership agreement made prior to, or at, the time prescribed by law for the filing of the partnership return for the taxable year (not including extensions) which are agreed to by all the partners, or which are adopted in such other manner as may be provided by the partnership agreement.

(d) Liquidation of a partner's interest

For purposes of this subchapter, the term ''liquidation of a partner's interest'' means the termination of a partner's entire interest in a partnership by means of a distribution, or a series of distributions, to the partner by the partnership.

(e) Distributions of partnership interests treated as exchanges

Except as otherwise provided in regulations, for purposes of—

(1) section 708 (relating to continuation of partnership),

(2) section 743 (relating to optional adjustment to basis of partnership property), and

(3) any other provision of this subchapter specified in regulations prescribed by the Secretary,

any distribution of an interest in a partnership (not otherwise treated as an exchange) shall be treated as an exchange.

(f) Qualified joint venture

(1) In general

In the case of a qualified joint venture conducted by a husband and wife who file a joint return for the taxable year, for purposes of this title—

(A) such joint venture shall not be treated as a partnership,

(B) all items of income, gain, loss, deduction, and credit shall be divided between the spouses in accordance with their respective interests in the venture, and

(C) each spouse shall take into account such spouse's respective share of such items as if they were attributable to a trade or business conducted by such spouse as a sole proprietor.

(2) Qualified joint venture

For purposes of paragraph (1), the term ''qualified joint venture'' means any joint venture involving the conduct of a trade or business if—

(A) the only members of such joint venture are a husband and wife,

(B) both spouses materially participate (within the meaning of section 469(h) without regard to paragraph (5) thereof) in such trade or business, and

(C) both spouses elect the application of this subsection.

(g) Cross reference

For rules in the case of the sale, exchange, liquidation, or reduction of a partner's interest, see sections 704(b) and 706(c)(2).

(Aug. 16, 1954, ch. 736, 68A Stat. 252; Pub. L. 94–455, title II, § 213(c)(3)(B), title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1548, 1834; Pub. L. 96–222, title I, § 102(a)(2)(C), Apr. 1, 1980, 94 Stat. 208; Pub. L. 98–369, div. A, title I, § 75(b), July 18, 1984, 98 Stat. 594; Pub. L. 99–514, title XVIII, § 1805(c)(2), Oct. 22, 1986, 100 Stat. 2810; Pub. L. 110–28, title VIII, § 8215(a), May 25, 2007, 121 Stat. 193; Pub. L. 114–74, title XI, § 1102(a), Nov. 2, 2015, 129 Stat. 638.)

AMENDMENTS

2015—Subsec. (b). Pub. L. 114–74 inserted at end ''In the case of a capital interest in a partnership in which capital is a material income-producing factor, whether a person is a partner with respect to such interest shall be determined without regard to whether such interest was derived by gift from any other person.''

2007—Subsecs. (f), (g). Pub. L. 110–28 added subsec. (f) and redesignated former subsec. (f) as (g).

1986—Subsec. (e). Pub. L. 99–514 substituted ''Distributions of partnership interests'' for ''Distributions'' in heading, substituted ''Except as otherwise provided in regulations, for purposes of'' for ''For purposes of'' in introductory provision, and ''any distribution of an interest in a partnership'' for ''any distribution'' in closing provisions.

1984—Subsecs. (e), (f). Pub. L. 98–369 added subsec. (e) and redesignated former subsec. (e) as (f).

1980—Subsec. (a)(3). Pub. L. 96–222 added par. (3).

1976—Subsec. (a). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (e). Pub. L. 94–455, § 213(c)(3)(B), added subsec. (e).

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–74 applicable to partnership taxable years beginning after Dec. 31, 2015, see sec-

tion 1102(c) of Pub. L. 114–74, set out as a note under section 704 of this title.

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–28, title VIII, §8215(c), May 25, 2007, 121 Stat. 194, provided that: ''The amendments made by this section [amending this section, section 1402 of this title, and section 411 of Title 42, The Public Health and Welfare] shall apply to taxable years beginning after December 31, 2006.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to distributions, sales, and exchanges made after Mar. 31, 1984, in taxable years ending after such date, see section 75(e) of Pub. L. 98–369, set out as an Effective Date note under section 386 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 213(c)(3)(B) of Pub. L. 94–455 applicable in the case of partnership taxable years beginning after Dec. 31, 1975, see section 213(f)(1) of Pub. L. 94–455, set out as a note under section 709 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[PART IV—REPEALED]

PRIOR PROVISIONS

A prior part IV, relating to effective date for subchapter, consisted of section 771 of this title, prior to repeal by Pub. L. 94–455, title XIX, §1901(a)(94), Oct. 4, 1976, 90 Stat. 1780.

[§§ 771 to 777. Repealed. Pub. L. 114–74, title XI, § 1101(b)(1), Nov. 2, 2015, 129 Stat. 625]

Section 771, added Pub. L. 105–34, title XII, §1221(a), Aug. 5, 1997, 111 Stat. 1002, related to application of subchapter to electing large partnerships.

A prior section 771, act Aug. 16, 1954, ch. 736, 68A Stat. 253, related to the effective date for this subchapter, prior to repeal by Pub. L. 94–455, title XIX, §1901(a)(94), Oct. 4, 1976, 90 Stat. 1780.

Section 772, added Pub. L. 105–34, title XII, §1221(a), Aug. 5, 1997, 111 Stat. 1002; amended Pub. L. 109–58, title XIII, §1322(a)(3)(I), (J), Aug. 8, 2005, 119 Stat. 1012, related to simplified flow-through for partners of electing large partnerships.

Section 773, added Pub. L. 105–34, title XII, §1221(a), Aug. 5, 1997, 111 Stat. 1004, related to computations of taxable income at partnership level of electing large partnerships.

Section 774, added Pub. L. 105–34, title XII, §1221(a), Aug. 5, 1997, 111 Stat. 1005; amended Pub. L. 105–206, title VI, §6012(c), July 22, 1998, 112 Stat. 819, related to other modifications of electing large partnerships.

Section 775, added Pub. L. 105–34, title XII, §1221(a), Aug. 5, 1997, 111 Stat. 1006; amended Pub. L. 106–170, title V, §532(c)(2)(G), Dec. 17, 1999, 113 Stat. 1930, defined ''electing large partnership''.

Section 776, added Pub. L. 105–34, title XII, §1221(a), Aug. 5, 1997, 111 Stat. 1007, related to special rules for electing large partnerships holding oil and gas properties.

Section 777, added Pub. L. 105–34, title XII, §1221(a), Aug. 5, 1997, 111 Stat. 1008, related to regulations under this part.

EFFECTIVE DATE OF REPEAL

Repeal applicable to returns filed for partnership taxable years beginning after Dec. 31, 2017, with certain exceptions, see section 1101(g) of Pub. L. 114–74, set out as an Effective Date note under section 6221 of this title.

Subchapter L—Insurance Companies

Part
I. Life insurance companies.
II. Other insurance companies.
III. Provisions of general application.

AMENDMENTS

1988—Pub. L. 100–647, title I, §1018(u)(32), Nov. 10, 1988, 102 Stat. 3592, redesignated parts III and IV as II and III, respectively, and struck out former Part II ''Mutual insurance companies (other than life and certain marine insurance companies and other than fire or flood insurance companies which operate on basis of perpetual policies of premium deposits).''

1962—Pub. L. 87–834, §8(g)(4)(A), Oct. 16, 1962, 76 Stat. 999, substituted ''and certain marine insurance companies and other than fire or flood insurance companies which operate on basis of perpetual policies or premium deposits'' for ''or marine or fire insurance companies issuing perpetual policies'' in heading of part II.

PART I—LIFE INSURANCE COMPANIES

Subpart
A. Tax imposed.
B. Life insurance gross income.
C. Life insurance deductions.
D. Accounting, allocation, and foreign provisions.
E. Definitions and special rules.

SUBPART A—TAX IMPOSED

Sec.
801. Tax imposed.

§ 801. Tax imposed

(a) Tax imposed

A tax is hereby imposed for each taxable year on the life insurance company taxable income of every life insurance company. Such tax shall consist of a tax computed as provided in section 11 as though the life insurance company taxable income were the taxable income referred to in section 11.

(b) Life insurance company taxable income

For purposes of this part, the term ''life insurance company taxable income'' means—

(1) life insurance gross income, reduced by

(2) life insurance deductions.

(Added Pub. L. 98–369, div. A, title II, §211(a), July 18, 1984, 98 Stat. 720; amended Pub. L. 99–514, title X, §1011(b)(3), Oct. 22, 1986, 100 Stat. 2389; Pub. L. 115–97, title I, §§13001(b)(2)(G), 13512(b)(3), 13514(b), Dec. 22, 2017, 131 Stat. 2096, 2143.)

PRIOR PROVISIONS

A prior section 801, added Pub. L. 86–69, §2(a), June 25, 1959, 73 Stat. 112; amended Pub. L. 87–858, §3(a), Oct. 23, 1962, 76 Stat. 1134; Pub. L. 91–172, title I, §121(b)(5)(B), Dec. 30, 1969, 83 Stat. 541; Pub. L. 93–406, title II, §2002(g)(11), Sept. 2, 1974, 88 Stat. 970; Pub. L. 94–455, title XV, §1505(a), title XIX, §§1901(c)(6), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1738, 1803, 1834; Pub. L. 95–600, title VII, §703(j)(4), Nov. 6, 1978, 92 Stat. 2941, defined ''life insurance company'' and related terms, prior to the general revision of this part by Pub. L. 98–369, §211(a). See section 816 of this title.

Another prior section 801, acts Aug. 16, 1954, ch. 736, 68A Stat. 255; Mar. 13, 1956, ch. 83, §2, 70 Stat. 36, contained provisions similar to this section, prior to the the general revision of this part by Pub. L. 86–69, §2(a).

A prior section 802, added Pub. L. 86–69, §2(a), June 25, 1959, 73 Stat. 115; amended Pub. L. 87–858, §3(b)(1), Oct. 23, 1962, 76 Stat. 1136; Pub. L. 88–272, title II, §235(c)(1), Feb. 26, 1964, 78 Stat. 126; Pub. L. 91–172, title V, §511(c)(1), Dec. 30, 1969, 83 Stat. 637; Pub. L. 94–455, title XIX, §1901(a)(95), (b)(33)(E), Oct. 4, 1976, 90 Stat. 1780, 1801; Pub. L. 95–600, title III, §301(b)(8), Nov. 6, 1978, 92 Stat. 2821, contained provisions similar to this section, prior to the general revision of this part by Pub. L. 98–369, §211(a).

Another prior section 802, acts Aug. 16, 1954, ch. 736, 68A Stat. 255; Mar. 13, 1956, ch. 83, §2, 70 Stat. 38; July 24, 1956, ch. 696, §§1, 2(b), 70 Stat. 633; Mar. 17, 1958, Pub. L. 85–345, §§1, 2(a), 72 Stat. 36, contained provision similar to this section, prior to the general revision of this part by Pub. L. 86–69, §2(a).

AMENDMENTS

2017—Subsec. (a). Pub. L. 115–97, §13001(b)(2)(G), struck out par. (1) designation and heading ''In general'' and struck out par. (2) which related to alternative tax in case of capital gains.

Subsec. (a)(2)(C). Pub. L. 115–97, §13512(b)(3), which directed striking out subpar. (C) of par. (2), could not be executed because of the prior amendment by section 13001(b)(2)(G) of Pub. L. 115–97, which struck out par. (2). See above.

Subsec. (c). Pub. L. 115–97, §13514(b), struck out subsec. (c) which referred to section 815 of this title for taxation of distributions from pre-1984 policyholders surplus account.

1986—Subsec. (a)(2)(C). Pub. L. 99–514 substituted ''the amount allowable as a deduction under paragraph (2)'' for ''the amounts allowable as deductions under paragraphs (2) and (3)'' in text and struck from heading ''special life insurance company deduction and'' before ''small''.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 13001(b)(2)(G) of Pub. L. 115–97 applicable to taxable years beginning after Dec. 31, 2017, see section 13001(c)(1) of Pub. L. 115–97, set out as a note under section 11 of this title.

Amendment by section 13512(b)(3) of Pub. L. 115–97 applicable to taxable years beginning after Dec. 31, 2017, see section 13512(c) of Pub. L. 115–97, set out as a note under section 453B of this title.

Pub. L. 115–97, title I, §13514(c), Dec. 22, 2017, 131 Stat. 2144, provided that: ''The amendments made by this section [amending this section and repealing section 815 of this title] shall apply to taxable years beginning after December 31, 2017.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1011(c)(1) of Pub. L. 99–514, set out as a note under section 453B of this title.

EFFECTIVE DATE

Pub. L. 98–369, div. A, title II, §215, July 18, 1984, 98 Stat. 758, provided that: ''The amendments made by this subtitle [subtitle A (§§211–219) of title II of div. A of Pub. L. 98–369, amending this part, enacting section 845 of this title, amending sections 72, 80, 243, 381, 401, 453B, 542, 594, 832, 841, 844, 891, 953, 1016, 1035, 1201, 1232A, 1351, 1503, 1504, 1561, 1563, 4371, 6501, 6511, 6601, and 6611 of this title, and enacting provisions set out as notes under this section and sections 453B, 806, 807, 809, 814, 816, 845, and 6655 of this title] shall apply to taxable years beginning after December 31, 1983.''

PHASED INCLUSION OF REMAINING BALANCE OF POLICYHOLDERS SURPLUS ACCOUNTS

Pub. L. 115–97, title I, §13514(d), Dec. 22, 2017, 131 Stat. 2144, provided that: ''In the case of any stock life insurance company which has a balance (determined as of the close of such company's last taxable year beginning before January 1, 2018) in an existing policyholders surplus account (as defined in section 815 of the Internal Revenue Code of 1986, as in effect before its repeal), the tax imposed by section 801 of such Code for the first 8 taxable years beginning after December 31, 2017, shall be the amount which would be imposed by such section for such year on the sum of—

''(1) life insurance company taxable income for such year (within the meaning of such section 801 but not less than zero), plus

''(2) ⅛ of such balance.''

TREATMENT OF CERTAIN WORKERS' COMPENSATION FUNDS

Pub. L. 100–647, title VI, §6076, Nov. 10, 1988, 102 Stat. 3706, provided that:

''(a) TREATMENT FOR TAXABLE YEARS BEGINNING BEFORE 1987.—In the case of any taxable year beginning before January 1, 1987, a deficiency shall not be assessed against (and if assessed, shall not be collected from) any qualified group self-insurers' fund to the extent such deficiency is attributable to the timing of policyholder dividend deductions.

''(b) QUALIFIED GROUP SELF-INSURERS' FUND.—For purposes of this section, the term 'qualified group self-insurers' fund' means any group of 2 or more employers which has been in existence for not less than 2 years, and who enter into agreements to pool their liabilities under the State workers' disability compensation laws for the purpose of qualifying as a self-insurer under such laws, if—

''(1) the group has received a certificate of approval from, and is subject to regulation by, the State board or agency that is responsible for administering the State workers' disability compensation laws,

''(2) each employer who is a member of the group, by written agreement, is jointly and severally bound to assume and discharge, by payment, any lawful judgment or award entered by a court of competent jurisdiction or by the State agency responsible for administering the State workers' disability compensation laws against a member of the group,

''(3) the group is prohibited by State law or regulation from using the monies collected for a purpose other than to pay, or to reserve against, claims under the State workers' disability compensation laws and expenses,

''(4) the group is prohibited by State law or regulation from taking projected investment income into account in determining members' premiums,

''(5) the group is required by State law or regulation to submit to the State board or agency that is responsible for administering the State workers' disability compensation laws an audited financial statement,

''(6) the group's investments are limited by State law or regulation to bonds, notes, or other evidences of indebtedness issued, assumed or guaranteed by the United States of America, or by an agency or instrumentality thereof, certificates of deposit in a federally insured bank, shares or savings deposits in a federally insured savings and loan association or credit union, and certificates of deposit issued by a commer-

cial bank duly chartered under State law, and other investments which are approved by the State board or agency that is responsible for administering the State workers' disability compensation laws, and

''(7) the group exclusively covers workers' compensation liability, is not a commercial insurance carrier or company licensed by the State board, agency, or commissioner responsible for regulating and licensing insurance carriers and companies; and is not subject to filing under the regulatory statements of the National Association of Insurance Commissioners.''

TREATMENT OF CERTAIN MARKET DISCOUNT BONDS

Pub. L. 99–514, title X, §1011(d), Oct. 22, 1986, 100 Stat. 2390, as amended by Pub. L. 100–647, title I, §1010(a)(2), (3), Nov. 10, 1988, 102 Stat. 3450, 3451, provided that:

''(1) IN GENERAL.—Notwithstanding the amendments made by subtitle B of title III [amending sections 593, 631, 852, 1201, and 1445 of this title and enacting provisions set out as notes under sections 631 and 1201 of this title], any gain recognized by a qualified life insurance company on the redemption at maturity of any market discount bond (as defined in section 1278 of the Internal Revenue Code of 1986) which was issued before July 19, 1984, and acquired by such company on or before September 25, 1985, shall be subject to tax at the rate of 31.6 percent. The preceding sentence shall apply only if the tax determined under the preceding sentence is less than the tax which would otherwise be imposed.

''(2) QUALIFIED LIFE INSURANCE COMPANY.—For purposes of paragraph (1), the term 'qualified life insurance company' means any life insurance company subject to tax under part I of subchapter L of chapter 1 of the Internal Revenue Code of 1986.''

WAIVER OF INTEREST ON CERTAIN UNDERPAYMENTS OF TAX

Pub. L. 99–514, title XVIII, §1829, Oct. 22, 1986, 100 Stat. 2851, provided that: ''No interest shall be payable for any period before July 19, 1984, on any underpayment of a tax imposed by the Internal Revenue Code of 1954 [now 1986], to the extent such underpayment was created or increased by any provision of subtitle A of title II of the Tax Reform Act of 1984 [see Effective Date note above] (relating to taxation of life insurance companies).''

SCOPE OF SECTION 255 OF THE TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982

Pub. L. 99–514, title XVIII, §1830, Oct. 22, 1986, 100 Stat. 2851, provided that: ''In the case of any taxable year beginning before January 1, 1982, in applying the provisions of section 255(c)(2) of the Tax Equity and Fiscal Responsibility Act of 1982 [section 255(c)(2) of Pub. L. 97–248, 96 Stat. 534, formerly set out as a note under section 809 of this title], the Internal Revenue Service shall give full and complete effect to the terms of any modified coinsurance contract. The terms to be given effect within the meaning of this provision shall include, but are not limited to, the effective date and investment income rate as stated in such contract.''

TREATMENT OF CERTAIN SELF-INSURED WORKERS' COMPENSATION FUNDS

Pub. L. 99–514, title XVIII, §1879(q), Oct. 22, 1986, 100 Stat. 2911, provided that:

''(1) MORATORIUM ON COLLECTION ACTIVITIES.—During the period beginning on the date of the enactment of this Act [Oct. 22, 1986] and ending on August 16, 1987, the Secretary of the Treasury or his delegate—

''(A) shall suspend any pending audit of any self-insured workers' compensation fund where the audit involves the issue of whether such fund is a mutual insurance company,

''(B) shall not initiate any audit of any such fund involving such issue, and

''(C) shall take no steps to collect from such fund any underpayment, interest, or penalty involving such issue.

''(2) SUSPENSION OF RUNNING OF INTEREST.—No interest shall be payable under chapter 67 of the Internal Revenue Code of 1986 on any underpayment by a self-insured workers' compensation fund involving such issue for the period beginning on August 16, 1986, and ending on August 16, 1987.

''(3) ADDITIONAL TIME TO FILE TAX COURT PROCEEDING.—If the period during which a petition involving such issue could have been filed with the Tax Court by any self-insured workers' compensation fund had not expired before August 16, 1986, such period shall not expire before August 16, 1987.

''(4) SELF-INSURED WORKERS' COMPENSATION FUND.—For purposes of this subsection, the term 'self-insured workers' compensation fund' means any self-insured workers' compensation fund established pursuant to applicable State law regulating self-insured workers' compensation funds.''

RESERVES COMPUTED ON NEW BASIS; FRESH START

Pub. L. 98–369, title II, §216, July 18, 1984, 98 Stat. 758, as amended by Pub. L. 99–514, §2, title XVIII, §1822, Oct. 22, 1986, 100 Stat. 2095, 2844; Pub. L. 100–647, title I, §1018(i), Nov. 10, 1988, 102 Stat. 3583, provided that:

''(a) RECOMPUTATION OF RESERVES.—

''(1) IN GENERAL.—As of the beginning of the first taxable year beginning after December 31, 1983, for purposes of subchapter L of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (other than section 816 thereof), the reserve for any contract shall be recomputed as if the amendments made by this subtitle [see Effective Date note above] had applied to such contract when it was issued.

''(2) PREMIUMS EARNED.—For the first taxable year beginning after December 31, 1983, in determining 'premiums earned on insurance contracts during the taxable year' as provided in section 832(b)(4) of the Internal Revenue Code of 1986, life insurance reserves which are included in unearned premiums on outstanding business at the end of the preceding taxable year shall be determined as provided in section 807 of the Internal Revenue Code of 1986, as amended by this subtitle, as though section 807 was applicable to such reserves in such preceding taxable year.

''(3) ISSUANCE DATE FOR GROUP CONTRACTS.—For purposes of this subsection, the issuance date of any group contract shall be determined under [former] section 807(e)(2) of the Internal Revenue Code of 1986 (as added by this subtitle), except that if such issuance date cannot be determined, the issuance date shall be determined on the basis prescribed by the Secretary of the Treasury or his delegate for purposes of this subsection.

''(b) FRESH START.—

''(1) IN GENERAL.—Except as provided in paragraph (2), in the case of any insurance company, any change in the method of accounting (and any change in the method of computing reserves) between such company's first taxable year beginning after December 31, 1983, and the preceding taxable year which is required solely by the amendments made by this subtitle [see Effective Date note above] shall be treated as not being a change in the method of accounting (or change in the method of computing reserves) for purposes of the Internal Revenue Code of 1986. The preceding sentence shall apply for purposes of computing the earnings and profits of any insurance company for its 1st taxable year beginning in 1984. The preceding sentence shall be applied by substituting '1985' for '1984' in the case of an insurance company which is a member of a controlled group (as defined in [former] section 806(d)(3)), the common parent of which is

''(A) a company having its principal place of business in Alabama and incorporated in Delaware on November 29, 1979, or

''(B) a company having its principal place of business in Houston, Texas, and incorporated in Delaware on June 9, 1947.

''(2) TREATMENT OF ADJUSTMENTS FROM YEARS BEFORE 1984.—

''(A) ADJUSTMENTS ATTRIBUTABLE TO DECREASES IN RESERVES.—No adjustment under [former] section 810(d) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act [July 18, 1984]) attributable to any decrease in reserves as a result of a change in a taxable year beginning before 1984 shall be taken into account in any taxable year beginning after 1983.

''(B) ADJUSTMENTS ATTRIBUTABLE TO INCREASES IN RESERVES.—

''(i) IN GENERAL.—Any adjustment under [former] section 810(d) of the Internal Revenue Code of 1986 (as so in effect) attributable to an increase in reserves as a result of a change in a taxable year beginning before 1984 shall be taken into account in taxable years beginning after 1983 to the extent that—

''(I) the amount of the adjustments which would be taken into account under such section in taxable years beginning after 1983 without regard to this subparagraph, exceeds

''(II) the amount of any fresh start adjustment attributable to contracts for which there was such an increase in reserves as a result of such change.

''(ii) FRESH START ADJUSTMENT.—For purposes of clause (i), the fresh start adjustment with respect to any contract is the excess (if any) of—

''(I) the reserve attributable to such contract as of the close of the taxpayer's last taxable year beginning before January 1, 1984, over

''(II) the reserve for such contract as of the beginning of the taxpayer's first taxable year beginning after 1983 as recomputed under subsection (a) of this section.

''(C) RELATED INCOME INCLUSIONS NOT TAKEN INTO ACCOUNT TO THE EXTENT DEDUCTION DISALLOWED UNDER SUBPARAGRAPH (b).—No premium shall be included in income to the extent such premium is directly related to an increase in a reserve for which a deduction is disallowed by subparagraph (B).

''(3) REINSURANCE TRANSACTIONS, AND RESERVE STRENGTHENING, AFTER SEPTEMBER 27, 1983.—

''(A) IN GENERAL.—Paragraph (1) shall not apply (and section 807(f) of the Internal Revenue Code of 1986 as amended by this subtitle shall apply)—

''(i) to any reserve transferred pursuant to—

''(I) a reinsurance agreement entered into after September 27, 1983, and before January 1, 1984, or

''(II) a modification of a reinsurance agreement made after September 27, 1983, and before January 1, 1984, and

''(ii) to any reserve strengthening reported for Federal income tax purposes after September 27, 1983, for a taxable year ending before January 1, 1984.

Clause (ii) shall not apply to the computation of reserves on any contract issued if such computation employs the reserve practice used for purposes of the most recent annual statement filed before September 27, 1983, for the type of contract with respect to which such reserves are set up. For purposes of this subparagraph, if the reinsurer's taxable year is not a calendar year, the first day of the reinsurer's first taxable year beginning after December 31, 1983, shall be substituted for 'January 1, 1984' each place it appears.

''(B) TREATMENT OF RESERVE ATTRIBUTABLE TO SECTION 818(c) ELECTION.—In the case of any reserve described in subparagraph (A), for purposes of section 807(f) of the Internal Revenue Code of 1986, any change in the treatment of any contract to which an election under section 818(c) of such Code (as in effect on the day before the date of the enactment of this Act) applied shall be treated as a change in the basis for determining the amount of any reserve.

''(C) 10-YEAR SPREAD INAPPLICABLE WHERE NO 10-YEAR SPREAD UNDER PRIOR LAW.—In the case of any item to which section 807(f) of such Code applies by reason of subparagraph (A) or (B), such item shall be taken into account for the first taxable year beginning after December 31, 1983 (in lieu of over the 10-year period otherwise provided in such section) unless the item would have been required to be taken into account over a period of 10 taxable years under [former] section 810(d) of such Code (as in effect on the day before the date of the enactment of this Act).

''(D) DISALLOWANCE OF SPECIAL LIFE INSURANCE COMPANY DEDUCTION AND SMALL LIFE INSURANCE COMPANY DEDUCTION.—Any amount included in income under section 807(f) of such Code by reason of subparagraph (A) or (B) (and any income attributable to expenses transferred in connection with the transfer of reserves described in subparagraph (A)) shall not be taken into account for purposes of determining the amount of special life insurance company deduction and the small life insurance company deduction.

''(E) DISALLOWANCE OF DEDUCTIONS UNDER [FORMER] SECTION 809(d).—No deduction shall be allowed under paragraph (5) or (6) of [former] section 809(d) of such Code (as in effect before the amendments made by this subtitle) with respect to any amount described in either such paragraph which is transferred in connection with the transfer of reserves described in subparagraph (A).

''(4) ELECTIONS UNDER SECTION 818(c) AFTER SEPTEMBER 27, 1983, NOT TO TAKE EFFECT.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), any election after September 27, 1983, under section 818(c) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act) shall not take effect.

''(B) EXCEPTION FOR CERTAIN CONTRACTS ISSUED UNDER PLAN OF INSURANCE FIRST FILED AFTER MARCH 1, 1982, AND BEFORE SEPTEMBER 28, 1983.—Paragraph (3) and subparagraph (A) of this paragraph shall not apply to any election under such section 818(c) if more than 95 percent of the reserves computed in accordance with such election are attributable to risks under life insurance contracts issued by the taxpayer under a plan of insurance first filed after March 1, 1982, and before September 28, 1983.

''(C) SECTION 818(c) ELECTIONS MADE BY CERTAIN ACQUIRED COMPANIES.—

''(i) IN GENERAL.—If the case of any corporation—

''(I) which made an election under such section 818(c) BEFORE SEPTEMBER 28, 1983, AND

''(II) which was acquired in a qualified stock purchase (as defined in section 338(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) before December 31, 1983,

the fact that such corporation is treated as a new corporation under section 338 of such Code shall not result in the election described in subclause (I) not applying to such new corporation.

''(ii) TIME FOR MAKING SECTION 818(c) OR 338 ELECTION.—In the case of any corporation described in clause (i), the time for making an election under section 818(c) of such Code (with respect to the first taxable year of the corporation beginning in 1983 and ending after September 28, 1983), or making an election under section 338 of such Code with respect to the qualified stock purchase described in clause (i)(II), shall not expire before the close of the 60th day after the date of the enactment of the Tax Reform Act of 1986 [Oct. 22, 1986].

''(iii) STATUTE OF LIMITATIONS.—In the case of any such election under section 818(c) or 338 of such Code which would not have been timely made but for clause (ii), the period for assessing any deficiency attributable to such election (or for filing claim for credit or refund of any overpayment attributable to such election) shall not expire before the date 2 years after the date of the enactment of this Act [July 18, 1984].

''(5) RECAPTURE OF REINSURANCE AFTER DECEMBER 31, 1983.—If (A) insurance or annuity contracts in force on December 31, 1983, are subject to a conventional coinsurance agreement entered into after December 31, 1981, and before January 1, 1984, and (B) such contracts are recaptured by the reinsured in any taxable year beginning after December 31, 1983, then—

''(i) if the amount of the reserves with respect to the recaptured contracts, computed at the date of recapture, that the reinsurer would have taken into account under [former] section 810(c) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act) exceeds the amount of the reserves with respect to the recaptured contracts, computed at the date of recapture, taken into account by the reinsurer under section 807(c) of the Internal Revenue Code of 1986 (as amended by this subtitle), such excess (but not greater than the amount of such excess if computed on January 1, 1984) shall be taken into account by the reinsurer under the method described in section 807(f)(1)(B)(ii) of the Internal Revenue Code of 1986 (as amended by this subtitle) commencing with the taxable year of recapture, and

''(ii) the amount, if any, taken into account by the reinsurer under clause (i) for purposes of part I of subchapter L of chapter 1 of the Internal Revenue Code of 1986 shall be taken into account by the reinsured under the method described in section 807(f)(1)(B)(i) of the Internal Revenue Code of 1986 (as amended by this subtitle) commencing with the taxable year of recapture.

The excess described in clause (i) shall be reduced by any portion of such excess to which section 807(f) of the Internal Revenue Code of 1986 applies by reason of paragraph (3) of this subsection. For purposes of this paragraph, the term 'reinsurer' refers to the taxpayer that held reserves with respect to the recaptured contracts as of the end of the taxable year preceding the first taxable year beginning after December 31, 1983, and the term 'reinsured' refers to the taxpayer to which such reserves are ultimately transferred upon termination.

''(c) ELECTION NOT TO HAVE RESERVES RECOMPUTED.—

''(1) IN GENERAL.—If a qualified life insurance company makes an election under this paragraph—

''(A) subsection (a) shall not apply to such company, and

''(B) as of the beginning of the first taxable year beginning after December 31, 1983, and thereafter, the reserve for any contract issued before the first day of such taxable year by such company shall be the statutory reserve for such contract (within the meaning of [former] section 809(b)(4)(B)(i) of the Internal Revenue Code of 1986).

''(2) ELECTION WITH RESPECT TO CONTRACTS ISSUED AFTER 1983 AND BEFORE 1989.—

''(A) IN GENERAL.—If—

''(i) a qualified life insurance company makes an election under paragraph (1), and

''(ii) the tentative LICTI (within the meaning of [former] section 806(c) of such Code) of such company for its first taxable year beginning after December 31, 1983, does not exceed $3,000,000 (determined with regard to this paragraph),

such company may elect under this paragraph to have the reserve for any contract issued on or after the first day of such first taxable year and before January 1, 1989, be equal to the greater of the statutory reserve for such contract (adjusted as provided in subparagraph (B)) or the net surrender value of such contract (as defined in section 807(e)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]).

''(B) ADJUSTMENT TO RESERVES.—If this paragraph applies to any contract, the opening and closing statutory reserves for such contract shall be adjusted as provided under the principles of section 805(c)(1) of such Code (as in effect for taxable years beginning in 1982 and 1983), except that section 805(c)(1)(B)(ii) of such Code (as so in effect) shall be applied by substituting—

''(i) the prevailing State assumed interest rate (within the meaning of section 807(c)(4) of such Code), for

''(ii) the adjusted reserves rate.

''(3) QUALIFIED LIFE INSURANCE COMPANY.—For purposes of this subsection, the term 'qualified life insurance company' means any life insurance company which, as of December 31, 1983, had assets of less than $100,000,000 (determined in the same manner as under [former] section 806(b)(3) of such Code).

''(4) SPECIAL RULES FOR CONTROLLED GROUPS.—For purposes of applying the dollar limitations of paragraphs (2) and (3), rules similar to the rules of [former] section 806(d) of such Code shall apply.

''(5) ELECTIONS.—Any election under paragraph (1) or (2)—

''(A) shall be made at such time and in such manner as the Secretary of the Treasury may prescribe, and

''(B) once made, shall be irrevocable.''

TREATMENT OF CERTAIN COMPANIES OPERATING BOTH AS STOCK AND MUTUAL COMPANY

Pub. L. 98–369, div. A, title II, §217(e), July 18, 1984, 98 Stat. 762, provided that: ''If, during the 10-year period ending on December 31, 1983, a company has, as authorized by the law of the State in which the company is domiciled, been operating as a mutual life insurance company with shareholders, such company shall be treated as a stock life insurance company.''

TREATMENT OF REINSURANCE AGREEMENTS REQUIRED BY NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

Pub. L. 98–369, div. A, title II, §217(g), July 18, 1984, 98 Stat. 763, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Effective for taxable years beginning after December 31, 1981, and before January 1, 1984, subsections (c)(1)(F) and (d)(12) of section 809 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect on the day before the date of the enactment of this Act [July 18, 1984]) shall not apply to dividends to policyholders reimbursed to the taxpayer by a reinsurer in respect of accident and health policies reinsured under a reinsurance agreement entered into before June 30, 1955, pursuant to the direction of the National Association of Insurance Commissioners and approved by the State insurance commissioner of the taxpayer's State of domicile. For purposes of subchapter L of chapter 1 of such Code (as in effect on the day before the date of the enactment of this Act) any such dividends shall be treated as dividends of the reinsurer and not the taxpayer.''

REPORTS TO CONGRESS ON REVENUE, SEGMENT BALANCE, ETC.

Pub. L. 98–369, div. A, title II, §231, July 18, 1984, 98 Stat. 776, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) REVENUE REPORTS.—Not later than July 1, 1985, and July 1 of each calendar year thereafter, the Secretary of the Treasury shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on—

''(1) the aggregate amount of revenue received under part I of subchapter L of chapter 1 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for the most recent taxable years for which data are available,

''(2) a comparison between the amount of such revenue and the amount anticipated by reason of changes made by the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97–248] or the Life Insurance Tax Act of 1984 [probably means title II of div. A of Pub. L. 98–369], and

''(3) the reasons for any difference between such aggregate revenues and anticipated revenues.

''(b) REPORT WITH RESPECT TO SEGMENT BALANCE, ETC.—

''(1) IN GENERAL.—The Secretary of the Treasury (in consultation with the Joint Committee on Taxation, the Committee on Ways and Means of the House of Representatives, and the Committee on Finance of the Senate) shall conduct a full and complete study of the operation of part I of subchapter L of chapter 1 of the Internal Revenue Code of 1986 during 1984, 1985, and 1986. Such study shall also include an analysis of life insurance products and the taxation thereof. Such study shall also include an analysis of whether part I of such subchapter L operates as a disincentive to growing companies.

''(2) ITEMS TO BE INCLUDED.—The study conducted under paragraph (1) shall include—

''(A) an analysis of the portion of the taxes paid by mutual life insurance companies and stock life insurance companies, and

''(B) any other data considered relevant by either stock life insurance companies or mutual life insurance companies in determining appropriate segment balance, such as the respective amounts of the following items held by each segment of the industry—

''(i) equity,

''(ii) life insurance reserves,

''(iii) other types of reserves,

''(iv) dividends paid to policyholders and shareholders,

''(v) pension business,

''(vi) total assets, and

''(vii) gross receipts.

Such report shall also include an analysis of the extent to which taxes paid by stockholders of life insurance companies shall be included in analyzing segment balance.

''(3) REPORTS.—

''(A) INTERIM REPORTS.—The Secretary of the Treasury shall submit interim reports on the study conducted under this subsection to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than July 1, 1986, 1987, and 1988.

''(B) FINAL REPORT.—Not later than January 1, 1989, the Secretary of the Treasury shall submit a final report on the study conducted under this subsection to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

''(c) AUTHORITY TO REQUIRE DATA.—The Secretary of the Treasury shall have authority to require reporting of such data with respect to life insurance companies and their products as may be necessary to carry out the purposes of this section.''

SUBPART B—LIFE INSURANCE GROSS INCOME

§ 803. Life insurance gross income

(a) In general

For purposes of this part, the term ''life insurance gross income'' means the sum of the following amounts:

(1) Premiums

(A) The gross amount of premiums and other consideration on insurance and annuity contracts, less

(B) return premiums, and premiums and other consideration arising out of indemnity reinsurance.

(2) Decreases in certain reserves

Each net decrease in reserves which is required by section 807(a) to be taken into account under this paragraph.

(3) Other amounts

All amounts not includible under paragraph (1) or (2) which under this subtitle are includible in gross income.

(b) Special rules for premiums

(1) Certain items included

For purposes of subsection (a)(1)(A), the term ''gross amount of premiums and other consideration'' includes—

(A) advance premiums,

(B) deposits,

(C) fees,

(D) assessments,

(E) consideration in respect of assuming liabilities under contracts not issued by the taxpayer, and

(F) the amount of policyholder dividends reimbursable to the taxpayer by a reinsurer in respect of reinsured policies,

on insurance and annuity contracts.

(2) Policyholder dividends excluded from return premiums

For purposes of subsection (a)(1)(B)—

(A) In general

Except as provided in subparagraph (B), the term ''return premiums'' does not include any policyholder dividends.

(B) Exception for indemnity reinsurance

Subparagraph (A) shall not apply to amounts of premiums or other consideration returned to another life insurance company in respect of indemnity reinsurance.

(Added Pub. L. 98–369, div. A, title II, § 211(a), July 18, 1984, 98 Stat. 721.)

PRIOR PROVISIONS

A prior section 803, acts Aug. 16, 1954, ch. 736, 68A Stat. 256; Mar. 13, 1956, ch. 83, § 2, 70 Stat. 39, related to income and deductions in the case of life insurance companies, prior to the general revision of this part by Pub. L. 86–69, § 2(a), June 25, 1959, 73 Stat. 112.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as a note under section 801 of this title.

SUBPART C—LIFE INSURANCE DEDUCTIONS

AMENDMENTS

2017—Pub. L. 115–97, title I, §§ 13511(b)(1), 13512(a), Dec. 22, 2017, 131 Stat. 2142, which directed amendment of the analysis for part I of subchapter L of chapter 1 by striking out items 806 and 810, was executed by striking out items 806 ''Small life insurance company deduction'' and 810 ''Operations loss deduction'' in this analysis, which is the analysis for subpart C of such part, to reflect the probable intent of Congress.

2004—Pub. L. 108–218, title II, § 205(b)(7), Apr. 10, 2004, 118 Stat. 610, struck out item 809 ''Reduction in certain deductions of mutual life insurance companies''.

1986—Pub. L. 99–514, title X, § 1011(b)(11)(B), Oct. 22, 1986, 100 Stat. 2389, substituted ''Small life insurance

company deduction'' for ''Special deductions'' in item 806.

§ 804. Life insurance deductions

For purposes of this part, the term ''life insurance deductions'' means the general deductions provided in section 805.

(Added Pub. L. 98–369, div. A, title II, § 211(a), July 18, 1984, 98 Stat. 722; amended Pub. L. 99–514, title X, § 1011(b)(2), Oct. 22, 1986, 100 Stat. 2389; Pub. L. 115–97, title I, § 13512(b)(4), Dec. 22, 2017, 131 Stat. 2143.)

PRIOR PROVISIONS

A prior section 804, added Pub. L. 86–69, § 2(a), June 25, 1959, 73 Stat. 115; amended Pub. L. 87–858, § 3(b)(2), Oct. 23, 1962, 76 Stat. 1137; Pub. L. 88–272, title II, § 214(b)(3), Feb. 26, 1964, 78 Stat. 55; Pub. L. 91–172, title IV, § 401(b)(2)(D), Dec. 30, 1969, 83 Stat. 602; Pub. L. 94–455, title XIX, § 1901(a)(96), (b)(1)(J)(i), (iii), (K), (M), (33)(F), Oct. 4, 1976, 90 Stat. 1780, 1791, 1801, defined the term ''taxable investment income'' and provided for the computation of such income, prior to the general revision of this part by Pub. L. 98–369, § 211(a).

Another prior section 804, acts Aug. 16, 1954, ch. 736, 68A Stat. 258; Mar. 13, 1956, ch. 83, § 2, 70 Stat. 41, related to reserve and other policy liability deductions, prior to the general revision of this part by Pub. L. 86–69, § 2(a).

AMENDMENTS

2017—Pub. L. 115–97 substituted ''means the general deductions provided in section 805.'' for ''means—

''(1) the general deductions provided in section 805, and

''(2) the small life insurance company deduction (if any) determined under section 806(a).''

1986—Pars. (2), (3). Pub. L. 99–514 redesignated par. (3) as (2), substituted ''section 806(a)'' for ''section 806(b)'', and struck out former par. (2), which read as follows: ''the special life insurance company deduction determined under section 806(a), and''.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–97 applicable to taxable years beginning after Dec. 31, 2017, see section 13512(c) of Pub. L. 115–97, set out as a note under section 453B of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1011(c)(1) of Pub. L. 99–514, set out as a note under section 453B of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as a note under section 801 of this title.

§ 805. General deductions

(a) General rule

For purposes of this part, there shall be allowed the following deductions:

(1) Death benefits, etc.

All claims and benefits accrued, and all losses incurred (whether or not ascertained), during the taxable year on insurance and annuity contracts.

(2) Increases in certain reserves

The net increase in reserves which is required by section 807(b) to be taken into account under this paragraph.

(3) Policyholder dividends

The deduction for policyholder dividends (determined under section 808(c)).

(4) Dividends received by company

(A) In general

The deductions provided by sections 243 and 245 (as modified by subparagraph (B))—

(i) for 100 percent dividends received, and

(ii) for the life insurance company's share of the dividends (other than 100 percent dividends) received.

(B) Application of section 246(b)

In applying section 246(b) (relating to limitation on aggregate amount of deductions for dividends received) for purposes of subparagraph (A), the limit on the aggregate amount of the deductions allowed by sections 243(a)(1) and 245 shall be the percentage determined under section 246(b)(3) of the life insurance company taxable income (and such limitation shall be applied as provided in section 246(b)(3)), computed without regard to—

(i) the deduction allowed under section 172,

(ii) the deductions allowed by sections 243(a)(1) and 245, and

(iii) any capital loss carryback to the taxable year under section 1212(a)(1),

but such limit shall not apply for any taxable year for which there is a loss from operations.

(C) 100 percent dividend

For purposes of subparagraph (A)—

(i) In general

Except as provided in clause (ii), the term ''100 percent dividend'' means any dividend if the percentage used for purposes of determining the deduction allowable under section 243 or 245(b) is 100 percent.

(ii) Treatment of dividends from noninsurance companies

The term ''100 percent dividend'' does not include any distribution by a corporation which is not an insurance company to the extent such distribution is out of tax-exempt interest, or out of the increase for the taxable year in policy cash values (within the meaning of subparagraph (F)) of life insurance policies and annuity and endowment contracts to which section 264(f) applies, or out of dividends which are not 100 percent dividends (determined with the application of this clause as if it applies to distributions by all corporations including insurance companies).

(D) Special rules for certain dividends from insurance companies

(i) In general

In the case of any 100 percent dividend paid to any life insurance company out of the earnings and profits for any taxable year beginning after December 31, 1983, of another life insurance company if—

(I) the paying company's share determined under section 812 for such taxable year, exceeds

(II) the receiving company's share determined under section 812 for its taxable year in which the dividend is received or accrued,

the deduction allowed under section 243 or 245(b) (as the case may be) shall be reduced as provided in clause (ii).

(ii) Amount of reduction

The reduction under this clause for a dividend is an amount equal to—

(I) the portion of such dividend attributable to prorated amounts, multiplied by

(II) the percentage obtained by subtracting the share described in subclause (II) of clause (i) from the share described in subclause (I) of such clause.

(iii) Prorated amounts

For purposes of this subparagraph, the term ''prorated amounts'' means tax-exempt interest, the increase for the taxable year in policy cash values (within the meaning of subparagraph (F)) of life insurance policies and annuity and endowment contracts to which section 264(f) applies, and dividends other than 100 percent dividends.

(iv) Portion of dividend attributable to prorated amounts

For purposes of this subparagraph, in determining the portion of any dividend attributable to prorated amounts—

(I) any dividend by the paying corporation shall be treated as paid first out of earnings and profits for taxable years beginning after December 31, 1983, attributable to prorated amounts (to the extent thereof), and

(II) by determining the portion of earnings and profits so attributable without any reduction for the tax imposed by this chapter.

(v) Subparagraph to apply to dividends from other insurance companies

Rules similar to the rules of this subsection shall apply in the case of 100 percent dividends paid by an insurance company which is not a life insurance company.

(E) Certain dividends received by foreign corporations

Subparagraph (A)(i) (and not subparagraph (A)(ii)) shall apply to any dividend received by a foreign corporation from a domestic corporation which would be a 100 percent dividend if section 1504(b)(3) did not apply for purposes of applying section 243(b)(2).

(F) Increase in policy cash values

For purposes of subparagraphs (C) and (D)—

(i) In general

The increase in the policy cash value for any taxable year with respect to policy or contract is the amount of the increase in the adjusted cash value during such taxable year determined without regard to—

(I) gross premiums paid during such taxable year, and

(II) distributions (other than amounts includible in the policyholder's gross income) during such taxable year to which section 72(e) applies.

(ii) Adjusted cash value

For purposes of clause (i), the term ''adjusted cash value'' means the cash surrender value of the policy or contract increased by the sum of—

(I) commissions payable with respect to such policy or contract for the taxable year, and

(II) asset management fees, surrender charges, mortality and expense charges, and any other fees or charges specified in regulations prescribed by the Secretary which are imposed (or which would be imposed were the policy or contract canceled) with respect to such policy or contract for the taxable year.

[(5) Repealed. Pub. L. 115–97, title I, § 13511(b)(5), Dec. 22, 2017, 131 Stat. 2142]

(6) Assumption by another person of liabilities under insurance, etc., contracts

The consideration (other than consideration arising out of indemnity reinsurance) in respect of the assumption by another person of liabilities under insurance and annuity contracts.

(7) Reimbursable dividends

The amount of policyholder dividends which—

(A) are paid or accrued by another insurance company in respect of policies the taxpayer has reinsured, and

(B) are reimbursable by the taxpayer under the terms of the reinsurance contract.

(8) Other deductions

Subject to the modifications provided by subsection (b), all other deductions allowed under this subtitle for purposes of computing taxable income.

Except as provided in paragraph (3), no amount shall be allowed as a deduction under this part in respect of policyholder dividends.

(b) Modifications

The modifications referred to in subsection (a)(8) are as follows:

(1) Interest

In applying section 163 (relating to deduction for interest), no deduction shall be allowed for interest in respect of items described in section 807(c).

(2) Charitable, etc., contributions and gifts

In applying section 170—

(A) the limit on the total deductions under such section provided by section 170(b)(2) shall be 10 percent of the life insurance company taxable income computed without regard to—

(i) the deduction provided by section 170,

(ii) the deductions provided by paragraphs (3) and (4) of subsection (a),

(iii) any net operating loss carryback to the taxable year under section 172, and

(iv) any capital loss carryback to the taxable year under section 1212(a)(1), and

(B) under regulations prescribed by the Secretary, a rule similar to the rule contained in section 170(d)(2)(B) (relating to special rule for net operating loss carryovers) shall be applied.

(3) Amortizable bond premium

(A) In general

Section 171 shall not apply.

(B) Cross reference

For rules relating to amortizable bond premium, see section 811(b).

(4) Dividends received deduction

Except as provided in subsection (a)(4), the deductions for dividends received provided by sections 243 and 245 shall not be allowed.

(Added Pub. L. 98–369, div. A, title II, §211(a), July 18, 1984, 98 Stat. 722; amended Pub. L. 99–514, title VI, §611(a)(5), title VIII, §805(c)(6), title X, §1011(b)(4), title XVIII, §1821(p), Oct. 22, 1986, 100 Stat. 2249, 2362, 2389, 2842; Pub. L. 100–203, title X, §10221(c)(2), Dec. 22, 1987, 101 Stat. 1330–409; Pub. L. 104–188, title I, §1702(h)(3), Aug. 20, 1996, 110 Stat. 1873; Pub. L. 105–34, title X, §1084(b)(1), Aug. 5, 1997, 111 Stat. 954; Pub. L. 113–295, div. A, title II, §221(a)(41)(G), (I), Dec. 19, 2014, 128 Stat. 4044; Pub. L. 115–97, title I, §§13511(a), (b)(4)–(6), 13512(b)(5), (6), Dec. 22, 2017, 131 Stat. 2142, 2143.)

CODIFICATION

Another section 1084(b) of Pub. L. 105–34 amended sections 101 and 264 of this title.

PRIOR PROVISIONS

A prior section 805, added Pub. L. 86–69, §2(a), June 25, 1959, 73 Stat. 118; amended Pub. L. 87–792, §7(g), Oct. 10, 1962, 76 Stat. 829; Pub. L. 88–571, §5(a), Sept. 2, 1964, 78 Stat. 860; Pub. L. 91–172, title IX, §907(a)(1), Dec. 30, 1969, 83 Stat. 715; Pub. L. 93–406, title II, §§1016(a)(6), 2002(g)(9), 2004(c)(3), Sept. 2, 1974, 88 Stat. 929, 970, 986; Pub. L. 94–267, §(1)(c)(4), Apr. 15, 1976, 90 Stat. 367; Pub. L. 94–455, title XIX, §1901(a)(97), Oct. 4, 1976, 90 Stat. 1780; Pub. L. 95–600, title I, §§141(f)(9), 155(a), Nov. 6, 1978, 92 Stat. 2795, 2801; Pub. L. 97–248, title II, §§257(a), 260(b), 261, 264(a)–(c)(1), Sept. 3, 1982, 96 Stat. 537, 540, 543, 544, related to policy and other contract liability requirements, prior to general revision of this part by Pub. L. 98–369, §211(a).

Another prior section 805, acts Aug. 16, 1954, ch. 736, 68A Stat. 258; Mar. 13, 1956, ch. 83, §2, 70 Stat. 43, authorized a special interest deduction, prior to the general revision of this part by Pub. L. 86–69, §2(a).

AMENDMENTS

2017—Subsec. (a)(4)(B)(i). Pub. L. 115–97, §13512(b)(5), redesignated cl. (ii) as (i) and struck out former cl. (i) which read as follows: ''the small life insurance company deduction,''.

Subsec. (a)(4)(B)(ii). Pub. L. 115–97, §13512(b)(5), redesignated cl. (iii) as (ii). Former cl. (ii) redesignated (i).

Pub. L. 115–97, §13511(b)(4), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''the operations loss deduction provided by section 810,''.

Subsec. (a)(4)(B)(iii), (iv). Pub. L. 115–97, §13512(b)(5), redesignated cls. (iii) and (iv) as (ii) and (iii), respectively.

Subsec. (a)(5). Pub. L. 115–97, §13511(b)(5), struck out par. (5) which provided for the operations loss deduction determined under section 810.

Subsec. (b)(2)(A)(iii). Pub. L. 115–97, §13512(b)(6), redesignated cl. (iv) as (iii) and struck out former cl. (iii) which read as follows: ''the small life insurance company deduction,''.

Subsec. (b)(2)(A)(iv). Pub. L. 115–97, §13512(b)(6), redesignated cl. (v) as (iv). Former cl. (iv) redesignated (iii).

Pub. L. 115–97, §13511(b)(6), amended cl. (iv) generally. Prior to amendment, cl. (iv) read as follows: ''any operations loss carryback to the taxable year under section 810, and''.

Subsec. (b)(2)(A)(v). Pub. L. 115–97, §13512(b)(6), redesignated cl. (v) as (iv).

Subsec. (b)(4), (5). Pub. L. 115–97, §13511(a), redesignated par. (5) as (4) and struck out former par. (4) which did not allow the net operating loss deduction provided in section 172, except as provided by section 844.

2014—Subsec. (a)(4)(A). Pub. L. 113–295, §221(a)(41)(G), struck out '', 244,'' after ''sections 243'' in introductory provisions.

Subsec. (a)(4)(B). Pub. L. 113–295, §221(a)(41)(I), struck out '', 244(a),'' after ''sections 243(a)(1)'' in introductory provisions and in cl. (iii).

Subsec. (a)(4)(C)(i), (D)(i). Pub. L. 113–295, §221(a)(41)(G), struck out '', 244,'' after ''section 243''.

Subsec. (b)(5). Pub. L. 113–295, §221(a)(41)(G), struck out '', 244,'' after ''sections 243''.

1997—Subsec. (a)(4)(C)(ii). Pub. L. 105–34, §1084(b)(1)(A), inserted '', or out of the increase for the taxable year in policy cash values (within the meaning of subparagraph (F)) of life insurance policies and annuity and endowment contracts to which section 264(f) applies,'' after ''tax-exempt interest''.

Subsec. (a)(4)(D)(iii). Pub. L. 105–34, §1084(b)(1)(B), substituted '', the increase for the taxable year in policy cash values (within the meaning of subparagraph (F)) of life insurance policies and annuity and endowment contracts to which section 264(f) applies, and'' for ''and''.

Subsec. (a)(4)(F). Pub. L. 105–34, §1084(b)(1)(C), added subpar. (F).

1996—Subsec. (a)(4)(E). Pub. L. 104–188 substituted ''243(b)(2)'' for ''243(b)(5)''.

1987—Subsec. (a)(4)(B). Pub. L. 100–203 substituted ''shall be the percentage determined under section 246(b)(3) of the life insurance company taxable income (and such limitation shall be applied as provided in section 246(b)(3))'' for ''shall be 80 percent of the life insurance company taxable income''.

1986—Subsec. (a)(4)(B). Pub. L. 99–514, §611(a)(5), substituted ''80 percent'' for ''85 percent'' in introductory provisions.

Subsec. (a)(4)(B)(i). Pub. L. 99–514, §1011(b)(4), struck out ''the special life insurance company deduction and'' before ''the small life''.

Subsec. (a)(4)(C) to (E). Pub. L. 99–514, §1821(p), added subpars. (C) and (D), redesignated former subpar. (D) as (E), and struck out former subpar. (C) which read as follows: ''For purposes of subparagraph (A), the term '100 percent dividend' means any dividend if the percentage used for purposes of determining the deduction allowable under section 243 or 244 is 100 percent. Such term does not include any dividend to the extent it is a distribution out of tax-exempt interest or out of dividends which are not 100 percent dividends (determined with the application of this sentence).''

Subsec. (b)(2). Pub. L. 99–514, §805(c)(6), redesignated par. (3) as (2). Former par. (2), which provided that section 166(c) (relating to reserve for bad debts) shall not apply, was struck out.

Subsec. (b)(2)(A)(iii). Pub. L. 99–514, §1011(b)(4), which directed that subsec. (b)(3)(A)(iii) be amended by striking out ''the special life insurance company deduction and'' before ''the small life'', was executed to subsec. (b)(2)(A)(iii) to reflect the probable intent of Congress and the redesignation of subsec. (b)(3) as (b)(2) by Pub. L. 99–514, §805(c)(6).

Subsec. (b)(3) to (6). Pub. L. 99–514, §805(c)(6), redesignated pars. (3) to (6) as (2) to (5), respectively.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 13511(a), (b)(4)–(6) of Pub. L. 115–97 applicable to losses arising in taxable years be-

ginning after Dec. 31, 2017, see section 13511(c) of Pub. L. 115–97, set out as a note under section 381 of this title.

Amendment by section 13512(b)(5), (6) of Pub. L. 115–97 applicable to taxable years beginning after Dec. 31, 2017, see section 13512(c) of Pub. L. 115–97, set out as a note under section 453B of this title.

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–295 not applicable to preferred stock issued before Oct. 1, 1942 (determined in the same manner as under section 247 of this title as in effect before its repeal by Pub. L. 113–295), see section 221(a)(41)(K) of Pub. L. 113–295, set out as a note under section 172 of this title.

Except as otherwise provided in section 221(a) of Pub. L. 113–295, amendment by Pub. L. 113–295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113–295, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to contracts issued after June 8, 1997, in taxable years ending after such date, with special provisions relating to changes in contracts to be treated as new contracts, see section 1084(d) of Pub. L. 105–34, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to taxable years beginning after Dec. 31, 1987, see section 10221(e)(2) of Pub. L. 100–203, as amended, set out as a note under section 243 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 611(a)(5) of Pub. L. 99–514 applicable to dividends received or accrued after Dec. 31, 1986, in taxable years ending after such date, see section 611(b)(1) of Pub. L. 99–514, set out as a note under section 246 of this title.

Amendment by section 805(c)(6) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain changes required in method of accounting, see section 805(d) of Pub. L. 99–514, set out as a note under section 166 of this title.

Amendment by section 1011(b)(4) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1011(c)(1) of Pub. L. 99–514, set out as a note under section 453B of this title.

Amendment by section 1821(p) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as a note under section 801 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[§ 806. Repealed. Pub. L. 115–97, title I, § 13512(a), Dec. 22, 2017, 131 Stat. 2142]

Section, added Pub. L. 98–369, div. A, title II, § 211(a), July 18, 1984, 98 Stat. 724; amended Pub. L. 99–514, title X, § 1011(a), (b)(5)–(8), (11)(A), Oct. 22, 1986, 100 Stat. 2388, 2389, related to small life insurance company deduction.

A prior section 806, added Pub. L. 86–69, § 2(a), June 25, 1959, 73 Stat. 120; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, related to certain changes in reserves and assets, prior to the general revision of this part by Pub. L. 98–369, § 211(a).

Another prior section 806, act Aug. 16, 1954, ch. 736, 68A Stat. 258, related to adjustment for certain reserves, prior to the general revision of this part by act Mar. 13, 1956, ch. 83, § 2, 70 Stat. 36.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 2017, see section 13512(c) of Pub. L. 115–97, set out as an Effective Date of 2017 Amendment note under section 453B of this title.

§ 807. Rules for certain reserves

(a) Decrease treated as gross income

If for any taxable year—

(1) the opening balance for the items described in subsection (c), exceeds

(2)(A) the closing balance for such items, reduced by

(B) the amount of the policyholders' share of tax-exempt interest and the amount of the policyholder's share of the increase for the taxable year in policy cash values (within the meaning of section 805(a)(4)(F)) of life insurance policies and annuity and endowment contracts to which section 264(f) applies,

such excess shall be included in gross income under section 803(a)(2).

(b) Increase treated as deduction

If for any taxable year—

(1)(A) the closing balance for the items described in subsection (c), reduced by

(B) the amount of the policyholders' share of tax-exempt interest and the amount of the policyholder's share of the increase for the taxable year in policy cash values (within the meaning of section 805(a)(4)(F)) of life insurance policies and annuity and endowment contracts to which section 264(f) applies, exceeds

(2) the opening balance for such items,

such excess shall be taken into account as a deduction under section 805(a)(2).

(c) Items taken into account

The items referred to in subsections (a) and (b) are as follows:

(1) The life insurance reserves (as defined in section 816(b)).

(2) The unearned premiums and unpaid losses included in total reserves under section 816(c)(2).

(3) The amounts (discounted at the appropriate rate of interest) necessary to satisfy the obligations under insurance and annuity contracts, but only if such obligations do not involve (at the time with respect to which the computation is made under this paragraph) life, accident, or health contingencies.

(4) Dividend accumulations, and other amounts, held at interest in connection with insurance and annuity contracts.

(5) Premiums received in advance, and liabilities for premium deposit funds.

(6) Reasonable special contingency reserves under contracts of group term life insurance or group accident and health insurance which are established and maintained for the provision of insurance on retired lives, for premium stabilization, or for a combination thereof.

For purposes of paragraph (3), the appropriate rate of interest is the highest rate or rates permitted to be used to discount the obligations by the National Association of Insurance Commissioners as of the date the reserve is determined. In no case shall the amount determined under paragraph (3) for any contract be less than the net surrender value of such contract. For purposes of paragraph (2) and section 805(a)(1), the amount of the unpaid losses (other than losses on life insurance contracts) shall be the amount of the discounted unpaid losses as defined in section 846.

(d) Method of computing reserves for purposes of determining income

(1) Determination of reserve

(A) In general

For purposes of this part (other than section 816), the amount of the life insurance reserves for any contract (other than a contract to which subparagraph (B) applies) shall be the greater of—

(i) the net surrender value of such contract, or

(ii) 92.81 percent of the reserve determined under paragraph (2).

(B) Variable contracts

For purposes of this part (other than section 816), the amount of the life insurance reserves for a variable contract shall be equal to the sum of—

(i) the greater of—

(I) the net surrender value of such contract, or

(II) the portion of the reserve that is separately accounted for under section 817, plus

(ii) 92.81 percent of the excess (if any) of the reserve determined under paragraph (2) over the amount in clause (i).

(C) Statutory cap

In no event shall the reserves determined under subparagraphs (A) or (B) for any contract as of any time exceed the amount which would be taken into account with respect to such contract as of such time in determining statutory reserves (as defined in paragraph (4)).

(D) No double counting

In no event shall any amount or item be taken into account more than once in determining any reserve under this subchapter.

(2) Amount of reserve

The amount of the reserve determined under this paragraph with respect to any contract shall be determined by using the tax reserve method applicable to such contract.

(3) Tax reserve method

For purposes of this subsection—

(A) In general

The term ''tax reserve method'' means—

(i) Life insurance contracts

The CRVM in the case of a contract covered by the CRVM.

(ii) Annuity contracts

The CARVM in the case of a contract covered by the CARVM.

(iii) Noncancellable accident and health insurance contracts

In the case of any noncancellable accident and health insurance contract, the reserve method prescribed by the National Association of Insurance Commissioners which covers such contract as of the date the reserve is determined.

(iv) Other contracts

In the case of any contract not described in clause (i), (ii), or (iii)—

(I) the reserve method prescribed by the National Association of Insurance Commissioners which covers such contract (as of the date the reserve is determined), or

(II) if no reserve method has been prescribed by the National Association of Insurance Commissioners which covers such contract, a reserve method which is consistent with the reserve method required under clause (i), (ii), or (iii) or under subclause (I) of this clause as of the date the reserve is determined for such contract (whichever is most appropriate).

(B) Definition of CRVM and CARVM

For purposes of this paragraph—

(i) CRVM

The term ''CRVM'' means the Commissioners' Reserve Valuation Method prescribed by the National Association of Insurance Commissioners which is applicable to the contract and in effect as of the date the reserve is determined.

(ii) CARVM

The term ''CARVM'' means the Commissioners' Annuities Reserve Valuation Method prescribed by the National Association of Insurance Commissioners which is applicable to the contract and in effect as of the date the reserve is determined.

(C) No additional reserve deduction allowed for deficiency reserves

Nothing in any reserve method described under this paragraph shall permit any increase in the reserve because the net premium (computed on the basis of assumptions required under this subsection) exceeds the actual premiums or other consideration charged for the benefit.

(4) Statutory reserves

The term ''statutory reserves'' means the aggregate amount set forth in the annual

statement with respect to items described in section 807(c). Such term shall not include any reserve attributable to a deferred and uncollected premium if the establishment of such reserve is not permitted under section 811(c).

(e) Special rules for computing reserves

(1) Net surrender value

For purposes of this section—

(A) In general

The net surrender value of any contract shall be determined—

(i) with regard to any penalty or charge which would be imposed on surrender, but

(ii) without regard to any market value adjustment on surrender.

(B) Special rule for pension plan contracts

In the case of a pension plan contract, the balance in the policyholder's fund shall be treated as the net surrender value of such contract. For purposes of the preceding sentence, such balance shall be determined with regard to any penalty or forfeiture which would be imposed on surrender but without regard to any market value adjustment.

(2) Qualified supplemental benefits

(A) Qualified supplemental benefits treated separately

For purposes of this part, the amount of the life insurance reserve for any qualified supplemental benefit shall be computed separately as though such benefit were under a separate contract.

(B) Qualified supplemental benefit

For purposes of this paragraph, the term ''qualified supplemental benefit'' means any supplemental benefit described in subparagraph (C) if—

(i) there is a separately identified premium or charge for such benefit, and

(ii) any net surrender value under the contract attributable to any other benefit is not available to fund such benefit.

(C) Supplemental benefits

For purposes of this paragraph, the supplemental benefits described in this subparagraph are any—

(i) guaranteed insurability,

(ii) accidental death or disability benefit,

(iii) convertibility,

(iv) disability waiver benefit, or

(v) other benefit prescribed by regulations,

which is supplemental to a contract for which there is a reserve described in subsection (c).

(3) Certain contracts issued by foreign branches of domestic life insurance companies

(A) In general

In the case of any qualified foreign contract, the amount of the reserve shall be not less than the minimum reserve required by the laws, regulations, or administrative guidance of the regulatory authority of the foreign country referred to in subparagraph (B) (but not to exceed the net level reserves for such contract).

(B) Qualified foreign contract

For purposes of subparagraph (A), the term ''qualified foreign contract'' means any contract issued by a foreign life insurance branch (which has its principal place of business in a foreign country) of a domestic life insurance company if—

(i) such contract is issued on the life or health of a resident of such country,

(ii) such domestic life insurance company was required by such foreign country (as of the time it began operations in such country) to operate in such country through a branch, and

(iii) such foreign country is not contiguous to the United States.

(4) Special rules for contracts issued before January 1, 1989, under existing plans of insurance, with term insurance or annuity benefits

For purposes of this part—

(A) In general

In the case of a life insurance contract issued before January 1, 1989, under an existing plan of insurance, the life insurance reserve for any benefit to which this paragraph applies shall be computed separately under subsection (d)(1) from any other reserve under the contract.

(B) Benefits to which this paragraph applies

This paragraph applies to any term insurance or annuity benefit with respect to which the requirements of clauses (i) and (ii) of paragraph (3)(C) are met.

(C) Existing plan of insurance

For purposes of this paragraph, the term ''existing plan of insurance'' means, with respect to any contract, any plan of insurance which was filed by the company using such contract in one or more States before January 1, 1984, and is on file in the appropriate State for such contract.

(5) Special rules for treatment of certain nonlife reserves

(A) In general

The amount taken into account for purposes of subsections (a) and (b) as—

(i) the opening balance of the items referred to in subparagraph (C),[1] and

(ii) the closing balance of such items,

shall be 80 percent of the amount which (without regard to this subparagraph) would have been taken into account as such opening or closing balance, as the case may be.

(B) Description of items

For purposes of this paragraph, the items referred to in this subparagraph are the items described in subsection (c) which consist of unearned premiums and premiums received in advance under insurance contracts not described in section 816(b)(1)(B).

[1] So in original. Probably should be ''subparagraph (B),''. See 2014 Amendment note below.

(6) Reporting rules

The Secretary shall require reporting (at such time and in such manner as the Secretary shall prescribe) with respect to the opening balance and closing balance of reserves and with respect to the method of computing reserves for purposes of determining income.

(f) Adjustment for change in computing reserves

(1) Treatment as change in method of accounting

If the basis for determining any item referred to in subsection (c) as of the close of any taxable year differs from the basis for such determination as of the close of the preceding taxable year, then so much of the difference between—

(A) the amount of the item at the close of the taxable year, computed on the new basis, and

(B) the amount of the item at the close of the taxable year, computed on the old basis,

as is attributable to contracts issued before the taxable year shall be taken into account under section 481 as adjustments attributable to a change in method of accounting initiated by the taxpayer and made with the consent of the Secretary.

(2) Termination as life insurance company

Except as provided in section 381(c)(22) (relating to carryovers in certain corporate readjustments), if for any taxable year the taxpayer is not a life insurance company, the balance of any adjustments under this subsection shall be taken into account for the preceding taxable year.

(Added Pub. L. 98–369, div. A, title II, §211(a), July 18, 1984, 98 Stat. 726; amended Pub. L. 99–514, title X, §1023(b), title XVIII, §1821(a), (s), Oct. 22, 1986, 100 Stat. 2399, 2837, 2843; Pub. L. 100–203, title X, §10241(a)–(b)(2)(A), Dec. 22, 1987, 101 Stat. 1330–419, 1330–420; Pub. L. 101–508, title XI, §11302(a), Nov. 5, 1990, 104 Stat. 1388–449; Pub. L. 104–188, title I, §1704(t)(61), Aug. 20, 1996, 110 Stat. 1890; Pub. L. 104–191, title III, §321(b), Aug. 21, 1996, 110 Stat. 2058; Pub. L. 105–34, title X, §1084(b)(2), Aug. 5, 1997, 111 Stat. 954; Pub. L. 108–218, title II, §205(b)(1), (2), Apr. 10, 2004, 118 Stat. 610; Pub. L. 113–295, div. A, title II, §221(a)(68), Dec. 19, 2014, 128 Stat. 4048; Pub. L. 115–97, title I, §§13513(a), 13517(a)(1)–(3), Dec. 22, 2017, 131 Stat. 2143–2145.)

CODIFICATION

Another section 1084(b) of Pub. L. 105–34 amended sections 101 and 264 of this title.

PRIOR PROVISIONS

A prior section 807, act Aug. 16, 1954, ch. 736, 68A Stat. 259, related to adjustment for certain reserves, prior to the general revision of this part by act Mar. 13, 1956, ch. 83, §2, 70 Stat. 36.

AMENDMENTS

2017—Subsec. (c). Pub. L. 115–97, §13517(a)(1), directed the general amendment of the second sentence of subsec. (c), which was executed by substituting ''For purposes of paragraph (3), the appropriate rate of interest is the highest rate or rates permitted to be used to discount the obligations by the National Association of Insurance Commissioners as of the date the reserve is determined.'' for ''For purposes of paragraph (3), the appropriate rate of interest for any obligation is whichever of the following rates is the highest as of the time such obligation first did not involve life, accident, or health contingencies: the applicable Federal interest rate under subsection (d)(2)(B)(i), the prevailing State assumed interest rate under subsection (d)(2)(B)(ii), or the rate of interest assumed by the company in determining the guaranteed benefit.'' in concluding provisions.

Subsec. (d)(1), (2). Pub. L. 115–97, §13517(a)(2)(A), (C), added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

''(1) IN GENERAL.—For purposes of this part (other than section 816), the amount of the life insurance reserves for any contract shall be the greater of—

''(A) the net surrender value of such contract, or

''(B) the reserve determined under paragraph (2).

In no event shall the reserve determined under the preceding sentence for any contract as of any time exceed the amount which would be taken into account with respect to such contract as of such time in determining statutory reserves (as defined in paragraph (6)).

''(2) AMOUNT OF RESERVE.—The amount of the reserve determined under this paragraph with respect to any contract shall be determined by using—

''(A) the tax reserve method applicable to such contract,

''(B) the greater of—

''(i) the applicable Federal interest rate, or

''(ii) the prevailing State assumed interest rate, and

''(C) the prevailing commissioners' standard tables for mortality and morbidity adjusted as appropriate to reflect the risks (such as substandard risks) incurred under the contract which are not otherwise taken into account.''

Subsec. (d)(3)(A)(iii). Pub. L. 115–97, §13517(a)(2)(D), substituted '', the reserve method prescribed by the National Association of Insurance Commissioners which covers such contract as of the date the reserve is determined'' for ''(other than a qualified long-term care insurance contract, as defined in section 7702B(b)), a 2-year full preliminary term method''.

Subsec. (d)(3)(A)(iv)(I). Pub. L. 115–97, §13517(a)(2)(E), substituted ''(as of the date the reserve is determined)'' for ''(as of the date of issuance)''.

Subsec. (d)(3)(A)(iv)(II). Pub. L. 115–97, §13517(a)(2)(F), substituted ''as of the date the reserve is determined for'' for ''as of the date of the issuance of''.

Subsec. (d)(3)(B). Pub. L. 115–97, §13517(a)(2)(G), (H), substituted ''applicable to the contract and in effect as of the date the reserve is determined'' for ''in effect on the date of the issuance of the contract'' in cls. (i) and (ii).

Subsec. (d)(4) to (6). Pub. L. 115–97, §13517(a)(2)(A), (B), redesignated par. (6) as (4) and struck out former pars. (4) and (5) which related to applicable Federal and prevailing State assumed interest rates and prevailing commissioners' standard tables, respectively.

Subsec. (e)(2). Pub. L. 115–97, §13517(a)(3)(C), amended par. (2) generally. Prior to amendment, par. (2) related to supplemental benefits.

Pub. L. 115–97, §13517(a)(3)(A), (B), redesignated par. (3) as (2) and struck out former par. (2) which related to issuance date in case of group contracts.

Subsec. (e)(3), (4). Pub. L. 115–97, §13517(a)(3)(B), redesignated pars. (4) and (6) as (3) and (4), respectively. Former par. (3) redesignated (2).

Subsec. (e)(5). Pub. L. 115–97, §13517(a)(3)(A), (B), redesignated par. (7) as (5) and struck out former par. (5) which related to treatment of substandard risks.

Subsec. (e)(6). Pub. L. 115–97, §13517(a)(3)(D), added par. (6). Former par. (6) redesignated (4).

Subsec. (e)(7). Pub. L. 115–97, §13517(a)(3)(B), redesignated par. (7) as (5).

Subsec. (f)(1). Pub. L. 115–97, §13513(a), amended par. (1) generally. Prior to amendment, par. (1) related to 10-year spread method of computation.

2014—Subsec. (e)(7)(B), (C). Pub. L. 113–295 redesignated subpar. (C) as (B) and struck out former subpar. (B) which related to transitional rule.

2004—Subsecs. (a)(2)(B), (b)(1)(B). Pub. L. 108–218, § 205(b)(1), struck out ''the sum of (i)'' before ''the amount'' and struck out ''plus (ii) any excess described in section 809(a)(2) for the taxable year,'' after ''to which section 264(f) applies,''.

Subsec. (d)(1). Pub. L. 108–218, § 205(b)(2)(A), substituted ''paragraph (6)'' for ''section 809(b)(4)(B)'' in concluding provisions.

Subsec. (d)(6). Pub. L. 108–218, § 205(b)(2)(B), added par. (6).

1997—Subsec. (a)(2)(B). Pub. L. 105–34, § 1084(b)(2)(A), substituted ''interest and the amount of the policyholder's share of the increase for the taxable year in policy cash values (within the meaning of section 805(a)(4)(F)) of life insurance policies and annuity and endowment contracts to which section 264(f) applies,'' for ''interest,''.

Subsec. (b)(1)(B). Pub. L. 105–34, § 1084(b)(2)(B), substituted ''interest and the amount of the policyholder's share of the increase for the taxable year in policy cash values (within the meaning of section 805(a)(4)(F)) of life insurance policies and annuity and endowment contracts to which section 264(f) applies,'' for ''interest,''.

1996—Subsec. (d)(3)(A)(iii). Pub. L. 104–191 inserted ''(other than a qualified long-term care insurance contract, as defined in section 7702B(b))'' after ''insurance contract''.

Subsec. (d)(3)(B)(ii). Pub. L. 104–188 substituted ''Commissioners' Annuities'' for ''Commissoners' Annuities''.

1990—Subsec. (e)(7). Pub. L. 101–508 added par. (7).

1987—Subsec. (c). Pub. L. 100–203, § 10241(b)(2)(A), substituted ''whichever of the following rates is the highest as of the time such obligation first did not involve life, accident, or health contingencies: the applicable Federal interest rate under subsection (d)(2)(B)(i), the prevailing State assumed interest rate under subsection (d)(2)(B)(ii), or the rate of interest assumed by the company in determining the guaranteed benefit.'' for ''the higher of the prevailing State assumed interest rate as of the time such obligation first did not involve life, accident, or health contingencies or the rate of interest assumed by the company (as of such time) in determining the guaranteed benefit.'' in third to last sentence.

Subsec. (d)(2)(B). Pub. L. 100–203, § 10241(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''the prevailing State assumed interest rate, and''.

Subsec. (d)(4). Pub. L. 100–203, § 10241(b)(1), substituted ''Applicable Federal interest rate; prevailing State assumed interest rate'' for ''Prevailing State assumed interest rate'' in heading and amended text generally, revising and restating as subpars. (A) and (B) provisions of former subpars. (A) to (D).

1986—Subsec. (c). Pub. L. 99–514, § 1023(b), inserted at end ''For purposes of paragraph (2) and section 805(a)(1), the amount of the unpaid losses (other than losses on life insurance contracts) shall be the amount of the discounted unpaid losses as defined in section 846.''

Pub. L. 99–514, § 1821(a), inserted at end ''In no case shall the amount determined under paragraph (3) for any contract be less than the net surrender value of such contract.''

Subsec. (d)(5)(C). Pub. L. 99–514, § 1821(s), inserted at end ''When the Secretary by regulation changes the table applicable to a type of contract, the new table shall be treated (for purposes of subparagraph (B) and for purposes of determining the issue dates of contracts for which it shall be used) as if it were a new prevailing commissioner's standard table adopted by the twenty-sixth State as of a date (no earlier than the date the regulation is issued) specified by the Secretary.''

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–97, title I, § 13513(b), Dec. 22, 2017, 131 Stat. 2143, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2017.''

Pub. L. 115–97, title I, § 13517(c), Dec. 22, 2017, 131 Stat. 2147, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 808, 811, 846, 848, 954, and 7702 of this title] shall apply to taxable years beginning after December 31, 2017.

''(2) TRANSITION RULE.—For the first taxable year beginning after December 31, 2017, the reserve with respect to any contract (as determined under section 807(d) of the Internal Revenue Code of 1986) at the end of the preceding taxable year shall be determined as if the amendments made by this section had applied to such reserve in such preceding taxable year.

''(3) TRANSITION RELIEF.—

''(A) IN GENERAL.—If—

''(i) the reserve determined under section 807(d) of the Internal Revenue Code of 1986 (determined after application of paragraph (2)) with respect to any contract as of the close of the year preceding the first taxable year beginning after December 31, 2017, differs from

''(ii) the reserve which would have been determined with respect to such contract as of the close of such taxable year under such section determined without regard to paragraph (2),

then the difference between the amount of the reserve described in clause (i) and the amount of the reserve described in clause (ii) shall be taken into account under the method provided in subparagraph (B).

''(B) METHOD.—The method provided in this subparagraph is as follows:

''(i) If the amount determined under subparagraph (A)(i) exceeds the amount determined under subparagraph (A)(ii), 1/8 of such excess shall be taken into account, for each of the 8 succeeding taxable years, as a deduction under section 805(a)(2) or 832(c)(4) of such Code, as applicable.

''(ii) If the amount determined under subparagraph (A)(ii) exceeds the amount determined under subparagraph (A)(i), 1/8 of such excess shall be included in gross income, for each of the 8 succeeding taxable years, under section 803(a)(2) or 832(b)(1)(C) of such Code, as applicable.''

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113–295, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–218, title II, § 205(c), Apr. 10, 2004, 118 Stat. 610, provided that: ''The amendments made by this section [amending this section and sections 808, 812, 817, and 842 of this title and repealing section 809 of this title] shall apply to taxable years beginning after December 31, 2004.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to contracts issued after June 8, 1997, in taxable years ending after such date, with special provisions relating to changes in contracts to be treated as new contracts, see section 1084(d) of Pub. L. 105–34, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–191 applicable to contracts issued after Dec. 31, 1997, see section 321(f) of Pub. L. 104–191, set out as an Effective Date note under section 7702B of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, § 11302(b), Nov. 5, 1990, 104 Stat. 1388–450, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning on or after September 30, 1990.''

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title X, §10241(c), Dec. 22, 1987, 101 Stat. 1330–420, provided that: ''The amendments made by this section [amending this section and section 812 of this title] shall apply to contracts issued in taxable years beginning after December 31, 1987.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1023(b) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, except as otherwise provided, see section 1023(e) of Pub. L. 99–514, set out as an Effective Date note under section 846 of this title.

Amendment by section 1821(a), (s) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as a note under section 801 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TREATMENT OF CERTAIN ASSESSMENT LIFE INSURANCE COMPANIES

Pub. L. 98–369, div. A, title II, §217(f), July 18, 1984, 98 Stat. 763, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) MORTALITY AND MORBIDITY TABLES.—In the case of a contract issued by an assessment life insurance company, the mortality and morbidity tables used in computing statutory reserves for such contract shall be used for purposes of paragraph (2)(C) of section 807(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by this subtitle [subtitle A (§§211–219) of title II of div. A of Pub. L. 98–369]) if such tables were—

''(A) in use since 1965, and

''(B) developed on the basis of the experience of assessment life insurance companies in the State in which such assessment life insurance company is domiciled.

''(2) TREATMENT OF CERTAIN MUTUAL ASSESSMENT LIFE INSURANCE COMPANIES.—In the case of any contract issued by a mutual assessment life insurance company which—

''(A) has been in existence since 1965, and

''(B) operates under chapter 13 or 14 of the Texas Insurance Code,

for purposes of part I of subchapter L of chapter 1 of the Internal Revenue Code of 1986, the amount of the life insurance reserves for such contract shall be equal to the amount taken into account with respect to such contract in determining statutory reserves.

''(3) STATUTORY RESERVES.—For purposes of this subsection, the term 'statutory reserves' has the meaning given to such term by [former] section 809(b)(4)(B) of such Code.''

SPECIAL RULE FOR COMPANIES USING NET LEVEL RESERVE METHOD FOR NONCANCELLABLE ACCIDENT AND HEALTH INSURANCE CONTRACTS

Pub. L. 98–369, div. A, title II, §217(n), July 18, 1984, 98 Stat. 766, as amended by Pub. L. 99–514, §2, title XVIII, §1823, Oct. 22, 1986, 100 Stat. 2095, 2845, provided that: ''A company shall be treated as meeting the requirements of section 807(d)(3)(A)(iii) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as amended by this Act, with respect to any directly-written noncancellable accident and health insurance contract (whether under existing or new plans of insurance) for any taxable year if—

''(1) such company—

''(A) was using the net level reserve method to compute at least 99 percent of its statutory reserves on such contracts as of December 31, 1982, and

''(B) received more than half its total direct premiums in 1982 from directly-written noncancellable accident and health insurance,

''(2) after December 31, 1983, and through such taxable year, such company has continuously used the net level reserve method for computing at least 99 percent of its tax and statutory reserves on such contracts, and

''(3) for any such contract for which the company does not use the net level reserve method, such company uses the same method for computing tax reserves as such company uses for computing its statutory reserves.''

§ 808. Policyholder dividends deduction

(a) Policyholder dividend defined

For purposes of this part, the term ''policyholder dividend'' means any dividend or similar distribution to policyholders in their capacity as such.

(b) Certain amounts included

For purposes of this part, the term ''policyholder dividend'' includes—

(1) any amount paid or credited (including as an increase in benefits) where the amount is not fixed in the contract but depends on the experience of the company or the discretion of the management,

(2) excess interest,

(3) premium adjustments, and

(4) experience-rated refunds.

(c) Amount of deduction

The deduction for policyholder dividends for any taxable year shall be an amount equal to the policyholder dividends paid or accrued during the taxable year.

(d) Definitions

For purposes of this section—

(1) Excess interest

The term ''excess interest'' means any amount in the nature of interest—

(A) paid or credited to a policyholder in his capacity as such, and

(B) in excess of interest determined at the prevailing State assumed rate for such contract.

(2) Premium adjustment

The term ''premium adjustment'' means any reduction in the premium under an insurance or annuity contract which (but for the reduction) would have been required to be paid under the contract.

(3) Experience-rated refund

The term ''experience-rated refund'' means any refund or credit based on the experience of the contract or group involved.

(e) Treatment of policyholder dividends

For purposes of this part, any policyholder dividend which—

(1) increases the cash surrender value of the contract or other benefits payable under the contract, or

(2) reduces the premium otherwise required to be paid,

shall be treated as paid to the policyholder and returned by the policyholder to the company as a premium.

(f) Coordination of 1984 fresh-start adjustment with acceleration of policyholder dividends deduction through change in business practice

(1) In general

The amount determined under paragraph (1) of subsection (c) for the year of change shall (before any reduction under paragraph (2) of subsection (c)) be reduced by so much of the accelerated policyholder dividends deduction for such year as does not exceed the 1984 fresh-start adjustment for policyholder dividends (to the extent such adjustment was not previously taken into account under this subsection).

(2) Year of change

For purposes of this subsection, the term ''year of change'' means the taxable year in which the change in business practices which results in the accelerated policyholder dividends deduction takes effect.

(3) Accelerated policyholder dividends deduction defined

For purposes of this subsection, the term ''accelerated policyholder dividends deduction'' means the amount which (but for this subsection) would be determined for the taxable year under paragraph (1) of subsection (c) but which would have been determined (under such paragraph) for a later taxable year under the business practices of the taxpayer as in effect at the close of the preceding taxable year.

(4) 1984 fresh-start adjustment for policyholder dividends

For purposes of this subsection, the term ''1984 fresh-start adjustment for policyholder dividends'' means the amounts held as of December 31, 1983, by the taxpayer as reserves for dividends to policyholders under section 811(b) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1984) other than for dividends which accrued before January 1, 1984. Such amounts shall be properly reduced to reflect the amount of previously nondeductible policyholder dividends (as determined under section 809(f) as in effect on the day before the date of the enactment of the Tax Reform Act of 1984).

(5) Separate application with respect to lines of business

This subsection shall be applied separately with respect to each line of business of the taxpayer.

(6) Subsection not to apply to mere change in dividend amount

This subsection shall not apply to a mere change in the amount of policyholder dividends.

(7) Subsection not to apply to policies issued after December 31, 1983

(A) In general

This subsection shall not apply to any policyholder dividend paid or accrued with respect to a policy issued after December 31, 1983.

(B) Exchanges of substantially similar policies

For purposes of subparagraph (A), any policy issued after December 31, 1983, in exchange for a substantially similar policy issued on or before such date shall be treated as issued before January 1, 1984. A similar rule shall apply in the case of a series of exchanges.

(8) Subsection to apply to policies provided under employee benefit plans

This subsection shall not apply to any policyholder dividend paid or accrued with respect to a group policy issued in connection with a plan to provide welfare benefits to employees (within the meaning of section 419(e)(2)).

(g) Prevailing State assumed interest rate

For purposes of this subchapter—

(1) In general

The term ''prevailing State assumed interest rate'' means, with respect to any contract, the highest assumed interest rate permitted to be used in computing life insurance reserves for insurance contracts or annuity contracts (as the case may be) under the insurance laws of at least 26 States. For purposes of the preceding sentence, the effect of nonforfeiture laws of a State on interest rates for reserves shall not be taken into account.

(2) When rate determined

The prevailing State assumed interest rate with respect to any contract shall be determined as of the beginning of the calendar year in which the contract was issued.

(Added Pub. L. 98–369, div. A, title II, § 211(a), July 18, 1984, 98 Stat. 732; amended Pub. L. 99–514, title XVIII, § 1821(b), (c), Oct. 22, 1986, 100 Stat. 2838; Pub. L. 108–218, title II, § 205(b)(3), Apr. 10, 2004, 118 Stat. 610; Pub. L. 115–97, title I, § 13517(b)(1), Dec. 22, 2017, 131 Stat. 2147.)

REFERENCES IN TEXT

The date of enactment of the Tax Reform Act of 1984, referred to in subsec. (f)(4), is the date of enactment of Pub. L. 98–369, div. A, which was approved July 18, 1984.

AMENDMENTS

2017—Subsec. (g). Pub. L. 115–97 added subsec. (g).

2004—Subsec. (c). Pub. L. 108–218 reenacted heading without change and amended text generally. Prior to amendment, text read as follows:

''(1) IN GENERAL.—Except as limited by paragraph (2), the deduction for policyholder dividends for any taxable year shall be an amount equal to the policyholder dividends paid or accrued during the taxable year.

''(2) REDUCTION IN CASE OF MUTUAL COMPANIES.—In the case of a mutual life insurance company, the deduction for policyholder dividends for any taxable year shall be reduced by the amount determined under section 809.''

1986—Subsec. (d)(1)(B). Pub. L. 99–514, § 1821(b), amended subpar. (B) generally. Prior to amendment,

subpar. (B) read as follows: ''determined at a rate in excess of the prevailing State assumed interest rate for such contract.''

Subsec. (f). Pub. L. 99–514, §1821(c), added subsec. (f).

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–97 applicable to taxable years beginning after Dec. 31, 2017, with transition rule and transition relief, see section 13517(c) of Pub. L. 115–97, set out as a note under section 807 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–218 applicable to taxable years beginning after Dec. 31, 2004, see section 205(c) of Pub. L. 108–218, set out as a note under section 807 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as a note under section 801 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[§ 809. Repealed. Pub. L. 108–218, title II, § 205(a), Apr. 10, 2004, 118 Stat. 610]

Section, added Pub. L. 98–369, div. A, title II, §211(a), July 18, 1984, 98 Stat. 733; amended Pub. L. 99–514, title XVIII, §1821(d)–(h), (r), Oct. 22, 1986, 100 Stat. 2839, 2840, 2843; Pub. L. 100–647, title I, §1018(u)(47), Nov. 10, 1988, 102 Stat. 3593; Pub. L. 107–147, title VI, §611(a), Mar. 9, 2002, 116 Stat. 61, related to reduction in certain deductions of mutual life insurance companies.

A prior section 809, added Pub. L. 86–69, §2(a), June 25, 1959, 73 Stat. 121; amended Pub. L. 87–59, §2(a), (b), June 27, 1961, 75 Stat. 120; Pub. L. 87–790, §3(a), Oct. 10, 1962, 76 Stat. 808; Pub. L. 87–858, §3(b)(3), (c), Oct. 23, 1962, 76 Stat. 1137; Pub. L. 88–272, title II, §§214(b)(4), 228(a), Feb. 26, 1964, 78 Stat. 55, 98; Pub. L. 91–172, title II, §201(a)(2)(C), title IX, §907(c)(2)(B), Dec. 30, 1969, 83 Stat. 558, 717; Pub. L. 94–455, title XV, §1508(a), title XIX, §§1901(a)(98), (b)(1)(J)(iv), (L)–(N), 33(G), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1741, 1781, 1791, 1801, 1834; Pub. L. 97–248, title II, §§255(b)(2)–(4), 259(a), 264(c)(2), (3), Sept. 3, 1982, 96 Stat. 534, 538, 544; Pub. L. 97–448, title I, §102(m)(1), Jan. 12, 1983, 96 Stat. 2374, related to general provisions regarding gain and loss from operations, prior to the general revision of this part by Pub. L. 98–369, §211(a).

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 2004, see section 205(c) of Pub. L. 108–218, set out as an Effective Date of 2004 Amendment note under section 807 of this title.

[§ 810. Repealed. Pub. L. 115–97, title I, § 13511(b)(1), Dec. 22, 2017, 131 Stat. 2142]

Section, added Pub. L. 98–369, div. A, title II, §211(a), July 18, 1984, 98 Stat. 738; amended Pub. L. 111–92, §13(c), Nov. 6, 2009, 123 Stat. 2994; Pub. L. 113–295, div. A, title II, §221(a)(41)(J), Dec. 19, 2014, 128 Stat. 4044, related to operations loss deduction.

A prior section 810, added Pub. L. 86–69, §2(a), June 25, 1959, 73 Stat. 125; amended Pub. L. 91–172, title I, §121(b)(5)(B), title IX, §907(a)(2), Dec. 30, 1969, 83 Stat. 541, 715, related to rules for certain reserves, prior to the general revision of this part by Pub. L. 98–369, §211(a).

EFFECTIVE DATE OF REPEAL

Repeal applicable to losses arising in taxable years beginning after Dec. 31, 2017, see section 13511(c) of Pub. L. 115–97, set out as an Effective Date of 2017 Amendment note under section 381 of this title.

SUBPART D—ACCOUNTING, ALLOCATION, AND FOREIGN PROVISIONS

AMENDMENTS

2017—Pub. L. 115–97, title I, §13514(a), Dec. 22, 2017, 131 Stat. 2143, struck out item 815 ''Distributions to shareholders from pre-1984 policyholders surplus account''.

1987—Pub. L. 100–203, title X, §10242(c)(4), Dec. 22, 1987, 101 Stat. 1330–423, struck out item 813 ''Foreign life insurance companies''.

§ 811. Accounting provisions

(a) Method of accounting

All computations entering into the determination of the taxes imposed by this part shall be made—

(1) under an accrual method of accounting, or

(2) to the extent permitted under regulations prescribed by the Secretary, under a combination of an accrual method of accounting with any other method permitted by this chapter (other than the cash receipts and disbursements method).

To the extent not inconsistent with the preceding sentence or any other provision of this part, all such computations shall be made in a manner consistent with the manner required for purposes of the annual statement approved by the National Association of Insurance Commissioners.

(b) Amortization of premium and accrual of discount

(1) In general

The appropriate items of income, deductions, and adjustments under this part shall be adjusted to reflect the appropriate amortization of premium and the appropriate accrual of discount attributable to the taxable year on bonds, notes, debentures, or other evidences of indebtedness held by a life insurance company. Such amortization and accrual shall be determined—

(A) in accordance with the method regularly employed by such company, if such method is reasonable, and

[1] Section catchline amended by Pub. L. 115–97 without corresponding amendment of analysis.

(B) in all other cases, in accordance with regulations prescribed by the Secretary.

(2) Special rules

(A) Amortization of bond premium

In the case of any bond (as defined in section 171(d)), the amount of bond premium, and the amortizable bond premium for the taxable year, shall be determined under section 171(b) as if the election set forth in section 171(c) had been made.

(B) Convertible evidence of indebtedness

In no case shall the amount of premium on a convertible evidence of indebtedness include any amount attributable to the conversion features of the evidence of indebtedness.

(3) Exception

No accrual of discount shall be required under paragraph (1) on any bond (as defined in section 171(d)), except in the case of discount which is—

(A) interest to which section 103 applies, or

(B) original issue discount (as defined in section 1273).

(c) No double counting

Nothing in this part shall permit—

(1) a reserve to be established for any item unless the gross amount of premiums and other consideration attributable to such item are required to be included in life insurance gross income,

(2) the same item to be counted more than once for reserve purposes, or

(3) any item to be deducted (either directly or as an increase in reserves) more than once.

(d) Method of computing reserves on contract where interest is guaranteed beyond end of taxable year

For purposes of this part (other than section 816), amounts in the nature of interest to be paid or credited under any contract for any period which is computed at a rate which—

(1) exceeds the interest rate in effect under section 808(g) for the contract for such period, and

(2) is guaranteed beyond the end of the taxable year on which the reserves are being computed,

shall be taken into account in computing the reserves with respect to such contract as if such interest were guaranteed only up to the end of the taxable year.

(e) Short taxable years

If any return of a corporation made under this part is for a period of less than the entire calendar year (referred to in this subsection as ''short period''), then section 443 shall not apply in respect to such period, but life insurance company taxable income shall be determined, under regulations prescribed by the Secretary, on an annual basis by a ratable daily projection of the appropriate figures for the short period.

(Added and amended Pub. L. 98–369, div. A, title I, § 42(a)(8), title II, § 211(a), July 18, 1984, 98 Stat. 557, 740; Pub. L. 100–647, title II, § 2004(p)(1), Nov. 10, 1988, 102 Stat. 3608; Pub. L. 115–97, title I, § 13517(b)(2), Dec. 22, 2017, 131 Stat. 2147.)

PRIOR PROVISIONS

A prior section 811, added Pub. L. 86–69, § 2(a), June 25, 1959, 73 Stat. 126; amended Pub. L. 97–248, title II, § 255(b)(1), Sept. 3, 1982, 96 Stat. 533; Pub. L. 98–369, div. A, title VII, § 714(a), July 18, 1984, 98 Stat. 960, related to dividends to policyholders, prior to the general revision of this part by Pub. L. 98–369, § 211(a).

Another prior section 811, act Aug. 16, 1954, ch. 736, § 811, as added Mar. 13, 1956, ch. 83, § 2, 70 Stat. 44; amended July 24, 1956, ch. 696, § 2(c), 70 Stat. 633; Mar. 17, 1958, Pub. L. 85–345, § 2(c), 72 Stat. 37, imposed a tax on the life insurance company taxable income of all life insurance companies for taxable years beginning after Dec. 31, 1957, prior to the general revision of this part by Pub. L. 86–69, § 2(a).

AMENDMENTS

2017—Subsec. (d)(1). Pub. L. 115–97 substituted ''the interest rate in effect under section 808(g)'' for ''the greater of the prevailing State assumed interest rate or applicable Federal interest rate in effect under section 807''.

1988—Subsec. (d)(1). Pub. L. 100–647 substituted ''the greater of the prevailing State assumed interest rate or applicable Federal interest rate in effect under section 807 for the contract'' for ''the prevailing State assumed interest rate for the contract''.

1984—Subsec. (b)(3). Pub. L. 98–369, § 42(a)(8), substituted ''section 1273'' for ''section 1232(b)''.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–97 applicable to taxable years beginning after Dec. 31, 2017, with transition rule and transition relief, see section 13517(c) of Pub. L. 115–97, set out as a note under section 807 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 42(a)(8) of Pub. L. 98–369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98–369, set out as an Effective Date note under section 1271 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as a note under section 801 of this title.

§ 812. Definition of company's share and policyholder's share

(a) Company's share

For purposes of section 805(a)(4), the term ''company's share'' means, with respect to any taxable year beginning after December 31, 2017, 70 percent.

(b) Policyholder's share

For purposes of section 807, the term ''policyholder's share'' means, with respect to any taxable year beginning after December 31, 2017, 30 percent.

(Added Pub. L. 98–369, div. A, title II, § 211(a), July 18, 1984, 98 Stat. 741; amended Pub. L. 99–514, title XVIII, § 1821(i), Oct. 22, 1986, 100 Stat. 2840; Pub. L. 100–203, title X, § 10241(b)(2)(B), Dec. 22, 1987, 101 Stat. 1330–420; Pub. L. 100–647, title I, § 1018(h)(1), title II, § 2004(p)(2), Nov. 10, 1988, 102 Stat. 3583, 3608; Pub. L. 104–188, title I,

§ 1602(b)(2), Aug. 20, 1996, 110 Stat. 1833; Pub. L. 105–34, title X, § 1084(b)(3), Aug. 5, 1997, 111 Stat. 955; Pub. L. 108–218, title II, § 205(b)(4), Apr. 10, 2004, 118 Stat. 610; Pub. L. 113–295, div. A, title II, § 221(a)(41)(G), Dec. 19, 2014, 128 Stat. 4044; Pub. L. 115–97, title I, § 13518(a), Dec. 22, 2017, 131 Stat. 2148.)

CODIFICATION

Another section 1084(b) of Pub. L. 105–34 amended sections 101 and 264 of this title.

PRIOR PROVISIONS

A prior section 812, added Pub. L. 86–69, § 2(a), June 25, 1959, 73 Stat. 127; amended Pub. L. 87–858, § 3(d)(1), Oct. 23, 1962, 76 Stat. 1137; Pub. L. 88–571, § 1(a), Sept. 2, 1964, 78 Stat. 857; Pub. L. 94–455, title VIII, § 806(d)(1), title XIX, § 1901(a)(99), Oct. 4, 1976, 90 Stat. 1598, 1781; Pub. L. 97–34, title II, § 207(b), Aug. 13, 1981, 95 Stat. 225, related to operations loss deductions, prior to the general revision of this part by Pub. L. 98–369, § 211(a).

Another prior section 812, act Aug. 16, 1954, ch. 736, § 812, as added Mar. 13, 1956, ch. 83, § 2, 70 Stat. 45, related to reserve and other policy liability deduction, prior to the general revision of this part by Pub. L. 86–69, § 2(a).

AMENDMENTS

2017—Pub. L. 115–97 amended section generally. Prior to amendment, section consisted of subsecs. (a) to (f), relating to definition of company's share and policyholders' share as pertaining to net and gross investment incomes.

2014—Subsec. (e)(2)(A). Pub. L. 113–295 struck out '', 244,'' after ''section 243''.

2004—Subsec. (b)(3)(A). Pub. L. 108–218 substituted ''section 808'' for ''sections 808 and 809''.

1997—Subsec. (d)(1)(D). Pub. L. 105–34 added subpar. (D).

1996—Subsec. (g). Pub. L. 104–188 struck out subsec. (g) which read as follows: ''TREATMENT OF INTEREST PARTIALLY TAX-EXEMPT UNDER SECTION 133.—For purposes of this section and subsections (a) and (b) of section 807, the terms 'gross investment income' and 'tax-exempt interest' shall not include any interest received with respect to a securities acquisition loan (as defined in section 133(b)). Such interest shall not be included in life insurance gross income for purposes of subsection (b)(3).''

1988—Subsec. (b)(2). Pub. L. 100–647, § 2004(p)(2), substituted ''In any case where neither the prevailing State assumed interest rate nor the applicable Federal interest rate is used, another appropriate rate shall be used for purposes of subparagraph (A).'' for ''In any case where the prevailing State assumed rate is not used, another appropriate rate shall be treated as the prevailing State assumed rate for purposes of subparagraph (A).''

Subsec. (e). Pub. L. 100–647, § 1018(h)(1), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''For purposes of this section, the term 'gross investment income' shall not include any dividend received by the life insurance company which is a 100-percent dividend (as defined in section 805(a)(4)(C)). Such term also shall not include any dividend described in section 805(a)(4)(D) (relating to certain dividends in the case of foreign corporations).''

1987—Subsec. (b)(2). Pub. L. 100–203 substituted ''at the greater of the prevailing State assumed rate or the applicable Federal interest rate'' for ''at the prevailing State assumed rate or, where such rate is not used, another appropriate rate'' in subpar. (A), and inserted provision at end that in any case where the prevailing State assumed rate is not used, another appropriate rate be treated as the prevailing State assumed rate for purposes of subpar. (A).

1986—Subsec. (b)(2). Pub. L. 99–514, § 1821(i)(1), inserted ''or, where such rate is not used, another appropriate rate'' after ''assumed rate'', in subpar. (A) and added subpar. (D).

Subsec. (b)(3)(B). Pub. L. 99–514, § 1821(i)(2), struck out ''(including tax-exempt interest)'' after ''insurance gross income'' in cl. (ii) and inserted at end ''For purposes of subparagraph (B)(ii), life insurance gross income shall be determined by including tax-exempt interest and by applying section 807(a)(2)(B) as if it did not contain clause (i) thereof.''

Subsec. (c). Pub. L. 99–514, § 1821(i)(3), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''For purposes of this section, the term 'net investment income' means 90 percent of gross investment income.''

Subsec. (g). Pub. L. 99–514, § 1821(i)(4), added subsec. (g).

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–97, title I, § 13518(c), Dec. 22, 2017, 131 Stat. 2148, provided that: ''The amendments made by this section [amending this section and section 817A of this title] shall apply to taxable years beginning after December 31, 2017.''

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–295 not applicable to preferred stock issued before Oct. 1, 1942 (determined in the same manner as under section 247 of this title as in effect before its repeal by Pub. L. 113–295), see section 221(a)(41)(K) of Pub. L. 113–295, set out as a note under section 172 of this title.

Except as otherwise provided in section 221(a) of Pub. L. 113–295, amendment by Pub. L. 113–295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113–295, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–218 applicable to taxable years beginning after Dec. 31, 2004, see section 205(c) of Pub. L. 108–218, set out as a note under section 807 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to contracts issued after June 8, 1997, in taxable years ending after such date, with special provisions relating to changes in contracts to be treated as new contracts, see section 1084(d) of Pub. L. 105–34, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1602(b)(1) of Pub. L. 104–188 applicable to loans made after Aug. 20, 1996, with exception, and provisions relating to certain refinancings, see section 1602(c) of Pub. L. 104–188, set out as an Effective Date of Repeal note under former section 133 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, § 1018(h)(2), Nov. 10, 1988, 102 Stat. 3583, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if included in the amendments made by section 211 of the Tax Reform Act of 1984 [Pub. L. 98–369].''

Amendment by section 2004(p)(2) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to contracts issued in taxable years beginning after Dec. 31, 1987, see section 10241(c) of Pub. L. 100–203, set out as a note under section 807 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of

the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as a note under section 801 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[§ 813. Repealed. Pub. L. 100–203, title X, § 10242(c)(1), Dec. 22, 1987, 101 Stat. 1330–423]

Section, added Pub. L. 98–369, div. A, title II, § 211(a), July 18, 1984, 98 Stat. 743; amended Pub. L. 99–514, title X, § 1011(b)(9), title XVIII, § 1821(j), Oct. 22, 1986, 100 Stat. 2389, 2841; Pub. L. 100–647, title I, § 1010(a)(1), Nov. 10, 1988, 102 Stat. 3450, related to foreign life insurance companies.

A prior section 813, act Aug. 16, 1954, ch. 736, § 813, as added Mar. 13, 1956, ch. 83, § 2, 70 Stat. 46, related to adjustment for certain reserves, prior to the general revision of this part by Pub. L. 86–69, § 2(a).

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 1987, see section 10242(d) of Pub. L. 100–203, set out as an Effective Date of 1987 Amendment note under section 816 of this title.

§ 814. Contiguous country branches of domestic life insurance companies

(a) Exclusion of items

In the case of a domestic mutual insurance company which—

(1) is a life insurance company,

(2) has a contiguous country life insurance branch, and

(3) makes the election provided by subsection (g) with respect to such branch,

there shall be excluded from each item involved in the determination of life insurance company taxable income the items separately accounted for in accordance with subsection (c).

(b) Contiguous country life insurance branch

For purposes of this section, the term contiguous country life insurance branch means a branch which—

(1) issues insurance contracts insuring risks in connection with the lives or health of residents of a country which is contiguous to the United States,

(2) has its principal place of business in such contiguous country, and

(3) would constitute a mutual life insurance company if such branch were a separate domestic insurance company.

For purposes of this section, the term ''insurance contract'' means any life, health, accident, or annuity contract or reinsurance contract or any contract relating thereto.

(c) Separate accounting required

Any taxpayer which makes the election provided by subsection (g) shall establish and maintain a separate account for the various income, exclusion, deduction, asset, reserve, liability, and surplus items properly attributable to the contracts described in subsection (b). Such separate accounting shall be made—

(1) in accordance with the method regularly employed by such company, if such method clearly reflects income derived from, and the other items attributable to, the contracts described in subsection (b), and

(2) in all other cases, in accordance with regulations prescribed by the Secretary.

(d) Recognition of gain on assets in branch account

If the aggregate fair market value of all the invested assets and tangible property which are separately accounted for by the domestic life insurance company in the branch account established pursuant to subsection (c) exceeds the aggregate adjusted basis of such assets for purposes of determining gain, then the domestic life insurance company shall be treated as having sold all such assets on the first day of the first taxable year for which the election is in effect at their fair market value on such first day. Notwithstanding any other provision of this chapter, the net gain shall be recognized to the domestic life insurance company on the deemed sale described in the preceding sentence.

(e) Transactions between contiguous country branch and domestic life insurance company

(1) Reimbursement for home office services, etc.

Any payment, transfer, reimbursement, credit, or allowance which is made from a separate account established pursuant to subsection (c) to one or more other accounts of a domestic life insurance company as reimbursement for costs incurred for or with respect to the insurance (or reinsurance) of risks accounted for in such separate account shall be taken into account by the domestic life insurance company in the same manner as if such payment, transfer, reimbursement, credit, or allowance had been received from a separate person.

(2) Repatriation of income

(A) In general

Except as provided in subparagraph (B), any amount directly or indirectly transferred or credited from a branch account established pursuant to subsection (c) to one or more other accounts of such company shall, unless such transfer or credit is a reimbursement to which paragraph (1) applies, be added to the income of the domestic life insurance company.

(B) Limitation

The addition provided by subparagraph (A) for the taxable year with respect to any contiguous country life insurance branch shall not exceed the amount by which—

(i) the aggregate decrease in the tentative LICTI of the domestic life insurance company for the taxable year and for all prior taxable years resulting solely from the application of subsection (a) of this section with respect to such branch, exceeds

(ii) the amount of additions to tentative LICTI pursuant to subparagraph (A) with respect to such contiguous country branch for all prior taxable years.

(C) Transitional rule

For purposes of this paragraph, in the case of a prior taxable year beginning before January 1, 1984, the term ''tentative LICTI'' means life insurance company taxable income determined under this part (as in effect for such year) without regard to this paragraph.

(f) Other rules

(1) Treatment of foreign taxes

No income, war profits, or excess profits taxes paid or accrued to any foreign country or possession of the United States which is attributable to income excluded under subsection (a) shall be taken into account for purposes of subpart A of part III of subchapter N (relating to foreign tax credit) or allowable as a deduction.

(2) United States source income allocable to contiguous country branch

For purposes of sections 881, 882, and 1442, each contiguous country life insurance branch shall be treated as a foreign corporation. Such sections shall be applied to each such branch in the same manner as if such sections contained the provisions of any treaty to which the United States and the contiguous country are parties, to the same extent such provisions would apply if such branch were incorporated in such contiguous country.

(g) Election

A taxpayer may make the election provided by this subsection with respect to any contiguous country for any taxable year. An election made under this subsection for any taxable year shall remain in effect for all subsequent taxable years, except that it may be revoked with the consent of the Secretary. The election provided by this subsection shall be made not later than the time prescribed by law for filing the return for the taxable year (including extensions thereof) with respect to which such election is made, and such election and any approved revocation thereof shall be made in the manner provided by the Secretary.

(h) Special rule for domestic stock life insurance companies

At the election of a domestic stock life insurance company which has a contiguous country life insurance branch described in subsection (b) (without regard to the mutual requirement in subsection (b)(3)), the assets of such branch may be transferred to a foreign corporation organized under the laws of the contiguous country without the application of section 367. Subsection (a) shall apply to the stock of such foreign corporation as if such domestic company were a mutual company and as if the stock were an item described in subsection (c). Subsection (e)(2) shall apply to amounts transferred or credited to such domestic company as if such domestic company and such foreign corporation constituted one domestic mutual life insurance company. The insurance contracts which may be transferred pursuant to this subsection shall include only those which are similar to the types of insurance contracts issued by a mutual life insurance company. Notwithstanding the first sentence of this subsection, if the aggregate fair market value of the invested assets and tangible property which are separately accounted for by the domestic life insurance company in the branch account exceeds the aggregate adjusted basis of such assets for purposes of determining gain, the domestic life insurance company shall be deemed to have sold all such assets on the first day of the taxable year for which the election under this subsection applies and the net gain shall be recognized to the domestic life insurance company on the deemed sale, but not in excess of the proportion of such net gain which equals the proportion which the aggregate fair market value of such assets which are transferred pursuant to this subsection is of the aggregate fair market value of all such assets.

(Added Pub. L. 98–369, div. A, title II, §211(a), July 18, 1984, 98 Stat. 744; amended Pub. L. 105–34, title XI, §1131(c)(1), Aug. 5, 1997, 111 Stat. 980; Pub. L. 115–97, title I, §14301(c)(5), Dec. 22, 2017, 131 Stat. 2222.)

AMENDMENTS

2017—Subsec. (f)(1). Pub. L. 115–97 redesignated subpar. (A) as par. (1), struck out subpar. (A) heading ''In general'', and struck out subpar. (B). Prior to amendment, text of subpar. (B) read as follows: ''For purposes of sections 78 and 902, where any amount is added to the life insurance company taxable income of the domestic life insurance company by reason of subsection (e)(2), the contiguous country life insurance branch shall be treated as a foreign corporation. Any amount so added shall be treated as a dividend paid by a foreign corporation, and the taxes paid to any foreign country or possession of the United States with respect to such amount shall be deemed to have been paid by such branch.''

1997—Subsec. (h). Pub. L. 105–34 struck out ''or 1491'' after ''section 367''.

NEW SECTION 814 TREATED AS CONTINUATION OF SECTION 819A

Pub. L. 98–369, div. A, title II, §217(a), July 18, 1984, 98 Stat. 762, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''For purposes of section 814 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to contiguous country branches of domestic life insurance companies)—

''(1) any election under section 819A of such Code (as in effect on the day before the date of the enactment of this Act [July 18, 1984]) shall be treated as an election under such section 814, and

''(2) any reference to a provision of such section 814 shall be treated as including a reference to the corresponding provision of such section 819A.''

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–97 applicable to taxable years of foreign corporations beginning after Dec. 31, 2017, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, see section 14301(d) of Pub. L. 115–97, set out as a note under section 78 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as a note under section 801 of this title.

[§ 815. Repealed. Pub. L. 115–97, title I, § 13514(a), Dec. 22, 2017, 131 Stat. 2143]

Section, added Pub. L. 98–369, div. A, title II, § 211(a), July 18, 1984, 98 Stat. 747; amended Pub. L. 99–514, title X, § 1011(b)(10), title XVIII, § 1821(k)(1), (2), Oct. 22, 1986, 100 Stat. 2389, 2841; Pub. L. 100–647, title I, § 1010(j)(1), Nov. 10, 1988, 102 Stat. 3456; Pub. L. 108–357, title VII, § 705(a), Oct. 22, 2004, 118 Stat. 1549; Pub. L. 113–295, div. A, title II, § 221(a)(41)(G), Dec. 19, 2014, 128 Stat. 4044, related to distributions to shareholders from pre-1984 policyholders surplus account.

A prior section 815, added Pub. L. 86–69, § 2(a), June 25, 1959, 73 Stat. 129; amended Pub. L. 87–790, § 3(b), Oct. 10, 1962, 76 Stat. 808; Pub. L. 87–858, § 3(b)(4), (e), Oct. 23, 1962, 76 Stat. 1137; Pub. L. 88–571, §§ 2, 3(a), 4(a), Sept. 2, 1964, 78 Stat. 857, 859; Pub. L. 90–225, § 4(a), (b), Dec. 27, 1967, 81 Stat. 733, 734; Pub. L. 91–172, title IX, § 907(b), Dec. 30, 1969, 83 Stat. 715; Pub. L. 94–331, § 1(a), June 30, 1976, 90 Stat. 781; Pub. L. 94–455, title XIX, §§ 1901(b)(1)(O), (24), (33)(H), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1791, 1798, 1801, 1834, contained provisions similar to this section, prior to the general revision of this part by Pub. L. 98–369, § 211(a).

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 2017, see section 13514(c) of Pub. L. 115–97, set out as an Effective Date of 2017 Amendment note under section 801 of this title.

SUBPART E—DEFINITIONS AND SPECIAL RULES

Sec.
816. Life insurance company defined.
817. Treatment of variable contracts.
817A. Special rules for modified guaranteed contracts.
818. Other definitions and special rules.

AMENDMENTS

1996—Pub. L. 104–188, title I, § 1612(b), Aug. 20, 1996, 110 Stat. 1847, added item 817A.

§ 816. Life insurance company defined

(a) Life insurance company defined

For purposes of this subtitle, the term ''life insurance company'' means an insurance company which is engaged in the business of issuing life insurance and annuity contracts (either separately or combined with accident and health insurance), or noncancellable contracts of health and accident insurance, if—

(1) its life insurance reserves (as defined in subsection (b)), plus

(2) unearned premiums, and unpaid losses (whether or not ascertained), on noncancellable life, accident, or health policies not included in life insurance reserves,

comprise more than 50 percent of its total reserves (as defined in subsection (c)). For purposes of the preceding sentence, the term ''insurance company'' means any company more than half of the business of which during the taxable year is the issuing of insurance or annuity contracts or the reinsuring of risks underwritten by insurance companies.

(b) Life insurance reserves defined

(1) In general

For purposes of this part, the term ''life insurance reserves'' means amounts—

(A) which are computed or estimated on the basis of recognized mortality or morbidity tables and assumed rates of interest, and

(B) which are set aside to mature or liquidate, either by payment or reinsurance, future unaccrued claims arising from life insurance, annuity, and noncancellable accident and health insurance contracts (including life insurance or annuity contracts combined with noncancellable accident and health insurance) involving, at the time with respect to which the reserve is computed, life, accident, or health contingencies.

(2) Reserves must be required by law

Except—

(A) in the case of policies covering life, accident, and health insurance combined in one policy issued on the weekly premium payment plan, continuing for life and not subject to cancellation, and

(B) as provided in paragraph (3),

in addition to the requirements set forth in paragraph (1), life insurance reserves must be required by law.

(3) Assessment companies

In the case of an assessment life insurance company or association, the term ''life insurance reserves'' includes—

(A) sums actually deposited by such company or association with State officers pursuant to law as guaranty or reserve funds, and

(B) any funds maintained, under the charter or articles of incorporation or association (or bylaws approved by a State insurance commissioner) of such company or association, exclusively for the payment of claims arising under certificates of membership or policies issued on the assessment plan and not subject to any other use.

(4) Amount of reserves

For purposes of this subsection, subsection (a), and subsection (c), the amount of any reserve (or portion thereof) for any taxable year shall be the mean of such reserve (or portion thereof) at the beginning and end of the taxable year.

(c) Total reserves defined

For purposes of subsection (a), the term ''total reserves'' means—

(1) life insurance reserves,

(2) unearned premiums, and unpaid losses (whether or not ascertained), not included in life insurance reserves, and

(3) all other insurance reserves required by law.

(d) Adjustments in reserves for policy loans

For purposes only of determining under subsection (a) whether or not an insurance company is a life insurance company, the life insurance reserves, and the total reserves, shall each be reduced by an amount equal to the mean of the aggregates, at the beginning and end of the taxable year, of the policy loans outstanding with respect to contracts for which life insurance reserves are maintained.

(e) Guaranteed renewable contracts

For purposes of this part, guaranteed renewable life, accident, and health insurance shall be

treated in the same manner as noncancellable life, accident, and health insurance.

(f) Amounts not involving life, accident, or health contingencies

For purposes only of determining under subsection (a) whether or not an insurance company is a life insurance company, amounts set aside and held at interest to satisfy obligations under contracts which do not contain permanent guarantees with respect to life, accident, or health contingencies shall not be included in reserves described in paragraph (1) or (3) of subsection (c).

(g) Burial and funeral benefit insurance companies

A burial or funeral benefit insurance company engaged directly in the manufacture of funeral supplies or the performance of funeral services shall not be taxable under this part but shall be taxable under section 831.

(h) Treatment of deficiency reserves

For purposes of this section and section 842(b)(2)(B)(i), the terms ''life insurance reserves'' and ''total reserves'' shall not include deficiency reserves.

(Added Pub. L. 98–369, div. A, title II, §211(a), July 18, 1984, 98 Stat. 748; amended Pub. L. 99–514, title XVIII, §1821(*l*), Oct. 22, 1986, 100 Stat. 2841; Pub. L. 100–203, title X, §10242(c)(2), Dec. 22, 1987, 101 Stat. 1330–423; Pub. L. 100–647, title I, §1010(f)(6), title II, §2004(q)(1), Nov. 10, 1988, 102 Stat. 3454, 3608.)

PRIOR PROVISIONS

A prior section 816, act Aug. 16, 1954, ch. 736, §816, as added Mar. 13, 1956, ch. 83, §2, 70 Stat. 46, related to taxation of foreign life insurance companies, prior to the general revision of this part by Pub. L. 86–69, §2(a).

AMENDMENTS

1988—Subsec. (g). Pub. L. 100–647, §1010(f)(6), substituted ''section 831'' for ''section 821 or section 831''.

Subsec. (h). Pub. L. 100–647, §2004(q)(1), substituted ''section 842(b)(2)(B)(i)'' for ''section 842(c)(1)(A)''.

1987—Subsec. (h). Pub. L. 100–203 substituted ''section 842(c)(1)(A)'' for ''section 813(a)(4)(B)''.

1986—Subsec. (h). Pub. L. 99–514 added subsec. (h).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1010(f)(6) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 2004(q)(1) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title X, §10242(d), Dec. 22, 1987, 101 Stat. 1330–423, provided that: ''The amendments made by this section [amending this section and sections 842, 864, and 4371 of this title and repealing section 813 of this title] shall apply to taxable years beginning after December 31, 1987.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as a note under section 801 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

SPECIAL ELECTION TO TREAT INDIVIDUAL NONCANCELLABLE ACCIDENT AND HEALTH CONTRACTS AS CANCELLABLE

Pub. L. 98–369, div. A, title II, §217(i), July 18, 1984, 98 Stat. 764, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–647, title I, §1010(h)(1), Nov. 10, 1988, 102 Stat. 3455, provided that:

''(1) IN GENERAL.—A mutual life insurance company may elect to treat all individual noncancellable (or guaranteed renewable) accident and health insurance contracts as though they were cancellable for purposes of section 816 of subchapter L of chapter 1 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].

''(2) EFFECT OF ELECTION ON SUBSIDIARIES OF ELECTING PARENT.—For purposes of determining the amount of the small life insurance company deduction of any controlled group which includes a mutual company which made an election under paragraph (1), the taxable income of such electing company shall be taken into account under [former] section 806(b)(2) of the Internal Revenue Code of 1986 (relating to phaseout of small life insurance company deduction).

''(3) ELECTION.—An election under paragraph (1) shall apply to the company's first taxable year beginning after December 31, 1983, and all taxable years thereafter.

''(4) TIME AND MANNER.—An election under paragraph (1) shall be made—

''(A) on the return of the taxpayer for its first taxable year beginning after December 31, 1983, and

''(B) in such manner as the Secretary of the Treasury or his delegate may prescribe.''

[Pub. L. 100–647, title I, §1010(h)(2), (3), Nov. 10, 1988, 102 Stat. 3455, provided that:

[''(2) EFFECTIVE DATE.—The amendment made by this subsection [amending section 217(i) of Pub. L. 98–369, set out above] shall apply to taxable years beginning after December 31, 1986, and before January 1, 1992.

[''(3) REVENUE LOSS LIMITED.—The decrease in the amount of Federal revenue by reason of the amendment made by this subsection shall not exceed $300,000 per taxable year.'']

§ 817. Treatment of variable contracts

(a) Increases and decreases in reserves

For purposes of subsections (a) and (b) of section 807, the sum of the items described in section 807(c) taken into account as of the close of the taxable year with respect to any variable contract shall, under regulations prescribed by the Secretary, be adjusted—

(1) by subtracting therefrom an amount equal to the sum of the amounts added from time to time (for the taxable year) to the reserves separately accounted for in accordance with subsection (c) by reason of appreciation in value of assets (whether or not the assets have been disposed of), and

(2) by adding thereto an amount equal to the sum of the amounts subtracted from time to time (for the taxable year) from such reserves by reason of depreciation in value of assets (whether or not the assets have been disposed of).

The deduction allowable for items described in paragraphs (1) and (6) of section 805(a) with respect to variable contracts shall be reduced to the extent that the amount of such items is increased for the taxable year by appreciation (or increased to the extent that the amount of such items is decreased for the taxable year by depreciation) not reflected in adjustments under the preceding sentence.

(b) Adjustment to basis of assets held in segregated asset account

In the case of variable contracts, the basis of each asset in a segregated asset account shall (in addition to all other adjustments to basis) be—

(1) increased by the amount of any appreciation in value, and

(2) decreased by the amount of any depreciation in value,

to the extent such appreciation and depreciation are from time to time reflected in the increases and decreases in reserves or other items referred to in subsection (a) with respect to such contracts.

(c) Separate accounting

For purposes of this part, a life insurance company which issues variable contracts shall separately account for the various income, exclusion, deduction, asset, reserve, and other liability items properly attributable to such variable contracts. For such items as are not accounted for directly, separate accounting shall be made—

(1) in accordance with the method regularly employed by such company, if such method is reasonable, and

(2) in all other cases, in accordance with regulations prescribed by the Secretary.

(d) Variable contract defined

For purposes of this part, the term ''variable contract'' means a contract—

(1) which provides for the allocation of all or part of the amounts received under the contract to an account which, pursuant to State law or regulation, is segregated from the general asset accounts of the company,

(2) which—

(A) provides for the payment of annuities,

(B) is a life insurance contract, or

(C) provides for funding of insurance on retired lives as described in section 807(c)(6), and

(3) under which—

(A) in the case of an annuity contract, the amounts paid in, or the amount paid out, reflect the investment return and the market value of the segregated asset account,

(B) in the case of a life insurance contract, the amount of the death benefit (or the period of coverage) is adjusted on the basis of the investment return and the market value of the segregated asset account, or

(C) in the case of funds held under a contract described in paragraph (2)(C), the amounts paid in, or the amounts paid out, reflect the investment return and the market value of the segregated asset account.

If a contract ceases to reflect current investment return and current market value, such contract shall not be considered as meeting the requirements of paragraph (3) after such cessation. Paragraph (3) shall be applied without regard to whether there is a guarantee, and obligations under such guarantee which exceed obligations under the contract without regard to such guarantee shall be accounted for as part of the company's general account.

(e) Pension plan contracts treated as paying annuity

A pension plan contract which is not a life, accident, or health, property, casualty, or liability insurance contract shall be treated as a contract which provides for the payments of annuities for purposes of subsection (d).

(f) Other special rules

(1) Life insurance reserves

For purposes of subsection (b)(1)(A) of section 816, the reflection of the investment return and the market value of the segregated asset account shall be considered an assumed rate of interest.

(2) Additional separate computations

Under regulations prescribed by the Secretary, such additional separate computations shall be made, with respect to the items separately accounted for in accordance with subsection (c), as may be necessary to carry out the purposes of this section and this part.

(g) Variable annuity contracts treated as annuity contracts

For purposes of this part, the term ''annuity contract'' includes a contract which provides for the payment of a variable annuity computed on the basis of—

(1) recognized mortality tables, and

(2)(A) the investment experience of a segregated asset account, or

(B) the company-wide investment experience of the company.

Paragraph (2)(B) shall not apply to any company which issues contracts which are not variable contracts.

(h) Treatment of certain nondiversified contracts

(1) In general

For purposes of subchapter L, section 72 (relating to annuities), and section 7702(a) (relating to definition of life insurance contract), a variable contract (other than a pension plan contract) which is otherwise described in this section and which is based on a segregated asset account shall not be treated as an annuity, endowment, or life insurance contract for any period (and any subsequent period) for which the investments made by such account are not, in accordance with regulations prescribed by the Secretary, adequately diversified.

(2) Safe harbor for diversification

A segregated asset account shall be treated as meeting the requirements of paragraph (1)

for any quarter of a taxable year if as of the close of such quarter—

(A) it meets the requirements of section 851(b)(3), and

(B) no more than 55 percent of the value of the total assets of the account are assets described in section 851(b)(3)(A)(i).

(3) Special rule for investments in United States obligations

To the extent that any segregated asset account with respect to a variable life insurance contract is invested in securities issued by the United States Treasury, the investments made by such account shall be treated as adequately diversified for purposes of paragraph (1).

(4) Look-through in certain cases

For purposes of this subsection, if all of the beneficial interests in a regulated investment company or in a trust are held by 1 or more—

(A) insurance companies (or affiliated companies) in their general account or in segregated asset accounts, or

(B) fund managers (or affiliated companies) in connection with the creation or management of the regulated investment company or trust,

the diversification requirements of paragraph (1) shall be applied by taking into account the assets held by such regulated investment company or trust.

(5) Independent investment advisors permitted

Nothing in this subsection shall be construed as prohibiting the use of independent investment advisors.

(6) Government securities funds

In determining whether a segregated asset account is adequately diversified for purposes of paragraph (1), each United States Government agency or instrumentality shall be treated as a separate issuer.

(Added Pub. L. 98–369, div. A, title II, §211(a), July 18, 1984, 98 Stat. 750; amended Pub. L. 99–514, title XVIII, §1821(m), (t)(1), Oct. 22, 1986, 100 Stat. 2841, 2844; Pub. L. 100–647, title VI, §6080(a), Nov. 10, 1988, 102 Stat. 3710; Pub. L. 104–188, title I, §1611(a), Aug. 20, 1996, 110 Stat. 1845; Pub. L. 105–34, title XII, §1271(b)(8), Aug. 5, 1997, 111 Stat. 1037; Pub. L. 108–218, title II, §205(b)(5), Apr. 10, 2004, 118 Stat. 610.)

PRIOR PROVISIONS

A prior section 817, added Pub. L. 86–69, §2(a), June 25, 1959, 73 Stat. 132; amended Pub. L. 94–455, title XIV, §1402(b)(1)(M), (2), title XIX, §§1901(a)(100), 1951(b)(11)(A), Oct. 4, 1976, 90 Stat. 1732, 1781, 1839, related to rules regarding certain gains and losses, prior to the general revision of this part by Pub. L. 98–369, §211(a).

Another prior section 817, act Aug. 16, 1954, ch. 736, §817, as added Mar. 13, 1956, ch. 83, §2, 70 Stat. 46, related to denial of double deductions, prior to the general revision of this part by Pub. L. 86–69, §2(a).

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–218, in introductory provisions, struck out ''(other than section 809)'' after ''For purposes of this part''.

1997—Subsec. (h)(2)(A). Pub. L. 105–34, §1271(b)(8)(A), substituted ''851(b)(3)'' for ''851(b)(4)''.

Subsec. (h)(2)(B). Pub. L. 105–34, §1271(b)(8)(B), substituted ''851(b)(3)(A)(i)'' for ''851(b)(4)(A)(i)''.

1996—Subsec. (d)(2)(C). Pub. L. 104–188, §1611(a)(1), added subpar. (C).

Subsec. (d)(3)(C). Pub. L. 104–188, §1611(a)(2), added subpar. (C).

1988—Subsec. (h)(6). Pub. L. 100–647 added par. (6).

1986—Subsec. (d). Pub. L. 99–514, §1821(t)(1), inserted at end ''Paragraph (3) shall be applied without regard to whether there is a guarantee, and obligations under such guarantee which exceed obligations under the contract without regard to such guarantee shall be accounted for as part of the company's general account.''

Subsec. (h)(1). Pub. L. 99–514, §1821(m)(2), struck out last sentence which read as follows: ''For purposes of this paragraph and paragraph (2), beneficial interests in a regulated investment company or in a trust shall not be treated as 1 investment if all of the beneficial interests in such company or trust are held by 1 or more segregated asset accounts of 1 or more insurance companies.''

Subsec. (h)(3) to (5). Pub. L. 99–514, §1821(m)(1), added pars. (3) and (4), redesignated former par. (4) as (5), and struck out former par. (3) which read as follows: ''In the case of a segregated asset account with respect to variable life insurance contracts, paragraph (1) shall not apply in the case of securities issued by the United States Treasury which are owned by a regulated investment company or by a trust all the beneficial interests in which are held by 1 or more segregated asset accounts of the company issuing the contract.''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–218 applicable to taxable years beginning after Dec. 31, 2004, see section 205(c) of Pub. L. 108–218, set out as a note under section 807 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XII, §1271(c), Aug. 5, 1997, 111 Stat. 1037, provided that: ''The amendments made by this section [amending this section and sections 851 and 1092 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1611(b), Aug. 20, 1996, 110 Stat. 1846, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1995.''

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title VI, §6080(b), Nov. 10, 1988, 102 Stat. 3710, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1987.''

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XVIII, §1821(t)(2), Oct. 22, 1986, 100 Stat. 2844, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply—

''(A) to contracts issued after December 31, 1986, and

''(B) to contracts issued before January 1, 1987, if such contract was treated as a variable contract on the taxpayer's return.''

Amendment by section 1821(m) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as a note under section 801 of this title.

DELAY IN EFFECTIVE DATE FOR DIVERSIFICATION REQUIREMENTS WITH RESPECT TO ACCOUNTS FOR CERTAIN IMMEDIATE ANNUITIES

Pub. L. 100–647, title I, § 1010(i), Nov. 10, 1988, 102 Stat. 3455, provided that: ''Section 817(h) of the 1986 Code shall not apply until January 1, 1989, with respect to a variable contract (as defined in section 817(d) of the 1986 Code) if—

''(1) such contract provides for the payment of an immediate annuity (as defined in section 72(u)(4) of the 1986 Code),

''(2) such contract was outstanding on September 12, 1986, and

''(3) the segregated asset account on which such contract is based was, on September 12, 1986, wholly invested in deposits insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 817A. Special rules for modified guaranteed contracts

(a) Computation of reserves

In the case of a modified guaranteed contract, clause (ii) of section 807(e)(1)(A) shall not apply.

(b) Segregated assets under modified guaranteed contracts marked to market

(1) In general

In the case of any life insurance company, for purposes of this subtitle—

(A) Any gain or loss with respect to a segregated asset shall be treated as ordinary income or loss, as the case may be.

(B) If any segregated asset is held by such company as of the close of any taxable year—

(i) such company shall recognize gain or loss as if such asset were sold for its fair market value on the last business day of such taxable year, and

(ii) any such gain or loss shall be taken into account for such taxable year.

Proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account under the preceding sentence. The Secretary may provide by regulations for the application of this subparagraph at times other than the times provided in this subparagraph.

(2) Segregated asset

For purposes of paragraph (1), the term ''segregated asset'' means any asset held as part of a segregated account referred to in subsection (d)(1) under a modified guaranteed contract.

(c) Special rule in computing life insurance reserves

For purposes of applying section 816(b)(1)(A) to any modified guaranteed contract, an assumed rate of interest shall include a rate of interest determined, from time to time, with reference to a market rate of interest.

(d) Modified guaranteed contract defined

For purposes of this section, the term ''modified guaranteed contract'' means a contract not described in section 817—

(1) all or part of the amounts received under which are allocated to an account which, pursuant to State law or regulation, is segregated from the general asset accounts of the company and is valued from time to time with reference to market values,

(2) which—

(A) provides for the payment of annuities,

(B) is a life insurance contract, or

(C) is a pension plan contract which is not a life, accident, or health, property, casualty, or liability contract,

(3) for which reserves are valued at market for annual statement purposes, and

(4) which provides for a net surrender value or a policyholder's fund (as defined in section 807(e)(1)).

If only a portion of a contract is not described in section 817, such portion shall be treated for purposes of this section as a separate contract.

(e) Regulations

The Secretary may prescribe regulations—

(1) to provide for the treatment of market value adjustments under sections 72, 7702, 7702A, and 807(e)(1)(B),

(2) to determine the interest rates applicable under sections 807(c)(3) and 807(d)(2)(B) with respect to a modified guaranteed contract annually, in a manner appropriate for modified guaranteed contracts and, to the extent appropriate for such a contract, to modify or waive the applicability of section 811(d),

(3) to provide rules to limit ordinary gain or loss treatment to assets constituting reserves for modified guaranteed contracts (and not other assets) of the company,

(4) to provide appropriate treatment of transfers of assets to and from the segregated account, and

(5) as may be necessary or appropriate to carry out the purposes of this section.

(Added Pub. L. 104–188, title I, § 1612(a), Aug. 20, 1996, 110 Stat. 1846; amended Pub. L. 115–97, title I, § 13518(b), Dec. 22, 2017, 131 Stat. 2148.)

AMENDMENTS

2017—Subsec. (e)(2). Pub. L. 115–97 substituted ''and 807(d)(2)(B)'' for '', 807(d)(2)(B), and 812''.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–97 applicable to taxable years beginning after Dec. 31, 2017, see section 13518(c) of Pub. L. 115–97, set out as a note under section 812 of this title.

EFFECTIVE DATE

Pub. L. 104–188, title I, § 1612(c), Aug. 20, 1996, 110 Stat. 1847, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1995.

''(2) TREATMENT OF NET ADJUSTMENTS.—Except as provided in paragraph (3), in the case of any taxpayer required by the amendments made by this section to change its calculation of reserves to take into account market value adjustments and to mark segregated assets to market for any taxable year—

''(A) such changes shall be treated as a change in method of accounting initiated by the taxpayer,

''(B) such changes shall be treated as made with the consent of the Secretary, and

''(C) the adjustments required by reason of section 481 of the Internal Revenue Code of 1986, shall be taken into account as ordinary income by the taxpayer for the taxpayer's first taxable year beginning after December 31, 1995.

''(3) LIMITATION ON LOSS RECOGNITION AND ON DEDUCTION FOR RESERVE INCREASES.—

''(A) LIMITATION ON LOSS RECOGNITION.—

''(i) IN GENERAL.—The aggregate loss recognized by reason of the application of section 481 of the Internal Revenue Code of 1986 with respect to section 817A(b) of such Code (as added by this section) for the first taxable year of the taxpayer beginning after December 31, 1995, shall not exceed the amount included in the taxpayer's gross income for such year by reason of the excess (if any) of—

''(I) the amount of life insurance reserves as of the close of the prior taxable year, over

''(II) the amount of such reserves as of the beginning of such first taxable year,

to the extent such excess is attributable to subsection (a) of such section 817A. Notwithstanding the preceding sentence, the adjusted basis of each segregated asset shall be determined as if all such losses were recognized.

''(ii) DISALLOWED LOSS ALLOWED OVER PERIOD.—The amount of the loss which is not allowed under clause (i) shall be allowed ratably over the period of 7 taxable years beginning with the taxpayer's first taxable year beginning after December 31, 1995.

''(B) LIMITATION ON DEDUCTION FOR INCREASE IN RESERVES.—

''(i) IN GENERAL.—The deduction allowed for the first taxable year of the taxpayer beginning after December 31, 1995, by reason of the application of section 481 of such Code with respect to section 817A(a) of such Code (as added by this section) shall not exceed the aggregate built-in gain recognized by reason of the application of such section 481 with respect to section 817A(b) of such Code (as added by this section) for such first taxable year.

''(ii) DISALLOWED DEDUCTION ALLOWED OVER PERIOD.—The amount of the deduction which is disallowed under clause (i) shall be allowed ratably over the period of 7 taxable years beginning with the taxpayer's first taxable year beginning after December 31, 1995.

''(iii) BUILT-IN GAIN.—For purposes of this subparagraph, the built-in gain on an asset is the amount equal to the excess of—

''(I) the fair market value of the asset as of the beginning of the first taxable year of the taxpayer beginning after December 31, 1995, over

''(II) the adjusted basis of such asset as of such time.''

§ 818. Other definitions and special rules

(a) Pension plan contracts

For purposes of this part, the term ''pension plan contract'' means any contract—

(1) entered into with trusts which (as of the time the contracts were entered into) were deemed to be trusts described in section 401(a) and exempt from tax under section 501(a) (or trusts exempt from tax under section 165 of the Internal Revenue Code of 1939 or the corresponding provisions of prior revenue laws);

(2) entered into under plans which (as of the time the contracts were entered into) were deemed to be plans described in section 403(a), or plans meeting the requirements of paragraphs (3), (4), (5), and (6) of section 165(a) of the Internal Revenue Code of 1939;

(3) provided for employees of the life insurance company under a plan which, for the taxable year, meets the requirements of paragraphs (3), (4), (5), (6), (7), (8), (11), (12), (13), (14), (15), (16), (17), (19), (20), (22), (26), and (27) of section 401(a);

(4) purchased to provide retirement annuities for its employees by an organization which (as of the time the contracts were purchased) was an organization described in section 501(c)(3) which was exempt from tax under section 501(a) (or was an organization exempt from tax under section 101(6) of the Internal Revenue Code of 1939 or the corresponding provisions of prior revenue laws), or purchased to provide retirement annuities for employees described in section 403(b)(1)(A)(ii) by an employer which is a State, a political subdivision of a State, or an agency or instrumentality of any one or more of the foregoing;

(5) entered into with trusts which (at the time the contracts were entered into) were individual retirement accounts described in section 408(a) or under contracts entered into with individual retirement annuities described in section 408(b); or

(6) purchased by—

(A) a governmental plan (within the meaning of section 414(d)) or an eligible deferred compensation plan (within the meaning of section 457(b)), or

(B) the Government of the United States, the government of any State or political subdivision thereof, or by any agency or instrumentality of the foregoing, or any organization (other than a governmental unit) exempt from tax under this subtitle, for use in satisfying an obligation of such government, political subdivision, agency or instrumentality, or organization to provide a benefit under a plan described in subparagraph (A).

(b) Treatment of capital gains and losses, etc.

In the case of a life insurance company—

(1) in applying section 1231(a), the term ''property used in the trade or business'' shall be treated as including only—

(A) property used in carrying on an insurance business, of a character which is subject to the allowance for depreciation provided in section 167, held for more than 1 year, and real property used in carrying on an insurance business, held for more than 1 year, which is not described in section 1231(b)(1)(A), (B), or (C), and

(B) property described in section 1231(b)(2), and

(2) in applying section 1221(a)(2), the reference to property used in trade or business shall be treated as including only property used in carrying on an insurance business.

(c) Gain on property held on December 31, 1958 and certain substituted property acquired after 1958

(1) Property held on December 31, 1958

In the case of property held by the taxpayer on December 31, 1958, if—

(A) the fair market value of such property on such date exceeds the adjusted basis for determining gain as of such date, and

(B) the taxpayer has been a life insurance company at all times on and after December 31, 1958,

the gain on the sale or other disposition of such property shall be treated as an amount (not less than zero) equal to the amount by which the gain (determined without regard to this subsection) exceeds the difference between the fair market value on December 31, 1958, and the adjusted basis for determining gain as of such date.

(2) Certain property acquired after December 31, 1958

In the case of property acquired after December 31, 1958, and having a substituted basis (within the meaning of section 1016(b))—

(A) for purposes of paragraph (1), such property shall be deemed held continuously by the taxpayer since the beginning of the holding period thereof, determined with reference to section 1223,

(B) the fair market value and adjusted basis referred to in paragraph (1) shall be that of that property for which the holding period taken into account includes December 31, 1958,

(C) paragraph (1) shall apply only if the property or properties the holding periods of which are taken into account were held only by life insurance companies after December 31, 1958, during the holding periods so taken into account,

(D) the difference between the fair market value and adjusted basis referred to in paragraph (1) shall be reduced (to not less than zero) by the excess of (i) the gain that would have been recognized but for this subsection on all prior sales or dispositions after December 31, 1958, of properties referred to in subparagraph (C), over (ii) the gain which was recognized on such sales or other dispositions, and

(E) the basis of such property shall be determined as if the gain which would have been recognized but for this subsection were recognized gain.

(3) Property defined

For purposes of paragraphs (1) and (2), the term ''property'' does not include insurance and annuity contracts and property described in paragraph (1) of section 1221(a).

(d) Insurance or annuity contract includes contracts supplementary thereto

For purposes of this part, the term ''insurance or annuity contract'' includes any contract supplementary thereto.

(e) Special rules for consolidated returns

(1) Items of companies other than life insurance companies

If an election under section 1504(c)(2) is in effect with respect to an affiliated group for the taxable year, all items of the members of such group which are not life insurance companies shall not be taken into account in determining the amount of the tentative LICTI of members of such group which are life insurance companies.

(2) Dividends within group

In the case of a life insurance company filing or required to file a consolidated return under section 1501 with respect to any affiliated group for any taxable year, any determination under this part with respect to any dividend paid by one member of such group to another member of such group shall be made as if such group was not filing a consolidated return.

(f) Allocation of certain items for purposes of foreign tax credit, etc.

(1) In general

Under regulations, in applying sections 861, 862, and 863 to a life insurance company, the deduction for policyholder dividends (determined under section 808(c)), reserve adjustments under subsections (a) and (b) of section 807, and death benefits and other amounts described in section 805(a)(1) shall be treated as items which cannot definitely be allocated to an item or class of gross income.

(2) Election of alternative allocation

(A) In general

On or before September 15, 1985, any life insurance company may elect to treat items described in paragraph (1) as properly apportioned or allocated among items of gross income to the extent (and in the manner) prescribed in regulations.

(B) Election irrevocable

Any election under subparagraph (A), once made, may be revoked only with the consent of the Secretary.

(3) Items described in section 807(c) treated as not interest for source rules, etc.

For purposes of part I of subchapter N, items described in any paragraph of section 807(c) shall be treated as amounts which are not interest.

(g) Qualified accelerated death benefit riders treated as life insurance

For purposes of this part—

(1) In general

Any reference to a life insurance contract shall be treated as including a reference to a qualified accelerated death benefit rider on such contract.

(2) Qualified accelerated death benefit riders

For purposes of this subsection, the term ''qualified accelerated death benefit rider'' means any rider on a life insurance contract if the only payments under the rider are payments meeting the requirements of section 101(g).

(3) Exception for long-term care riders

Paragraph (1) shall not apply to any rider which is treated as a long-term care insurance contract under section 7702B.

(Added and amended Pub. L. 98–369, div. A, title II, §211(a), title X, §1001(b)(10), (e), July 18, 1984, 98 Stat. 752, 1011, 1012; Pub. L. 99–514, title XI, §§1106(d)(3)(C), 1112(d)(4), 1136(b), title XVIII, §1821(n), (*o*), Oct. 22, 1986, 100 Stat. 2424, 2445, 2486, 2842; Pub. L. 100–647, title I, §§1010(k), 1011(e)(5)(A), Nov. 10, 1988, 102 Stat. 3456, 3461; Pub. L. 104–191, title III, §332(a), Aug. 21, 1996, 110 Stat. 2069; Pub. L. 106–170, title V, §532(c)(1)(D), (3), Dec. 17, 1999, 113 Stat. 1930, 1931.)

REFERENCES IN TEXT

Section 165 of the Internal Revenue Code of 1939, referred to in subsec. (a)(1), (2), was classified to section 165 of former Title 26, Internal Revenue Code. Section 101 of the Internal Revenue Code of 1939, referred to in subsec. (a)(4) was classified to section 101 of former Title 26, Internal Revenue Code. Sections 101 and 165 were repealed by section 7851(a)(1)(A) of this title. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title. See, also, section 7851(e) of this title for provision that references in the 1986 Code to a provision of the 1939 Code, not then applicable, shall be deemed a reference to the corresponding provision of the 1986 Code, which is then applicable.

PRIOR PROVISIONS

A prior section 818, added Pub. L. 86–69, §2(a), June 25, 1959, 73 Stat. 133; amended Pub. L. 88–272, title II, §228(b)(1), Feb. 26, 1964, 78 Stat. 98; Pub. L. 91–688, §1(a), Jan. 12, 1971, 84 Stat. 2072; Pub. L. 94–455, title XIX, §§1901(a)(101), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1781, 1834; Pub. L. 97–248, title II, §§258(a), 260(a), 262, 267(a), Sept. 3, 1982, 96 Stat. 538–540, 550, related to accounting provisions generally, prior to the general revision of this part by Pub. L. 98–369, §211(a).

Another prior section 818, act Aug. 16, 1954, ch. 736, §818, as added Mar. 13, 1956, ch. 83, §2, 70 Stat. 46, related to certain new insurance companies, prior to the general revision of this part by Pub. L. 86–69, §2(a).

A prior section 819, added Pub. L. 86–69, §2(a), June 25, 1959, 73 Stat. 136; amended Pub. L. 89–809, title I, §104(i)(3), Nov. 13, 1966, 80 Stat. 1561; Pub. L. 94–455, title XIX, §§1901(a)(102), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1781, 1834, related to foreign life insurance companies, prior to the general revision of this part by Pub. L. 98–369, §211(a). See section 813 of this title.

A prior section 819A, added Pub. L. 94–455, title X, §1043(a), Oct. 4, 1976, 90 Stat. 1639, related to contiguous country branches of domestic life insurance companies, prior to the general revision of this part by Pub. L. 98–369, §211(a). See section 814 of this title.

A prior section 820, added Pub. L. 86–69, §2(a), June 25, 1959, 73 Stat. 137; amended Pub. L. 94–455, title XIX, §§1901(a)(103), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1782, 1834, related to optional treatment of policies reinsured under modified coinsurance contracts, prior to repeal by Pub. L. 97–248, title II, §255(a), (c), Sept. 3, 1982, 96 Stat. 533, 534, applicable to taxable years beginning after Dec. 31, 1981, with exception.

A prior section 821, acts Aug. 16, 1954, ch. 736, 68A Stat. 260; Mar. 30, 1955, ch. 18, §2, 69 Stat. 14; Mar. 13, 1956, ch. 83, §3(a)(1), (2), 70 Stat. 47; Mar. 29, 1956, ch. 115, §2, 70 Stat. 66; Mar. 29, 1957, Pub. L. 85–12, §2, 71 Stat. 9; June 30, 1958, Pub. L. 85–475, §2, 72 Stat. 259; June 30, 1959, Pub. L. 86–75, §2, 73 Stat. 157; June 30, 1960, Pub. L. 86–564, title II, §201, 74 Stat. 290; June 30, 1961, Pub. L. 87–72, §2, 75 Stat. 193; June 28, 1962, Pub. L. 87–508, §2, 76 Stat. 114; Oct. 16, 1962, Pub. L. 87–834, §8(a), 76 Stat. 989; June 29, 1963 Pub. L. 88–52, §2, 77 Stat. 72; Feb. 26, 1964, Pub. L. 88–272, title I, §123(a), 78 Stat. 29; Nov. 13, 1966, Pub. L. 89–809, title I, §104(i)(4), 80 Stat. 1562; Oct. 4, 1976, Pub. L. 94–455, title IX, §901(b), title XV, §1507(b)(1), title XIX, §§1901(a)(104), 1906(b)(13)(A), 90 Stat. 1607, 1739, 1782, 1834; May 23, 1977, Pub. L. 95–30, title II, §201(3), (4), 91 Stat. 141; Nov. 6, 1978, Pub. L. 95–600, title III, §301(b)(9), 92 Stat. 2821; Aug. 13, 1981, Pub. L. 97–34, title II, §231(b)(1), (2), 95 Stat. 249, related to tax on mutual insurance companies to which former part II applied, prior to repeal by Pub. L. 99–514, title X, §1024(a)(1), Oct. 22, 1986, 100 Stat. 2405, effective for taxable years beginning after Dec. 31, 1986.

A prior section 822 was renumbered section 834 of this title by Pub. L. 99–514, title X, §1024(a)(3), Oct. 22, 1986, 100 Stat. 2405.

A prior section 823, added Pub. L. 87–834, §8(c), Oct. 16, 1962, 76 Stat. 992; amended Pub. L. 91–172, title IX, §907(c)(2)(B), Dec. 30, 1969, 83 Stat. 717, related to determination of statutory underwriting income or loss, prior to repeal by Pub. L. 99–514, title X, §1024(a)(1), Oct. 22, 1986, 100 Stat. 2405, effective for taxable years beginning after Dec. 31, 1986.

Another prior section 823, act Aug. 16, 1954, ch. 736, 68A Stat. 263, which defined ''net premiums'' and ''dividends to policyholders'', was redesignated section 822(f) of this title by section 8(b)(4) of Pub. L. 87–834.

A prior section 824, added Pub. L. 87–834, §8(c), Oct. 16, 1962, 76 Stat. 993; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, related to adjustments to provide protection against losses, prior to repeal by Pub. L. 99–514, title X, §1024(a)(1), Oct. 22, 1986, 100 Stat. 2405, effective for taxable years beginning after Dec. 31, 1986.

A prior section 825, added Pub. L. 87–834, §8(c), Oct. 16, 1962, 76 Stat. 995; amended Pub. L. 91–172 title IX, §907(c)(2)(C), (D), Dec. 30, 1969, 83 Stat. 717; Pub. L. 94–455, title VIII, §806(d)(2), title XIX, §1901(a)(106), Oct. 4, 1976, 90 Stat. 1599, 1782; Pub. L. 97–34, title II, §207(b), Aug. 13, 1981, 95 Stat. 225, related to unused loss deduction, prior to repeal by Pub. L. 99–514, title X, §1024(a)(1), Oct. 22, 1986, 100 Stat. 2405, effective for taxable years beginning after Dec. 31, 1986.

A prior section 826 was renumbered section 835 of this title by Pub. L. 99–514, title X, §1024(a)(3), Oct. 22, 1986, 100 Stat. 2405.

AMENDMENTS

1999—Subsec. (b)(2). Pub. L. 106–170, §532(c)(3), substituted ''section 1221(a)(2)'' for ''section 1221(2)''.

Subsec. (c)(3). Pub. L. 106–170, §532(c)(1)(D), substituted ''section 1221(a)'' for ''section 1221''.

1996—Subsec. (g). Pub. L. 104–191 added subsec. (g).

1988—Subsec. (a)(6). Pub. L. 100–647, §1011(e)(5)(A), in subpar. (A) substituted ''eligible deferred compensation plan'' for ''eligible State deferred compensation plan'', and in subpar. (B), inserted ''or any organization (other than a governmental unit) exempt from tax under this subtitle,'' after ''foregoing,'' and substituted ''agency or instrumentality, or organization'' for ''or agency or instrumentality''.

Subsec. (f)(3). Pub. L. 100–647, §1010(k), added par. (3).

1986—Subsec. (a)(3). Pub. L. 99–514, §1136(b), substituted ''(26), and (27)'' for ''and (26)''.

Pub. L. 99–514, §1112(d)(4), substituted ''(22), and (26)'' for ''and (22)''.

Pub. L. 99–514, §1106(d)(3)(C), inserted ''(17),'' after ''(16),''.

Subsec. (a)(6)(A). Pub. L. 99–514, §1821(n), in amending subpar. (A) generally, inserted ''an eligible State deferred compensation plan (within the meaning of section 457(b)), or''.

Subsec. (e). Pub. L. 99–514, §1821(*o*), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''If an election under section 1504(c)(2) is in effect with respect to an affiliated group for the taxable year, all items of the members of such group which are not life insurance companies shall not be taken into account in determining the amount of the tentative LICTI of members of such group which are life insurance companies.''

1984—Subsec. (b)(1)(A). Pub. L. 98–369, §1001(b)(10), (e), substituted ''6 months'' for ''1 year'' in two places, ap-

plicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–191, title III, § 332(b), Aug. 21, 1996, 110 Stat. 2069, provided that:

''(1) IN GENERAL.—The amendment made by this section [amending this section] shall take effect on January 1, 1997.

''(2) ISSUANCE OF RIDER NOT TREATED AS MATERIAL CHANGE.—For purposes of applying sections 101(f), 7702, and 7702A of the Internal Revenue Code of 1986 to any contract—

''(A) the issuance of a qualified accelerated death benefit rider (as defined in section 818(g) of such Code (as added by this Act)), and

''(B) the addition of any provision required to conform an accelerated death benefit rider to the requirements of such section 818(g),

shall not be treated as a modification or material change of such contract.''

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, § 1011(e)(5)(B), Nov. 10, 1988, 102 Stat. 3461, provided that: ''The amendments made by this paragraph [amending this section] shall apply to contracts issued after December 31, 1986.''

Amendment by section 1010(k) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1106(d)(3)(C) of Pub. L. 99–514 applicable to benefits accruing in years beginning after Dec. 31, 1988, except as otherwise provided, see section 1106(i)(5) of Pub. L. 99–514 set out as a note under section 415 of this title.

Amendment by section 1112(d)(4) of Pub. L. 99–514 applicable to plan years beginning after Dec. 31, 1988, with special rule regarding collective bargaining agreements ratified before Mar. 1, 1986, and with provision for waiver of the excise tax on reversions, see section 1112(e) of Pub. L. 99–514, set out as a note under section 401 of this title.

Amendment by section 1821(n), (*o*) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1112 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

PART II—OTHER INSURANCE COMPANIES

PRIOR PROVISIONS

A prior part II (§§ 821 to 826) related to mutual insurance companies other than life and certain marine insurance companies and other than fire and flood insurance companies which operated on the basis of perpetual policies or premium deposits, consisted of sections 821–826, prior to repeal (except for sections 822 and 826 which were renumbered sections 834 and 835, respectively, by Pub. L. 99–514, title X, § 1024(a)(1)–(3), Oct. 22, 1986, 100 Stat. 2405. See Prior Provisions note set out under section 818 of this title.

AMENDMENTS

1988—Pub. L. 100–647, title I, § 1010(f)(7), Nov. 10, 1988, 102 Stat. 3454, substituted ''Tax on insurance companies other than life insurance companies'' for ''Tax on insurance companies (other than life or mutual), mutual marine insurance companies, and certain mutual fire or flood insurance companies'' in item 831.

1986—Pub. L. 99–514, title X, §§ 1012(b)(2), 1024(a)(2), (c)(18), Oct. 22, 1986, 100 Stat. 2393, 2405, 2408, redesignated part III (§ 831 et seq.) as II and added items 833, 834, and 835. Former part II (§ 821 et seq.) was repealed.

1962—Pub. L. 87–834, § 8(g)(4)(C), Oct. 16, 1962, 76 Stat. 999, substituted ''and certain mutual fire or flood insurance companies'' for ''and mutual fire insurance companies issuing perpetual policies'' in item 831.

§ 831. Tax on insurance companies other than life insurance companies

(a) General rule

Taxes computed as provided in section 11 shall be imposed for each taxable year on the taxable income of every insurance company other than a life insurance company.

(b) Alternative tax for certain small companies

(1) In general

In lieu of the tax otherwise applicable under subsection (a), there is hereby imposed for each taxable year on the income of every insurance company to which this subsection applies a tax computed by multiplying the taxable investment income of such company for such taxable year by the rates provided in section 11(b).

(2) Companies to which this subsection applies

(A) In general

This subsection shall apply to every insurance company other than life if—

(i) the net written premiums (or, if greater, direct written premiums) for the taxable year do not exceed $2,200,000,

(ii) such company meets the diversification requirements of subparagraph (B), and

(iii) such company elects the application of this subsection for such taxable year.

The election under clause (iii) shall apply to the taxable year for which made and for all subsequent taxable years for which the requirements of clauses (i) and (ii) are met. Such an election, once made, may be revoked only with the consent of the Secretary.

(B) Diversification requirements

(i) In general

An insurance company meets the requirements of this subparagraph if—

(I) no more than 20 percent of the net written premiums (or, if greater, direct written premiums) of such company for the taxable year is attributable to any one policyholder, or

(II) such insurance company does not meet the requirement of subclause (I) and no person who holds (directly or indirectly) an interest in such insurance company is a specified holder who holds (directly or indirectly) aggregate interests in such insurance company which constitute a percentage of the entire interests in such insurance company which is more than a de minimis percentage higher than the percentage of interests in the specified assets with respect to such insurance company held (directly or indirectly) by such specified holder.

(ii) Definitions

For purposes of clause (i)(II)—

(I) Specified holder

The term ''specified holder'' means, with respect to any insurance company, any individual who holds (directly or indirectly) an interest in such insurance company and who is a spouse or lineal descendant (including by adoption) of an individual who holds an interest (directly or indirectly) in the specified assets with respect to such insurance company.

(II) Specified assets

The term ''specified assets'' means, with respect to any insurance company, the trades or businesses, rights, or assets with respect to which the net written premiums (or direct written premiums) of such insurance company are paid.

(III) Indirect interest

An indirect interest includes any interest held through a trust, estate, partnership, or corporation.

(IV) De minimis

Except as otherwise provided by the Secretary in regulations or other guidance, 2 percentage points or less shall be treated as de minimis.

(C) Controlled group rules

(i) In general

For purposes of this paragraph—

(I) in determining whether any company is described in clause (i) of subparagraph (A), such company shall be treated as receiving during the taxable year amounts described in such clause (i) which are received during such year by all other companies which are members of the same controlled group as the insurance company for which the determination is being made, and

(II) in determining the attribution of premiums to any policyholder under subparagraph (B)(i), all policyholders which are related (within the meaning of section 267(b) or 707(b)) or are members of the same controlled group shall be treated as one policyholder.

(ii) Controlled group

For purposes of clause (i), the term ''controlled group'' means any controlled group of corporations (as defined in section 1563(a)); except that—

(I) ''more than 50 percent'' shall be substituted for ''at least 80 percent'' each place it appears in section 1563(a), and

(II) subsections (a)(4) and (b)(2)(D) of section 1563 shall not apply.

(D) Inflation adjustment

In the case of any taxable year beginning in a calendar year after 2015, the dollar amount set forth in subparagraph (A)(i) shall be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting ''calendar year 2013'' for ''calendar year 2016'' in subparagraph (A)(ii) thereof.

If the amount as adjusted under the preceding sentence is not a multiple of $50,000, such amount shall be rounded to the next lowest multiple of $50,000.

(3) Limitation on use of net operating losses

For purposes of this part, a net operating loss (as defined in section 172) shall not be carried—

(A) to or from any taxable year for which the insurance company is not subject to the tax imposed by subsection (a), or

(B) to any taxable year if, between the taxable year from which such loss is being carried and such taxable year, there is an intervening taxable year for which the insurance company was not subject to the tax imposed by subsection (a).

(c) Insurance company defined

For purposes of this section, the term ''insurance company'' has the meaning given to such term by section 816(a)).[1]

(d) Reporting

Every insurance company for which an election is in effect under subsection (b) for any taxable year shall furnish to the Secretary at such time and in such manner as the Secretary shall prescribe such information for such taxable year as the Secretary shall require with respect to the requirements of subsection (b)(2)(A)(ii).

[1] So in original. Second closing parenthesis probably should not appear.

(e) Cross references

(1) For taxation of foreign corporations carrying on an insurance business within the United States, see section 842.

(2) For exemption from tax for certain insurance companies other than life, see section 501(c)(15).

(Aug. 16, 1954, ch. 736, 68A Stat. 264; Pub. L. 87–834, § 8(e)(1), (f), (g)(4)(B), Oct. 16, 1962, 76 Stat. 997–999; Pub. L. 89–809, title I, § 104(i)(6), Nov. 13, 1966, 80 Stat. 1562; Pub. L. 94–455, title XIX, §§ 1901(a)(107), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1782, 1834; Pub. L. 99–514, title X, § 1024(a)(4), Oct. 22, 1986, 100 Stat. 2405; Pub. L. 100–647, title I, § 1010(f)(1), (9), Nov. 10, 1988, 102 Stat. 3454, 3455; Pub. L. 108–218, title II, § 206(c), (d), Apr. 10, 2004, 118 Stat. 611; Pub. L. 114–113, div. Q, title III, § 333(a), (b), Dec. 18, 2015, 129 Stat. 3106, 3108; Pub. L. 115–97, title I, §§ 11002(d)(1)(AA), 13001(b)(2)(H), 13511(b)(2)(B), Dec. 22, 2017, 131 Stat. 2060, 2096, 2142.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

AMENDMENTS

2017—Subsec. (b)(2)(D)(ii). Pub. L. 115–97, § 11002(d)(1)(AA), substituted ''for 'calendar year 2016' in subparagraph (A)(ii)'' for ''for 'calendar year 1992' in subparagraph (B)''.

Subsec. (b)(3). Pub. L. 115–97, § 13511(b)(2)(B), struck out ''except as provided in section 844,'' after ''part,'' in introductory provisions.

Subsec. (e). Pub. L. 115–97, § 13001(b)(2)(H), redesignated pars. (2) and (3) as (1) and (2), respectively, and struck out former par. (1) which read as follows: ''For alternative tax in case of capital gains, see section 1201(a).''

2015—Subsec. (b)(2)(A). Pub. L. 114–113, § 333(a)(1)(A), (C), (b)(1), struck out ''(including interinsurers and reciprocal underwriters)'' after ''other than life'' in introductory provisions, substituted ''$2,200,000'' for ''$1,200,000'' in cl. (i), added cl. (ii), redesignated former cl. (ii) as (iii), and, in concluding provisions, substituted ''clause (iii)'' for ''clause (ii)'' and ''clauses (i) and (ii)'' for ''clause (i)''.

Subsec. (b)(2)(B), (C). Pub. L. 114–113, § 333(a)(1)(B), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (b)(2)(C)(i). Pub. L. 114–113, § 333(a)(2), substituted ''For purposes of this paragraph—'' for ''For purposes of subparagraph (A),'', inserted subcl. (I) designation before ''in determining'', and added subcl. (II).

Subsec. (b)(2)(D). Pub. L. 114–113, § 333(b)(2), added subpar. (D).

Subsecs. (d), (e). Pub. L. 114–113, § 333(a)(3), added subsec. (d) and redesignated former subsec. (d) as (e).

2004—Subsec. (b)(2)(A)(i). Pub. L. 108–218, § 206(d), struck out ''exceed $350,000 but'' after ''taxable year''.

Subsecs. (c), (d). Pub. L. 108–218, § 206(c), added subsec. (c) and redesignated former subsec. (c) as (d).

1988—Subsec. (b)(2)(A). Pub. L. 100–647, § 1010(f)(1), inserted at end ''The election under clause (ii) shall apply to the taxable year for which made and for all subsequent taxable years for which the requirements of clause (i) are met. Such an election, once made, may be revoked only with the consent of the Secretary.''

Subsec. (b)(3). Pub. L. 100–647, § 1010(f)(9), added par. (3).

1986—Pub. L. 99–514 amended section generally, substituting provisions imposing taxes on insurance companies other than life insurance companies, with an alternative tax on certain small companies, for provisions imposing taxes on insurance companies (other than life or mutual), mutual marine insurance companies, and certain mutual fire or flood insurance companies, with an election for multiple line companies to be taxed on total income.

1976—Subsec. (a). Pub. L. 94–455, § 1901(a)(107), substituted ''on the taxable income'' for ''or the taxable income''.

Subsec. (b). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' wherever appearing.

1966—Subsec. (b). Pub. L. 89–809, § 104(i)(6)(A), redesignated subsec. (c) as (b). Former subsec. (b), which excepted foreign insurance companies other than life or mutual insurance companies, foreign mutual marine insurance companies, and foreign mutual fire insurance companies not carrying on an insurance business within the United States and provided that they would be taxable as other foreign corporations, was struck out.

Subsecs. (c), (d). Pub. L. 89–809, § 104(i)(6)(B), redesignated subsec. (d) as (c) and added item (2). Former subsec. (c) redesignated (b).

1962—Pub. L. 87–834, § 8(g)(4)(B), substituted ''and certain mutual fire or flood insurance companies'' for ''and mutual fire insurance companies issuing perpetual policies'' in section catchline.

Subsec. (a). Pub. L. 87–834, § 8(e)(1), included flood insurance companies, and substituted provisions authorizing imposition of the tax on those companies whose principal business is the issuance of policies for which the premium deposits are the same, regardless of the length of the term for which the policies are written, if the unabsorbed portion of such premium deposits not required for losses, expenses, or establishment of reserves is returned or credited to the policyholder on cancellation or expiration of the policy for provisions which authorized imposition of tax on those companies which issued policies for which the sole premium charged is a single deposit which (except for such deduction of underwriting costs as may be provided) is refundable on cancellation or expiration of the policy.

Subsecs. (c), (d). Pub. L. 87–834, § 8(f), added subsec. (c) and redesignated former subsec. (c) as (d).

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 11002(d)(1)(AA) of Pub. L. 115–97 applicable to taxable years beginning after Dec. 31, 2017, see section 11002(e) of Pub. L. 115–97, set out as a note under section 1 of this title.

Amendment by section 13001(b)(2)(H) of Pub. L. 115–97 applicable to taxable years beginning after Dec. 31, 2017, see section 13001(c)(1) of Pub. L. 115–97, set out as a note under section 11 of this title.

Amendment by section 13511(b)(2)(B) of Pub. L. 115–97 applicable to losses arising in taxable years beginning after Dec. 31, 2017, see section 13511(c) of Pub. L. 115–97, set out as a note under section 381 of this title.

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114–113, div. Q, title III, § 333(c), Dec. 18, 2015, 129 Stat. 3108, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2016.''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–218 applicable to taxable years beginning after Dec. 31, 2003, with exception for companies in receivership or liquidation, see section 206(e) of Pub. L. 108–218, set out as a note under section 501 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title X, § 1024(e), Oct. 22, 1986, 100 Stat. 2409, provided that: ''The amendments made by this

section [amending this section and sections 501, 832, 834, 835, 841, 842, 844, 891, 1201, 1504, and 1563 of this title, redesignating former sections 822 and 826 of this title as sections 834 and 835 of this title, respectively, and repealing sections 821, 823, 824, and 825 of this title] (and the provisions of subsection (d) [set out below]) shall apply to taxable years beginning after December 31, 1986.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(107) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable with respect to taxable years beginning after Dec. 31, 1962, see section 8(h) of Pub. L. 87–834, set out as a note under section 501 of this title.

TRANSITIONAL RULES FOR 1984 AMENDMENT

Pub. L. 99–514, title X, § 1024(d), Oct. 22, 1986, 100 Stat. 2408, as amended by Pub. L. 100–647, title I, § 1010(f)(8), Nov. 10, 1988, 102 Stat. 3454, provided that:

''(1) TREATMENT OF AMOUNTS IN PROTECTION AGAINST LOSS ACCOUNT.—In the case of any insurance company which had a protection against loss account for its last taxable year beginning before January 1, 1987, there shall be included in the gross income of such company for any taxable year beginning after December 31, 1986, the amount which would have been included in gross income for such taxable year under section 824 of the Internal Revenue Code of 1954 [now 1986] (as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]). For purposes of the preceding sentence, no addition to such account shall be made for any taxable year beginning after December 31, 1986. In the case of a company taxable under section 831(b) of the Internal Revenue Code of 1986 (as amended by subsection (a)), any amount included in gross income under this paragraph shall be treated as gross investment income.

''(2) TRANSITIONAL RULE FOR UNUSED LOSS CARRYOVER UNDER SECTION 825.—Any unused loss carryover under section 825 of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]) which—

''(A) is from a taxable year beginning before January 1, 1987, and

''(B) could have been carried under such section to a taxable year beginning after December 31, 1986, but for the repeal made by subsection (a)(1) [repealing sections 821 and 823 to 825 of this title],

shall be included in the net operating loss deduction under section 832(c)(10) of such Code without regard to the limitations of [former] section 844(b) of such Code.''

§ 832. Insurance company taxable income

(a) Definition of taxable income

In the case of an insurance company subject to the tax imposed by section 831, the term ''taxable income'' means the gross income as defined in subsection (b)(1) less the deductions allowed by subsection (c).

(b) Definitions

In the case of an insurance company subject to the tax imposed by section 831—

(1) Gross income

The term ''gross income'' means the sum of—

(A) the combined gross amount earned during the taxable year, from investment income and from underwriting income as provided in this subsection, computed on the basis of the underwriting and investment exhibit of the annual statement approved by the National Association of Insurance Commissioners,

(B) gain during the taxable year from the sale or other disposition of property,

(C) all other items constituting gross income under subchapter B, except that, in the case of a mutual fire insurance company exclusively issuing perpetual policies, the amount of single deposit premiums paid to such company shall not be included in gross income,

(D) in the case of a mutual fire or flood insurance company whose principal business is the issuance of policies—

(i) for which the premium deposits are the same (regardless of the length of the term for which the policies are written), and

(ii) under which the unabsorbed portion of such premium deposits not required for losses, expenses, or establishment of reserves is returned or credited to the policyholder on cancellation or expiration of the policy,

an amount equal to 2 percent of the premiums earned on insurance contracts during the taxable year with respect to such policies after deduction of premium deposits returned or credited during the same taxable year, and

(E) in the case of a company which writes mortgage guaranty insurance, the amount required by subsection (e)(5) to be subtracted from the mortgage guaranty account.

(2) Investment income

The term ''investment income'' means the gross amount of income earned during the taxable year from interest, dividends, and rents, computed as follows: To all interest, dividends, and rents received during the taxable year, add interest, dividends, and rents due and accrued at the end of the taxable year, and deduct all interest, dividends, and rents due and accrued at the end of the preceding taxable year.

(3) Underwriting income

The term ''underwriting income'' means the premiums earned on insurance contracts during the taxable year less losses incurred and expenses incurred.

(4) Premiums earned

The term ''premiums earned on insurance contracts during the taxable year'' means an amount computed as follows:

(A) From the amount of gross premiums written on insurance contracts during the taxable year, deduct return premiums and premiums paid for reinsurance.

(B) To the result so obtained, add 80 percent of the unearned premiums on outstanding business at the end of the preceding taxable year and deduct 80 percent of the unearned premiums on outstanding business at the end of the taxable year.

(C) To the result so obtained, in the case of a taxable year beginning after December 31, 1986, and before January 1, 1993, add an amount equal to 3⅓ percent of unearned premiums on outstanding business at the end of the most recent taxable year beginning before January 1, 1987.

For purposes of this subsection, unearned premiums shall include life insurance reserves, as defined in section 816(b) but determined as provided in section 807. For purposes of this subsection, unearned premiums of mutual fire or flood insurance companies described in paragraph (1)(D) means (with respect to the policies described in paragraph (1)(D)) the amount of unabsorbed premium deposits which the company would be obligated to return to its policyholders at the close of the taxable year if all of its policies were terminated at such time; and the determination of such amount shall be based on the schedule of unabsorbed premium deposit returns for each such company then in effect. Premiums paid by the subscriber of a mutual flood insurance company described in paragraph (1)(D) or issuing exclusively perpetual policies shall be treated, for purposes of computing the taxable income of such subscriber, in the same manner as premiums paid by a policyholder to a mutual fire insurance company described in subparagraph (C) or (D) of paragraph (1).

(5) Losses incurred

(A) In general

The term ''losses incurred'' means losses incurred during the taxable year on insurance contracts computed as follows:

(i) To losses paid during the taxable year, deduct salvage and reinsurance recovered during the taxable year.

(ii) To the result so obtained, add all unpaid losses on life insurance contracts plus all discounted unpaid losses (as defined in section 846) outstanding at the end of the taxable year and deduct all unpaid losses on life insurance contracts plus all discounted unpaid losses outstanding at the end of the preceding taxable year.

(iii) To the results so obtained, add estimated salvage and reinsurance recoverable as of the end of the preceding taxable year and deduct estimated salvage and reinsurance recoverable as of the end of the taxable year.

The amount of estimated salvage recoverable shall be determined on a discounted basis in accordance with procedures established by the Secretary.

(B) Reduction of deduction

The amount which would (but for this subparagraph) be taken into account under subparagraph (A) shall be reduced by an amount equal to the applicable percentage of the sum of—

(i) tax-exempt interest received or accrued during such taxable year,

(ii) the aggregate amount of deductions provided by sections 243 and 245 for—

(I) dividends (other than 100 percent dividends) received during the taxable year, and

(II) 100 percent dividends received during the taxable year to the extent attributable (directly or indirectly) to prorated amounts, and

(iii) the increase for the taxable year in policy cash values (within the meaning of section 805(a)(4)(F)) of life insurance policies and annuity and endowment contracts to which section 264(f) applies.

In the case of a 100 percent dividend paid by an insurance company, the portion attributable to prorated amounts shall be determined under subparagraph (E)(ii). For purposes of this subparagraph, the applicable percentage is 5.25 percent divided by the highest rate in effect under section 11(b).

(C) Exception for investments made before August 8, 1986

(i) In general

Except as provided in clause (ii), subparagraph (B) shall not apply to any dividend or interest received or accrued on any stock or obligation acquired before August 8, 1986.

(ii) Special rule for 100 percent dividends

For purposes of clause (i), the portion of any 100 percent dividend which is attributable to prorated amounts shall be treated as received with respect to stock acquired on the later of—

(I) the date the payor acquired the stock or obligation to which the prorated amounts are attributable, or

(II) the 1st day on which the payor and payee were members of the same affiliated group (as defined in section 243(b)(2)).

(D) Definitions

For purposes of this paragraph—

(i) Prorated amounts

The term ''prorated amounts'' means tax-exempt interest and dividends with respect to which a deduction is allowable under section 243 or 245 (other than 100 percent dividends).

(ii) 100 percent dividend

(I) In general

The term ''100 percent dividend'' means any dividend if the percentage used for purposes of determining the deduction allowable under section 243 or 245(b) is 100 percent.

(II) Certain dividends received by foreign corporations

A dividend received by a foreign corporation from a domestic corporation which would be a 100 percent dividend if section 1504(b)(3) did not apply for purposes of applying section 243(b)(2) shall be treated as a 100 percent dividend.

(E) Special rules for dividends subject to proration at subsidiary level

(i) In general

In the case of any 100 percent dividend paid to an insurance company to which

this part applies by any insurance company, the amount of the decrease in the deductions of the payee company by reason of the portion of such dividend attributable to prorated amounts shall be reduced (but not below zero) by the amount of the decrease in the deductions (or increase in income) of the payor company attributable to the application of this section or section 805(a)(4)(A) to such amounts.

(ii) Portion of dividend attributable to prorated amounts

For purposes of this subparagraph, in determining the portion of any dividend attributable to prorated amounts—

(I) any dividend by the paying corporation shall be treated as paid first out of earnings and profits attributable to prorated amounts (to the extent thereof), and

(II) by determining the portion of earnings and profits so attributable without any reduction for the tax imposed by this chapter.

(6) Expenses incurred

The term ''expenses incurred'' means all expenses shown on the annual statement approved by the National Association of Insurance Commissioners, and shall be computed as follows: To all expenses paid during the taxable year, add expenses unpaid at the end of the taxable year and deduct expenses unpaid at the end of the preceding taxable year. For purposes of this subchapter, the term ''expenses unpaid'' shall not include any unpaid loss adjustment expenses shown on the annual statement, but such unpaid loss adjustment expenses shall be included in unpaid losses. For the purpose of computing the taxable income subject to the tax imposed by section 831, there shall be deducted from expenses incurred (as defined in this paragraph) all expenses incurred which are not allowed as deductions by subsection (c).

(7) Special rules for applying paragraph (4)

(A) Reduction not to apply to life insurance reserves

Subparagraph (B) of paragraph (4) shall be applied with respect to insurance contracts described in section 816(b)(1)(B) by substituting ''100 percent'' for ''80 percent'' each place it appears in such subparagraph (B), and subparagraph (C) of paragraph (4) shall be applied by not taking such contracts into account.

(B) Special treatment of premiums attributable to insuring certain securities

In the case of premiums attributable to insurance against default in the payment of principal or interest on securities described in section 165(g)(2)(C) with maturities of more than 5 years—

(i) subparagraph (B) of paragraph (4) shall be applied by substituting ''90 percent'' for ''80 percent'' each place it appears, and

(ii) subparagraph (C) of paragraph (4) shall be applied by substituting ''1⅔ percent'' for ''3⅓ percent''.

(C) Termination as insurance company taxable under section 831(a)

Except as provided in section 381(c)(22) (relating to carryovers in certain corporate readjustments), if, for any taxable year beginning before January 1, 1993, the taxpayer ceases to be an insurance company taxable under section 831(a), the aggregate adjustments which would be made under paragraph (4)(C) for such taxable year and subsequent taxable years but for such cessation shall be made for the taxable year preceding such cessation year.

(D) Treatment of companies which become taxable under section 831(a)

(i) Exception to phase-in for companies which were not taxable, etc., before 1987

Subparagraph (C) of paragraph (4) shall not apply to any insurance company which, for each taxable year beginning before January 1, 1987, was not subject to the tax imposed by section 821(a)[1] or 831(a) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) by reason of being—

(I) subject to tax under section 821(c)[1] (as so in effect), or

(II) described in section 501(c) (as so in effect) and exempt from tax under section 501(a).

(ii) Phase-in beginning at later date for companies not 1st taxable under section 831(a) in 1987

In the case of an insurance company—

(I) which was not subject to the tax imposed by section 831(a) for its 1st taxable year beginning after December 31, 1986, by reason of being subject to tax under section 831(b), or described in section 501(c) and exempt from tax under section 501(a), and

(II) which, for any taxable year beginning before January 1, 1987, was subject to the tax imposed by section 821(a)[1] or 831(a) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986),

subparagraph (C) of paragraph (4) shall apply beginning with the 1st taxable year beginning after December 31, 1986, for which such company is subject to the tax imposed by section 831(a) and shall be applied by substituting the last day of the preceding taxable year for ''December 31, 1986'' and the 1st day of the 7th succeeding taxable year for ''January 1, 1993''.

(E) Treatment of certain reciprocal insurers

In the case of a reciprocal (within the meaning of section 835(a)) which reports (as required by State law) on its annual statement reserves on unearned premiums net of premium acquisition expenses—

(i) subparagraph (B) of paragraph (4) shall be applied by treating unearned premiums as including an amount equal to such expenses, and

[1] See References in Text note below.

(ii) appropriate adjustments shall be made under subparagraph (c) of paragraph (4) to reflect the amount by which—

(I) such reserves at the close of the most recent taxable year beginning before January 1, 1987, are greater or less than,

(II) 80 percent of the sum of the amount under subclause (I) plus such premium acquisition expenses,[2]

(8) Special rules for applying paragraph (4) to title insurance premiums

(A) In general

In the case of premiums attributable to title insurance—

(i) subparagraph (B) of paragraph (4) shall be applied by substituting ''the discounted unearned premiums'' for ''80 percent of the unearned premiums'' each place it appears, and

(ii) subparagraph (C) of paragraph (4) shall not apply.

(B) Method of discounting

For purposes of subparagraph (A), the amount of the discounted unearned premiums as of the end of any taxable year shall be the present value of such premiums (as of such time and separately with respect to premiums received in each calendar year) determined by using—

(i) the amount of the undiscounted unearned premiums at such time,

(ii) the applicable interest rate, and

(iii) the applicable statutory premium recognition pattern.

(C) Determination of applicable factors

In determining the amount of the discounted unearned premiums as of the end of any taxable year—

(i) Undiscounted unearned premiums

The term ''undiscounted unearned premiums'' means the unearned premiums shown in the yearly statement filed by the taxpayer for the year ending with or within such taxable year.

(ii) Applicable interest rate

The term ''applicable interest rate'' means the annual rate determined under 846(c)(2) for the calendar year in which the premiums are received.

(iii) Applicable statutory premium recognition pattern

The term ''applicable statutory premium recognition pattern'' means the statutory premium recognition pattern—

(I) which is in effect for the calendar year in which the premiums are received, and

(II) which is based on the statutory premium recognition pattern which applies to premiums received by the taxpayer in such calendar year.

For purposes of the preceding sentence, premiums received during any calendar year shall be treated as received in the middle of such year.

(c) Deductions allowed

In computing the taxable income of an insurance company subject to the tax imposed by section 831, there shall be allowed as deductions:

(1) all ordinary and necessary expenses incurred, as provided in section 162 (relating to trade or business expenses);

(2) all interest, as provided in section 163;

(3) taxes, as provided in section 164;

(4) losses incurred, as defined in subsection (b)(5) of this section;

(5) capital losses to the extent provided in subchapter P (relating to capital gains and losses) plus losses from capital assets sold or exchanged in order to obtain funds to meet abnormal insurance losses and to provide for the payment of dividends and similar distributions to policyholders. Capital assets shall be considered as sold or exchanged in order to obtain funds to meet abnormal insurance losses and to provide for the payment of dividends and similar distributions to policyholders to the extent that the gross receipts from their sale or exchange are not greater than the excess, if any, for the taxable year of the sum of dividends and similar distributions paid to policyholders in their capacity as such, losses paid, and expenses paid over the sum of the items described in section 834(b) (other than paragraph (1)(D) thereof) and net premiums received. In the application of section 1212 for purposes of this section, the net capital loss for the taxable year shall be the amount by which losses for such year from sales or exchanges of capital assets exceeds the sum of the gains from such sales or exchanges and whichever of the following amounts is the lesser:

(A) the taxable income (computed without regard to gains or losses from sales or exchanges of capital assets); or

(B) losses from the sale or exchange of capital assets sold or exchanged to obtain funds to meet abnormal insurance losses and to provide for the payment of dividends and similar distributions to policyholders;

(6) debts in the nature of agency balances and bills receivable which become worthless within the taxable year;

(7) the amount of interest earned during the taxable year which under section 103 is excluded from gross income;

(8) the depreciation deduction allowed by section 167 and the deduction allowed by section 611 (relating to depletion);

(9) charitable, etc., contributions, as provided in section 170;

(10) deductions (other than those specified in this subsection) as provided in part VI of subchapter B (sec. 161 and following, relating to itemized deductions for individuals and corporations) and in part I of subchapter D (sec. 401 and following, relating to pension, profit-sharing, stock bonus plans, etc.);

(11) dividends and similar distributions paid or declared to policyholders in their capacity as such, except in the case of a mutual fire insurance company described in subsection

[2] So in original. The comma probably should be a period.

(b)(1)(C). For purposes of the preceding sentence, the term ''dividends and similar distributions'' includes amounts returned or credited to policyholders on cancellation or expiration of policies described in subsection (b)(1)(D). For purposes of this paragraph, the term ''paid or declared'' shall be construed according to the method of accounting regularly employed in keeping the books of the insurance company;

(12) the special deductions allowed by part VIII of subchapter B (sec. 241 and following, relating to dividends received); and

(13) in the case of a company which writes mortgage guaranty insurance, the deduction allowed by subsection (e).

(d) Double deductions

Nothing in this section shall permit the same item to be deducted more than once.

(e) Special deduction and income account

In the case of a company which writes mortgage guaranty insurance—

(1) Additional deduction

There shall be allowed as a deduction for the taxable year, if bonds are purchased as required by paragraph (2), the sum of—

(A) an amount representing the amount required by State law or regulation to be set aside in a reserve for mortgage guaranty insurance losses resulting from adverse economic cycles; and

(B) an amount representing the aggregate of amounts so set aside in such reserve for the 8 preceding taxable years to the extent such amounts were not deducted under this paragraph in such preceding taxable years,

except that the deduction allowable for the taxable year under this paragraph shall not exceed the taxable income for the taxable year computed without regard to this paragraph or to any carryback of a net operating loss. For purposes of this paragraph, the amount required by State law or regulation to be so set aside in any taxable year shall not exceed 50 percent of premiums earned on insurance contracts (as defined in subsection (b)(4)) with respect to mortgage guaranty insurance for such year. For purposes of this subsection, all amounts shall be taken into account on a first-in-time basis. The computation and deduction under this section of losses incurred (including losses resulting from adverse economic cycles) shall not be affected by the provisions of this subsection. For purposes of this subsection, the terms ''preceding taxable years'' and ''preceding taxable year'' shall not include taxable years which began before January 1, 1967.

(2) Purchase of bonds

The deduction under paragraph (1) shall be allowed only to the extent that tax and loss bonds are purchased in an amount equal to the tax benefit attributable to such deduction, as determined under regulations prescribed by the Secretary, on or before the date that any taxes (determined without regard to this subsection) due for the taxable year for which the deduction is allowed are due to be paid. If a deduction would be allowed but for the fact that tax and loss bonds were not timely purchased, such deduction shall be allowed to the extent such purchases are made within a reasonable time, as determined by the Secretary, if all interest and penalties, computed as if this sentence did not apply, are paid.

(3) Mortgage guaranty account

Each company which writes mortgage guaranty insurance shall, for purposes of this part, establish and maintain a mortgage guaranty account.

(4) Additions to account

There shall be added to the mortgage guaranty account for each taxable year an amount equal to the amount allowed as a deduction for the taxable year under paragraph (1).

(5) Subtractions from account and inclusion in gross income

After applying paragraph (4), there shall be subtracted for the taxable year from the mortgage guaranty account and included in gross income—

(A) the amount (if any) remaining which was added to the account for the tenth preceding taxable year,

(B) the excess (if any) of the aggregate amount in the mortgage guaranty account over the aggregate amount in the reserve referred to in paragraph (1)(A). For purposes of determining such excess, the aggregate amount in the mortgage guaranty account shall be determined after applying subparagraph (A), and the aggregate amount in the reserve referred to in paragraph (1)(A) shall be determined by disregarding any amounts remaining in such reserve added for taxable years beginning before January 1, 1967,

(C) an amount (if any) equal to the net operating loss for the taxable year computed without regard to this subparagraph, and

(D) any amount improperly subtracted from the account under subparagraph (A), (B), or (C) to the extent that tax and loss bonds were redeemed with respect to such amount.

If a company liquidates or otherwise terminates its mortgage guaranty insurance business and does not transfer or distribute such business in an acquisition of assets referred to in section 381(a), the entire amount remaining in such account shall be subtracted. Except in the case where a company transfers or distributes its mortgage guaranty insurance in an acquisition of assets referred to in section 381(a), if the company is not subject to the tax imposed by section 831 for any taxable year, the entire amount in the account at the close of the preceding taxable year shall be subtracted from the account in such preceding taxable year.

(6) Lease guaranty insurance; insurance of State and local obligations

The provisions of this subsection shall also apply in all respects to a company which writes lease guaranty insurance or insurance on obligations the interest on which is excludable from gross income under section 103. In

applying this subsection to such a company, any reference to mortgage guaranty insurance contained in this section shall be deemed to be a reference also to lease guaranty insurance and to insurance on obligations the interest on which is excludable from gross income under section 103; and in the case of insurance on obligations the interest on which is excludable from gross income under section 103, the references in paragraph (1) to ''losses resulting from adverse economic cycles'' include losses from declining revenues related to such obligations (as well as losses resulting from adverse economic cycles), and the time specified in subparagraph (A) of paragraph (5) shall be the twentieth preceding taxable year.

(f) Interinsurers

In the case of a mutual insurance company which is an interinsurer or reciprocal underwriter—

(1) there shall be allowed as a deduction the increase for the taxable year in savings credited to subscriber accounts, or

(2) there shall be included as an item of gross income the decrease for the taxable year in savings credited to subscriber accounts.

For purposes of the preceding sentence, the term ''savings credited to subscriber accounts'' means such portion of the surplus as is credited to the individual accounts of subscribers before the 16th day of the 3rd month following the close of the taxable year, but only if the company would be obligated to pay such amount promptly to such subscriber if he terminated his contract at the close of the company's taxable year. For purposes of determining his taxable income, the subscriber shall treat any such savings credited to his account as a dividend paid or declared.

(g) Dividends within group

In the case of an insurance company subject to tax under section 831(a) filing or required to file a consolidated return under section 1501 with respect to any affiliated group for any taxable year, any determination under this part with respect to any dividend paid by one member of such group to another member of such group shall be made as if such group were not filing a consolidated return.

(Aug. 16, 1954, ch. 736, 68A Stat. 264; Mar. 13, 1956, ch. 83, §3(b), 70 Stat. 48; Pub. L. 87–834, §8(e)(2)–(5), Oct. 16, 1962, 76 Stat. 997, 998; Pub. L. 88–272, title II, §228(c), Feb. 26, 1964, 78 Stat. 99; Pub. L. 89–809, title I, §104(i)(7), Nov. 13, 1966, 80 Stat. 1562; Pub. L. 90–240, §5(a)–(c), Jan. 2, 1968, 81 Stat. 776, 777; Pub. L. 93–483, §5, Oct. 26, 1974, 88 Stat. 1458; Pub. L. 94–455, title XIX, §§1901(a)(108), (b)(1)(T), (U), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1782, 1792, 1834; Pub. L. 97–248, title II, §234(b)(2)(A), Sept. 3, 1982, 96 Stat. 503; Pub. L. 98–369, div. A, title II, §211(b)(9), July 18, 1984, 98 Stat. 755; Pub. L. 99–514, title X, §§1021(a), (b), 1022(a), 1023(a), 1024(c)(1)–(6), Oct. 22, 1986, 100 Stat. 2395, 2397, 2399, 2406, 2407; Pub. L. 100–647, title I, §1010(c), (d)(1), (2), Nov. 10, 1988, 102 Stat. 3451–3453; Pub. L. 101–508, title XI, §§11303(a), (b), 11305(a), Nov. 5, 1990, 104 Stat. 1388–450, 1388–451; Pub. L. 104–188, title I, §§1702(h)(3), 1704(t)(45), Aug. 20, 1996, 110 Stat. 1873, 1889; Pub. L. 105–34, title X, §1084(b)(4), Aug. 5, 1997, 111 Stat. 955; Pub. L. 113–295, div. A, title II, §221(a)(41)(G), (69), Dec. 19, 2014, 128 Stat. 4044, 4048; Pub. L. 115–97, title I, §§13001(b)(2)(I), 13515(a), Dec. 22, 2017, 131 Stat. 2096, 2144.)

REFERENCES IN TEXT

Section 821, referred to in subsec. (b)(7)(D), was repealed by Pub. L. 99–514, title X, §1024(a)(1), Oct. 22, 1986, 100 Stat. 2405.

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (b)(7)(D), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

CODIFICATION

Another section 1084(b) of Pub. L. 105–34 amended sections 101 and 264 of this title.

AMENDMENTS

2017—Subsec. (b)(5)(B). Pub. L. 115–97, §13515(a), substituted ''the applicable percentage'' for ''15 percent'' in introductory provisions and inserted ''For purposes of this subparagraph, the applicable percentage is 5.25 percent divided by the highest rate in effect under section 11(b).'' at end of concluding provisions.

Subsec. (c)(5). Pub. L. 115–97, §13001(b)(2)(I), struck out ''sec. 1201 and following,'' before ''relating to capital gains and losses'' in introductory provisions.

2014—Subsec. (b)(5)(B)(ii), (D)(i), (ii)(I). Pub. L. 113–295, §221(a)(41)(G), struck out '', 244,''after ''sections 243'' in subpar. (B)(ii) and after ''section 243'' in subpar. (D)(i), (ii)(I).

Subsec. (e). Pub. L. 113–295, §221(a)(69)(A), struck out ''of taxable years beginning after December 31, 1966,'' after ''In the case'' in introductory provisions.

Subsec. (e)(6). Pub. L. 113–295, §221(a)(69)(B), substituted ''The'' for ''In the case of any taxable year beginning after December 31, 1970, the''.

1997—Subsec. (b)(5)(B)(iii). Pub. L. 105–34, which directed amendment of subpar. (B) by adding cl. (iii) at the end, was executed by adding cl. (iii) after cl. (ii) to reflect the probable intent of Congress.

1996—Subsec. (b)(5)(C)(ii)(II), (D)(ii)(II). Pub. L. 104–188, §1702(h)(3), substituted ''243(b)(2)'' for ''243(b)(5)''.

Subsec. (b)(7)(A). Pub. L. 104–188, §1704(t)(45), provided that section 11303(b)(1) of Pub. L. 101–508 shall be applied as if ''paragraph'' appeared instead of ''subparagraph'' in the material proposed to be stricken. See 1990 Amendment note below.

1990—Subsec. (b)(4). Pub. L. 101–508, §11303(a), substituted ''section 807.'' for ''section 807, pertaining to the life, burial, or funeral insurance, or annuity business of an insurance company subject to the tax imposed by section 831 and not qualifying as a life insurance company under section 816.'' in first sentence after subpar. (C).

Subsec. (b)(5)(A). Pub. L. 101–508, §11305(a), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''The term 'losses incurred' means losses incurred during the taxable year on insurance contracts, computed as follows:

''(i) To losses paid during the taxable year, add salvage and reinsurance recoverable outstanding at the end of the preceding taxable year and deduct salvage and reinsurance recoverable outstanding at the end of the taxable year.

''(ii) To the result so obtained, add all unpaid losses on life insurance contracts plus all discounted unpaid losses (as defined in section 846) outstanding at the end of the taxable year and deduct unpaid losses on life insurance contracts plus all discounted unpaid losses outstanding at the end of the preceding taxable year.''

Subsec. (b)(7)(A). Pub. L. 101–508, §11303(b)(2), substituted ''such contracts into account'' for ''such amounts into account''.

Pub. L. 101–508, §11303(b)(1), which directed the substitution of ''insurance contracts described in section

816(b)(1)(B)'' for ''amounts included in unearned premiums under the 2nd sentence of such subparagraph'', was executed by making the substitution for ''amounts included in unearned premiums under the 2nd sentence of such paragraph''. See 1996 Amendment note above.

1988—Subsec. (b)(5)(B)(ii)(II). Pub. L. 100–647, §1010(d)(2), inserted ''(directly or indirectly)'' after ''attributable''.

Subsec. (b)(7)(C). Pub. L. 100–647, §1010(c)(1), substituted ''insurance company taxable under section 831(a)'' for ''nonlife insurance company'' in heading and ''section 831(a)'' for ''this part'' in text.

Subsec. (b)(7)(D), (E). Pub. L. 100–647, §1010(c)(2), added subpars. (D) and (E).

Subsec. (e)(5)(A). Pub. L. 100–647, §1010(c)(3), struck out ''and'' after ''preceding taxable year,''.

Subsec. (e)(5)(B). Pub. L. 100–647, §1010(c)(3), which directed amendment of subpar. (B) by substituting a comma for the period at end, could not be executed because there was no period at end of subpar. (B).

Subsec. (g). Pub. L. 100–647, §1010(d)(1), added subsec. (g).

1986—Subsec. (b)(1)(C). Pub. L. 99–514, §1024(c)(1), substituted ''exclusively issuing perpetual policies'' for ''described in section 831(a)(3)(A)''.

Subsec. (b)(1)(D). Pub. L. 99–514, §1024(c)(2), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''in the case of a mutual fire or flood insurance company described in section 831(a)(3)(B), an amount equal to 2 percent of the premiums earned on insurance contracts during the taxable year with respect to policies described in section 831(a)(3)(B) after deduction of premium deposits returned or credited during the same taxable year, and''.

Subsec. (b)(4). Pub. L. 99–514, §1024(c)(3), substituted ''paragraph (1)(D)'' for ''section 831(a)(3)(B)'' in two places and amended last sentence generally, substituting ''described in paragraph (1)(D) or issuing exclusively perpetual policies'' for ''referred to in paragraph (3) of section 831(a)'' and ''described in subparagraph (C) or (D) of paragraph (1)'' for ''referred to in such paragraph (3)''.

Subsec. (b)(4)(B), (C). Pub. L. 99–514, §1021(a), added subpars. (B) and (C) and struck out former subpar. (B) which read as follows: ''To the result so obtained, add unearned premiums on outstanding business at the end of the preceding taxable year and deduct unearned premiums on outstanding business at the end of the taxable year.''

Subsec. (b)(5)(A). Pub. L. 99–514, §1022(a), in amending par. (5) generally, designated existing provisions of par. (5) as subpar. (A), inserted subpar. heading ''In general'', and redesignated former subpars. (A) and (B) as cls. (i) and (ii).

Subsec. (b)(5)(A)(ii). Pub. L. 99–514, §1023(a)(1), amended cl. (ii) generally, inserting ''on life insurance contracts plus all discounted unpaid losses (as defined in section 846)'' and ''on life insurance contracts plus all discounted unpaid losses''.

Subsec. (b)(5)(B) to (E). Pub. L. 99–514, §1022(a), in amending par. (5) generally, added subpars. (B) to (E). Former subpar. (B) redesignated (A)(ii).

Subsec. (b)(6). Pub. L. 99–514, §1023(a)(2), inserted second sentence defining ''expenses unpaid''.

Subsec. (b)(7), (8). Pub. L. 99–514, §1021(b), added pars. (7) and (8).

Subsec. (c)(5). Pub. L. 99–514, §1024(c)(4), substituted ''section 834(b)'' for ''section 822(b)''.

Subsec. (c)(11). Pub. L. 99–514, §1024(c)(5), substituted ''subsection (b)(1)(C)'' for ''section 831(a)(3)(A)'' and ''subsection (b)(1)(D)'' for ''section 831(a)(3)(B)''.

Subsec. (f). Pub. L. 99–514, §1024(c)(6), added subsec. (f).

1984—Subsec. (b)(4). Pub. L. 98–369, in provisions following subpar. (B), substituted ''section 816(b) but determined as provided in section 807'' and ''section 816'' for ''section 801(b)'' and ''section 801'', respectively.

1982—Subsec. (e)(2). Pub. L. 97–248 struck out '', as if no election to make installment payments under section 6152 is made'' after ''due to be paid''.

1976—Subsec. (b)(1), (6). Pub. L. 94–455, §1901(a)(108), substituted ''Association'' for ''Convention''.

Subsec. (c)(5)(A). Pub. L. 94–455, §1901(b)(1)(T), struck out ''or to the deductions provided in section 242 for partially tax-exempt interest'' after ''exchanges of capital assets''.

Subsec. (c)(12). Pub. L. 94–455, §1901(b)(1)(U), struck out ''partially tax-exempt interest and to'' after ''and following, relating to''.

Subsec. (e)(2). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

1974—Subsec. (e)(6). Pub. L. 93–483 added par. (6).

1968—Subsec. (b)(1)(E). Pub. L. 90–240, §5(a), added subpar. (E).

Subsec. (c)(13). Pub. L. 90–240, §5(b), added par. (13).

Subsec. (e). Pub. L. 90–240, §5(c), added subsec. (e).

1966—Subsec. (d). Pub. L. 89–809 redesignated subsec. (e) as (d). Former subsec. (d), having reference to the taxable income of foreign insurance companies other than life or mutual and foreign mutual marine, was struck out.

Subsec. (e). Pub. L. 89–809 redesignated subsec. (e) as (d).

1964—Subsec. (c)(10). Pub. L. 88–272 inserted reference to part I of subchapter D.

1962—Subsec. (b)(1)(C). Pub. L. 87–834, §8(e)(3), (5), substituted ''section 831(a)(3)(A)'' for ''section 831(a)''.

Subsec. (b)(1)(D). Pub. L. 87–834, §8(e)(5), added subpar. (D).

Subsec. (b)(4). Pub. L. 87–834, §8(e)(2), inserted provisions defining unearned premiums of mutual fire or flood insurance companies, and which require premiums paid by the subscriber of a mutual flood insurance company to be treated, for purposes of computing the taxable income of such subscriber, in the same manner as premiums paid by a policyholder to a mutual fire insurance company referred to in par. (3) of section 831(a) of this title.

Subsec. (c)(11). Pub. L. 87–834, §8(e)(4), substituted ''section 831(a)(3)(A)'' for ''section 831(a)'', and inserted definition of ''dividends and similar distributions''.

1956—Subsec. (b)(4). Act Mar. 13, 1956, §3(b)(1), substituted ''section 801(b)'' for ''section 806''.

Subsec. (c). Act Mar. 13, 1956, §3(b)(2), (3), substituted ''the items described in section 822(b) (other than paragraph (1)(D) thereof) and net premiums received. In the application of section 1212'' for ''interest, dividends, rents, and net premiums received. In the application of section 1211'' in par. (5), and authorized the deduction for depletion in par. (8).

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 13001(b)(2)(I) of Pub. L. 115–97 applicable to taxable years beginning after Dec. 31, 2017, see section 13001(c)(1) of Pub. L. 115–97, set out as a note under section 11 of this title.

Pub. L. 115–97, title I, §13515(b), Dec. 22, 2017, 131 Stat. 2144, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2017.''

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by section (a)(41)(G) of Pub. L. 113–295 not applicable to preferred stock issued before Oct. 1, 1942 (determined in the same manner as under section 247 of this title as in effect before its repeal by Pub. L. 113–295), see section 221(a)(41)(K) of Pub. L. 113–295, set out as a note under section 172 of this title.

Except as otherwise provided in section 221(a) of Pub. L. 113–295, amendment by Pub. L. 113–295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113–295, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to contracts issued after June 8, 1997, in taxable years ending after such date, with special provisions relating to changes in contracts to be treated as new contracts, see section

1084(d) of Pub. L. 105–34, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1702(h)(3) of Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, § 11303(c), Nov. 5, 1990, 104 Stat. 1388–450, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to taxable years beginning on or after September 30, 1990.

''(2) AMENDMENTS TREATED AS CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer who is required by reason of the amendments made by this section to change his method of computing reserves—

''(A) such change shall be treated as a change in a method of accounting,

''(B) such change shall be treated as initiated by the taxpayer,

''(C) such change shall be treated as having been made with the consent of the Secretary, and

''(D) the net adjustments which are required by section 481 of the Internal Revenue Code of 1986 to be taken into account by the taxpayer shall be taken into account over a period not to exceed 4 taxable years beginning with the taxpayer's first taxable year beginning on or after September 30, 1990.

''(3) COORDINATION WITH SECTION 832(b)(4)(C).—The amendments made by this section shall not affect the application of section 832(b)(4)(C) of the Internal Revenue Code of 1986.''

Pub. L. 101–508, title XI, § 11305(c), Nov. 5, 1990, 104 Stat. 1388–451, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 846 of this title] shall apply to taxable years beginning after December 31, 1989.

''(2) AMENDMENTS TREATED AS CHANGE IN METHOD OF ACCOUNTING.—

''(A) IN GENERAL.—In the case of any taxpayer who is required by reason of the amendments made by this section to change his method of computing losses incurred—

''(i) such change shall be treated as a change in a method of accounting,

''(ii) such change shall be treated as initiated by the taxpayer, and

''(iii) such change shall be treated as having been made with the consent of the Secretary.

''(B) ADJUSTMENTS.—In applying section 481 of the Internal Revenue Code of 1986 with respect to the change referred to in subparagraph (A)—

''(i) only 13 percent of the net amount of adjustments (otherwise required by such section 481 to be taken into account by the taxpayer) shall be taken into account, and

''(ii) the portion of such net adjustments which is required to be taken into account by the taxpayer (after the application of clause (i)) shall be taken into account over a period not to exceed 4 taxable years beginning with the taxpayer's 1st taxable year beginning after December 31, 1989.

''(3) TREATMENT OF COMPANIES WHICH TOOK INTO ACCOUNT SALVAGE RECOVERABLE.—In the case of any insurance company which took into account salvage recoverable in determining losses incurred for its last taxable year beginning before January 1, 1990, 87 percent of the discounted amount of estimated salvage recoverable as of the close of such last taxable year shall be allowed as a deduction ratably over its 1st 4 taxable years beginning after December 31, 1989.

''(4) SPECIAL RULE FOR OVERESTIMATES.—If for any taxable year beginning after December 31, 1989—

''(A) the amount of the section 481 adjustment which would have been required without regard to paragraph (2) and any discounting, exceeds

''(B) the sum of the amount of salvage recovered taken into account under section 832(b)(5)(A)(i) for the taxable year and any preceding taxable year beginning after December 31, 1989, attributable to losses incurred with respect to any accident year beginning before 1990 and the undiscounted amount of estimated salvage recoverable as of the close of the taxable year on account of such losses,

87 percent of such excess (adjusted for discounting used in determining the amount of salvage recoverable as of the close of the last taxable year of the taxpayer beginning before January 1, 1990) shall be included in gross income for such taxable year.

''(5) EFFECT ON EARNINGS AND PROFITS.—The earnings and profits of any insurance company for its 1st taxable year beginning after December 31, 1989, shall be increased by the amount of the section 481 adjustment which would have been required but for paragraph (2). For purposes of applying sections 56, [former] 902, 952(c)(1), and 960 of the Internal Revenue Code of 1986, earnings and profits of a corporation shall be determined by applying the principles of paragraph (2)(B).''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title X, § 1021(c), Oct. 22, 1986, 100 Stat. 2397, provided that:

''(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1986.

''(2) SPECIAL TRANSITIONAL RULE FOR TITLE INSURANCE COMPANIES.—For the 1st taxable year beginning after December 31, 1986, in the case of premiums attributable to title insurance—

''(A) IN GENERAL.—The unearned premiums at the end of the preceding taxable year as defined in paragraph (4) of section 832(b) [of the Internal Revenue Code of 1986] shall be determined as if the amendments made by this section had applied to such unearned premiums in the preceding taxable year and by using the interest rate and premium recognition pattern applicable to years ending in calendar year 1987.

''(B) FRESH START.—Except as provided in subparagraph (C), any difference between—

''(i) the amount determined to be unearned premiums for the year preceding the first taxable year of a title insurance company beginning after December 31, 1986, determined without regard to subparagraph (A), and

''(ii) such amount determined with regard to subparagraph (A),

shall not be taken into account for purposes of the Internal Revenue Code of 1986.

''(C) EFFECT ON EARNINGS AND PROFITS.—The earnings and profits of any insurance company for its 1st taxable year beginning after December 31, 1986, shall be increased by the amount of the difference determined under subparagraph (A) with respect to such company.''

Pub. L. 99–514, title X, § 1022(b), Oct. 22, 1986, 100 Stat. 2399, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1986.''

Amendment by section 1023(a) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, except as otherwise provided, see section 1023(e) of Pub. L. 99–514, set out as an Effective Date note under section 846 of this title.

Amendment by section 1024(c)(1)–(6) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31,

1986, see section 1024(e) of Pub. L. 99–514, set out as a note under section 831 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to taxable years beginning after Dec. 31, 1982, see section 234(e) of Pub. L. 97–248, set out as a note under section 6655 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(108), (b)(1)(T), (U) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Pub. L. 90–240, §5(e), Jan. 2, 1968, 81 Stat. 778, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by subsections (a), (b), (c), and (d) [amending this section and section 381 of this title] shall apply to taxable years beginning after December 31, 1966, except that so much of section 832(e)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by the amendment made by subsection (c)) as provides for payment of interest and penalties for failure to make a timely purchase of tax and loss bonds shall not apply with respect to any period during which such bonds are not available for purchase.''

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–272, title II, §228(d), Feb. 26, 1964, 78 Stat. 99, provided that: ''The amendment made by subsection (a) [amending former section 809 of this title] shall apply to taxable years beginning after December 31, 1961. The amendment made by subsection (c) [amending this section] shall apply to taxable years beginning after December 31, 1953, and ending after August 16, 1954.''

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable with respect to taxable years beginning after Dec. 31, 1962, see section 8(h) of Pub. L. 87–834, set out as a note under section 501 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Mar. 13, 1956, applicable only to taxable years beginning after Dec. 31, 1954, see section 6 of act Mar. 13, 1956, set out as a note under section 316 of this title.

DEDUCTION FROM EARNINGS AND PROFITS OF INSURANCE COMPANIES TO WHICH SECTION 11305(c)(3) OF PUB. L. 101–508 APPLIES

Pub. L. 104–188, title I, §1702(c)(4), Aug. 20, 1996, 110 Stat. 1869, provided that: ''The earnings and profits of any insurance company to which section 11305(c)(3) of the Revenue Reconciliation Act of 1990 [Pub. L. 101–508, set out above] applies shall be determined without regard to any deduction allowed under such section; except that, for purposes of applying sections 56 and [former] 902, and subpart F of part III of subchapter N of chapter 1 of the Internal Revenue Code of 1986, such deduction shall be taken into account.''

ACQUISITION DATE OF CERTAIN STOCKS OR OBLIGATIONS FOR PURPOSES OF SUBSECTION (b)(5)(C)(i)

Pub. L. 100–647, title I, §1010(d)(3), Nov. 10, 1988, 102 Stat. 3453, provided that: ''For purposes of section 832(b)(5)(C)(i) of the 1986 Code, any stock or obligation acquired on or after August 8, 1986, by an insurance company subject to the tax imposed by section 831 of the 1986 Code (hereinafter in this paragraph referred to as the 'acquiring company') from another insurance company so subject (hereinafter in this paragraph referred to as the 'transferor company') shall be treated as acquired on the date on which such stock or obligation was acquired by the transferor company if—

''(A) the transferor company acquired such stock or obligation before August 8, 1986, and

''(B) at all times after the date on which such stock or obligation was acquired by the transferor company and before the date of the acquisition by the acquiring company, the transferor company and the acquiring company were members of the same affiliated group filing a consolidated return.

For purposes of the preceding sentence, the date on which the stock or obligation was acquired by the transferor company shall be determined with regard to any prior application of the preceding sentence. For purposes of this paragraph, if the acquiring corporation or transferor corporation was a party to a reorganization described in section 368(a)(1)(F) of the 1986 Code, any reference to such corporation shall include a reference to any predecessor thereof involved in such reorganization.''

STUDY OF TREATMENT OF PROPERTY AND CASUALTY INSURANCE COMPANIES

Pub. L. 99–514, title X, §1025, Oct. 22, 1986, 100 Stat. 2409, directed Secretary of the Treasury or his delegate to conduct a study of the treatment of policyholder dividends by mutual property and casualty insurance companies, the treatment of property and casualty insurance companies under the minimum tax, and the operation and effect of, and revenue raised by, the amendments made by this subtitle, and not later than Jan. 1, 1989 (due date extended to Jan. 1, 1992, by Pub. L. 101–508, title XI, §11831(b), Nov. 5, 1990, 104 Stat. 1388–559), such Secretary to submit to Committee on Ways and Means of House of Representatives, Committee on Finance of Senate, and Joint Committee on Taxation, the results of such study, together with such recommendations as he determined to be appropriate.

PHYSICIANS' AND SURGEONS' MUTUAL PROTECTION AND INTERINDEMNITY ARRANGEMENTS OR ASSOCIATIONS

Pub. L. 99–514, title X, §1031, Oct. 22, 1986, 100 Stat. 2409, as amended by Pub. L. 100–647, title I, §1010(g), Nov. 10, 1988, 102 Stat. 3455, provided that:

''(a) CERTAIN PHYSICIANS' AND SURGEONS' MUTUAL PROTECTION AND INTERINDEMNITY ARRANGEMENTS OR ASSOCIATIONS.—

''(1) TREATMENT OF ARRANGEMENTS OR ASSOCIATIONS.—

''(A) CAPITAL CONTRIBUTIONS.—There shall not be included in the gross income of any eligible physicians' and surgeons' mutual protection and interindemnity arrangement or association any initial payment (whether made in a lump sum or a series of substantially equal payments over a period of not more than 6 years) made during any taxable year to such arrangement or association by a member joining such arrangement or association which—

''(i) does not release such member from obligations to pay current or future dues, assessments, or premiums; and

''(ii) is a condition precedent to receiving benefits of membership.

Such initial payment shall be included in the gross income of such arrangement or association for such taxable year if it is reasonable to expect that such payment will be deductible pursuant to paragraph

(2) by any member of such arrangement or association.

''(B) RETURN OF CONTRIBUTIONS.—

''(i) IN GENERAL.—The repayment to any member of any amount of any payment excluded under subparagraph (A) shall not be treated as policyholder dividend, and is not deductible by the arrangement or association.

''(ii) SOURCE OF RETURNS.—Except in the case of the termination of a member's interest in the arrangement or association, any amount distributed to any member shall be treated as paid out of surplus in excess of amounts excluded under subparagraph (A).

''(2) DEDUCTION FOR MEMBERS OF ELIGIBLE ARRANGEMENTS OR ASSOCIATIONS.—

''(A) PAYMENT AS TRADE OR BUSINESS EXPENSES.—To the extent not otherwise allowable under the Internal Revenue Code of 1986, any member of any eligible arrangement or association may treat any initial payment referred to in paragraph (1) made during a taxable year to such arrangement or association as an ordinary and necessary expense incurred in connection with a trade or business for purposes of the deduction allowable under section 162, to the extent such payment does not exceed the amount which would be payable to an independent insurance company for similar annual insurance coverage (as determined by the Secretary), and further reduced by any annual dues, assessments, or premiums paid during such taxable year. Such deduction shall not be allowable as to any initial payment referred to in paragraph (1) made to an eligible arrangement or association by any person who is a member of any other eligible arrangement or association on or after the effective date of the Tax Reform Act of 1986. Any excess amount not allowed as a deduction for the taxable year in which such payment was made pursuant to the limitation contained in the 1st sentence of this subparagraph shall, subject to such limitation, be allowable as a deduction in any of the 5 succeeding taxable years, in order of time, to the extent not previously allowed as a deduction under this sentence.

''(B) REFUNDS OF INITIAL PAYMENTS.—Any amount attributable to any initial payment referred to in paragraph (1) to such arrangement or association described in paragraph (1) which is later refunded for any reason shall be included in the gross income of the recipient in the taxable year received, to the extent a deduction for such payment was allowed. Any amount refunded in excess of such payment shall be included in gross income except to the extent otherwise excluded from income by the Internal Revenue Code of 1986.

''(3) ELIGIBLE ARRANGEMENTS OR ASSOCIATIONS.—The terms 'eligible physicans' [sic] and surgeons' mutual protection and interindemnity arrangement or association' and 'eligible arrangement or association' mean and are limited to any mutual protection and interindemnity arrangement or association that provides only medical malpractice liability protection for its members or medical malpractice liability protection in conjunction with protection against other liability claims incurred in the course of, or related to, the professional practice of a physician or surgeon and which—

''(A) was operative and was providing such protection, or had received a permit for the offer and sale of memberships, under the laws of any State before January 1, 1984,

''(B) is not subject to regulation by any State insurance department,

''(C) has a right to make unlimited assessments against all members to cover current claims and losses, and

''(D) is not a member of, nor subject to protection by, any insurance guaranty plan or association of any State.

''(b) EFFECTIVE DATE.—The provisions of subsection (a) shall apply to payments made to and receipts of physicians' and surgeons' mutual protection and interindemnity arrangements or associations, and refunds of payments by such arrangements or associations, after the date of the enactment of this Act [Oct. 22, 1986], in taxable years ending after such date.''

TREATMENT AS UNEARNED PREMIUMS OF ADDITIONS TO RESERVES REQUIRED BY STATE LAW OR REGULATIONS FOR MORTGAGE GUARANTY INSURANCE LOSSES

Pub. L. 90–240, §5(g), Jan. 2, 1968, 81 Stat. 779, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) In the case of taxable years beginning before 1967, a company shall treat additions to a reserve, required by State law or regulations for mortgage guaranty insurance losses resulting from adverse economic cycles, as unearned premiums for purposes of section 832(b)(4) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], but the amount so treated as unearned premiums in a taxable year shall not exceed 50 percent of premiums earned on insurance contracts (as defined in section 832(b)(4) of such Code), determined without regard to amounts added to the reserve, with respect to mortgage guaranty insurance for such year. The amount of unearned premiums at the close of 1966 shall be determined without regard to the preceding sentence for the purpose of applying section 832(b)(4) of such Code to 1967. Additions to such a reserve shall not be treated as unearned premiums for any taxable year beginning after 1966.

''(2) If a mortgage guaranty insurance company made additions to a reserve which were so treated as unearned premiums described in paragraph (1), such company, in taxable years beginning after 1966, shall include in gross income (in addition to the items specified in section 832(b)(1) of such Code) the sum of the following amounts until there is included in gross income an amount equal to the aggregate additions to the reserve described in paragraph (1) for taxable years beginning before 1967:

''(A) an amount (if any) equal to the excess of losses incurred (as defined in section 832(b)(5) of such Code) for the taxable year over 35 percent of premiums earned on insurance contracts during the taxable year (as defined in section 832(b)(4) of such Code), determined without regard to amounts added to the reserve referred to in paragraph (1), with respect to mortgage guaranty insurance,

''(B) the amount (if any) remaining which was added to the reserve for the tenth preceding taxable year, and

''(C) the excess (if any) of—

''(i) the aggregate of amounts so treated as unearned premiums for all taxable years beginning before 1967 less the total of the amounts included in gross income under this paragraph for prior taxable years and the amounts included in gross income under subparagraphs (A) and (B) for the taxable year, over

''(ii) the aggregate of the additions made for taxable years beginning before 1967 which remain in the reserve at the close of the taxable year.

Amounts shall be taken into account on a first-in-time basis. For purposes of section 832(e) of such Code and this paragraph, if part of the reserve is reduced under State law or regulation, such reduction shall first apply to the extent of amounts added to the reserve for taxable years beginning before 1967, and only then to amounts added thereafter.

''(3) The provisions of this subsection shall apply to taxable years beginning after December 31, 1956.''

§ 833. Treatment of Blue Cross and Blue Shield organizations, etc.

(a) General rule

In the case of any organization to which this section applies—

(1) Treated as stock company

Such organization shall be taxable under this part in the same manner as if it were a stock insurance company.

(2) Special deduction allowed

The deduction determined under subsection (b) for any taxable year shall be allowed.

(3) Reductions in unearned premium reserves not to apply

Subparagraph (B) of paragraph (4) of section 832(b) shall be applied by substituting ''100 percent'' for ''80 percent'', and subparagraph (C) of such paragraph (4) shall not apply.

(b) Amount of deduction

(1) In general

Except as provided in paragraph (2), the deduction determined under this subsection for any taxable year is the excess (if any) of—

(A) 25 percent of the sum of—

(i) the claims incurred during the taxable year and liabilities incurred during the taxable year under cost-plus contracts, and

(ii) the expenses incurred during the taxable year in connection with the administration, adjustment, or settlement of claims or in connection with the administration of cost-plus contracts, over

(B) the adjusted surplus as of the beginning of the taxable year.

(2) Limitation

The deduction determined under paragraph (1) for any taxable year shall not exceed taxable income for such taxable year (determined without regard to such deduction).

(3) Adjusted surplus

For purposes of this subsection—

(A) In general

The adjusted surplus as of the beginning of any taxable year is an amount equal to the adjusted surplus as of the beginning of the preceding taxable year—

(i) increased by the amount of any adjusted taxable income for such preceding taxable year, or

(ii) decreased by the amount of any adjusted net operating loss for such preceding taxable year.

(B) Special rule

The adjusted surplus as of the beginning of the organization's 1st taxable year beginning after December 31, 1986, shall be its surplus as of such time. For purposes of the preceding sentence and subsection (c)(3)(C), the term ''surplus'' means the excess of the total assets over total liabilities as shown on the annual statement.

(C) Adjusted taxable income

The term ''adjusted taxable income'' means taxable income determined—

(i) without regard to the deduction determined under this subsection,

(ii) without regard to any carryforward or carryback to such taxable year, and

(iii) by increasing gross income by an amount equal to the net exempt income for the taxable year.

(D) Adjusted net operating loss

The term ''adjusted net operating loss'' means the net operating loss for any taxable year determined with the adjustments set forth in subparagraph (C).

(E) Net exempt income

The term ''net exempt income'' means—

(i) any tax-exempt interest received or accrued during the taxable year, reduced by any amount (not otherwise deductible) which would have been allowable as a deduction for the taxable year if such interest were not tax-exempt, and

(ii) the aggregate amount allowed as a deduction for the taxable year under sections 243 and 245.

The amount determined under clause (ii) shall be reduced by the amount of any decrease in deductions allowable for the taxable year by reason of section 832(b)(5)(B) to the extent such decrease is attributable to deductions under sections 243 and 245.

(4) Only health-related items taken into account

Any determination under this subsection shall be made by only taking into account items attributable to the health-related business of the taxpayer.

(c) Organizations to which section applies

(1) In general

This section shall apply to—

(A) any existing Blue Cross or Blue Shield organization, and

(B) any other organization meeting the requirements of paragraph (3).

(2) Existing Blue Cross or Blue Shield organization

The term ''existing Blue Cross or Blue Shield organization'' means any Blue Cross or Blue Shield organization if—

(A) such organization was in existence on August 16, 1986,

(B) such organization is determined to be exempt from tax for its last taxable year beginning before January 1, 1987, and

(C) no material change has occurred in the operations of such organization or in its structure after August 16, 1986, and before the close of the taxable year.

To the extent permitted by the Secretary, any successor to an organization meeting the requirements of the preceding sentence, and any organization resulting from the merger or consolidation of organizations each of which met such requirements, shall be treated as an existing Blue Cross or Blue Shield organization.

(3) Other organizations

(A) In general

An organization meets the requirements of this paragraph for any taxable year if—

(i) substantially all the activities of such organization involve the providing of health insurance,

(ii) at least 10 percent of the health insurance provided by such organization is provided to individuals and small groups

(not taking into account any medicare supplemental coverage),

(iii) such organization provides continuous full-year open enrollment (including conversions) for individuals and small groups,

(iv) such organization's policies covering individuals provide full coverage of pre-existing conditions of high-risk individuals without a price differential (with a reasonable waiting period), and coverage is provided without regard to age, income, or employment status of individuals under age 65,

(v) at least 35 percent of its premiums are determined on a community rated basis, and

(vi) no part of its net earnings inures to the benefit of any private shareholder or individual.

(B) Small group defined

For purposes of subparagraph (A), the term ''small group'' means the lesser of—

(i) 15 individuals, or

(ii) the number of individuals required for a small group under applicable State law.

(C) Special rule for determining adjusted surplus

For purposes of subsection (b), the adjusted surplus of any organization meeting the requirements of this paragraph as of the beginning of the 1st taxable year for which it meets such requirements shall be its surplus as of such time.

(4) Treatment as existing Blue Cross or Blue Shield organization

(A) In general

Paragraph (2) shall be applied to an organization described in subparagraph (B) as if it were a Blue Cross or Blue Shield organization.

(B) Applicable organization

An organization is described in this subparagraph if it—

(i) is organized under, and governed by, State laws which are specifically and exclusively applicable to not-for-profit health insurance or health service type organizations, and

(ii) is not a Blue Cross or Blue Shield organization or health maintenance organization.

(5) Nonapplication of section in case of low medical loss ratio

Notwithstanding the preceding paragraphs, paragraphs (2) and (3) of subsection (a) shall not apply to any organization unless such organization's percentage of total premium revenue expended on reimbursement for clinical services and for activities that improve health care quality provided to enrollees under its policies during such taxable year (as reported under section 2718 of the Public Health Service Act) is not less than 85 percent.

(Added Pub. L. 99–514, title X, § 1012(b)(1), Oct. 22, 1986, 100 Stat. 2391; amended Pub. L. 104–191, title III, § 351(a), Aug. 21, 1996, 110 Stat. 2071; Pub. L. 105–34, title XVI, § 1604(d)(2)(A), Aug. 5, 1997, 111 Stat. 1098; Pub. L. 111–148, title IX, § 9016(a), Mar. 23, 2010, 124 Stat. 872; Pub. L. 113–235, div. N, § 102(a), Dec. 16, 2014, 128 Stat. 2773; Pub. L. 113–295, div. A, title II, § 221(a)(41)(G), Dec. 19, 2014, 128 Stat. 4044.)

REFERENCES IN TEXT

Section 2718 of the Public Health Service Act, referred to in subsec. (c)(5), is classified to section 300gg–18 of Title 42, The Public Health and Welfare.

AMENDMENTS

2014—Subsec. (b)(3)(E). Pub. L. 113–295 struck out '', 244,'' after ''sections 243'' in cl. (ii) and in concluding provisions.

Subsec. (c)(5). Pub. L. 113–235 substituted ''paragraphs (2) and (3) of subsection (a)'' for ''this section'' and inserted ''and for activities that improve health care quality'' after ''clinical services''.

2010—Subsec. (c)(5). Pub. L. 111–148 added par. (5).

1997—Subsec. (b)(1)(A)(i). Pub. L. 105–34, § 1604(d)(2)(A)(i), inserted ''and liabilities incurred during the taxable year under cost-plus contracts'' before the comma.

Subsec. (b)(1)(A)(ii). Pub. L. 105–34, § 1604(d)(2)(A)(ii), inserted ''or in connection with the administration of cost-plus contracts'' before the last comma.

1996—Subsec. (c)(4). Pub. L. 104–191 added par. (4).

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–295 not applicable to preferred stock issued before Oct. 1, 1942 (determined in the same manner as under section 247 of this title as in effect before its repeal by Pub. L. 113–295), see section 221(a)(41)(K) of Pub. L. 113–295, set out as a note under section 172 of this title.

Except as otherwise provided in section 221(a) of Pub. L. 113–295, amendment by Pub. L. 113–295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113–295, set out as a note under section 1 of this title.

Pub. L. 113–235, div. N, § 102(b), Dec. 16, 2014, 128 Stat. 2773, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009.''

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–148, title IX, § 9016(b), Mar. 23, 2010, 124 Stat. 872, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009.''

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XVI, § 1604(d)(2)(B), Aug. 5, 1997, 111 Stat. 1098, provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect as if included in the amendments made by section 1012 of the Tax Reform Act of 1986 [Pub. L. 99–514].''

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–191, title III, § 351(b), Aug. 21, 1996, 110 Stat. 2071, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years ending after December 31, 1996.''

EFFECTIVE DATE

Pub. L. 99–514, title X, § 1012(c), Oct. 22, 1986, 100 Stat. 2393, as amended by Pub. L. 100–647, title I, § 1010(b)(1), (2), Nov. 10, 1988, 102 Stat. 3451, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section and amending section 501 of this title] shall apply to taxable years beginning after December 31, 1986.

''(2) STUDY OF FRATERNAL BENEFICIARY ASSOCIATIONS.—The Secretary of the Treasury or his delegate

shall conduct a study of organizations described in section 501(c)(8) of the Internal Revenue Code of 1986 and which received gross annual insurance premiums in excess of $25,000,000 for the taxable years of such organizations which ended during 1984. Not later than January 1, 1988, the Secretary of the Treasury shall submit to the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, and the Joint Committee on Taxation the results of such study, together with such recommendations as he determines to be appropriate. The Secretary of the Treasury shall have authority to require the furnishing of such information as may be necessary to carry out the purposes of this paragraph.

''(3) SPECIAL RULES FOR EXISTING BLUE CROSS OR BLUE SHIELD ORGANIZATIONS.—

''(A) IN GENERAL.—In the case of any existing Blue Cross or Blue Shield organization (as defined in section 833(c)(2) of the Internal Revenue Code of 1986 as added by this section)—

''(i) no adjustment shall be made under section 481 (or any other provision) of such Code on account of a change in its method of accounting for its 1st taxable year beginning after December 31, 1986, and

''(ii) for purposes of determining gain or loss, the adjusted basis of any asset held on the 1st day of such taxable year shall be treated as equal to its fair market value as of such day.

''(B) TREATMENT OF CERTAIN DISTRIBUTIONS.—For purposes of section 833(b)(3)(B), the surplus of any organization as of the beginning of its 1st taxable year beginning after December 31, 1986, shall be increased by the amount of any distribution (other than to policyholders) made by such organization after August 16, 1986, and before the beginning of such taxable year.

''(C) RESERVE WEAKENING AFTER AUGUST 16, 1986.—Any reserve weakening after August 16, 1986, by an existing Blue Cross or Blue Shield organization shall be treated as occurring in such organization's 1st taxable year beginning after December 31, 1986.

''(4) OTHER SPECIAL RULES.—

''(A) The amendments made by this section shall not apply with respect to that portion of the business of Mutual of America which is attributable to pension business.

''(B) The amendments made by this section shall not apply to that portion of the business of the Teachers Insurance Annuity Association-College Retirement Equities Fund which is attributable to pension business.

''(C) The amendments made by this section shall not apply to—

''(i) the retirement fund of the YMCA,

''(ii) the Missouri Hospital Plan,

''(iii) administrative services performed by municipal leagues, and

''(iv) dental benefit coverage provided by a Delta Dental Plans Association organization through contracts with independent professional service providers so long as the provision of such coverage is the principal activity of such organization.

''(D) For purposes of this paragraph, the term 'pension business' means the administration of any plan described in section 401(a) of the Internal Revenue Code of 1954 [now 1986] which includes a trust exempt from tax under section 501(a), any plan under which amounts are contributed by an individual's employer for an annuity contract described in section 403(b) of such Code, any individual retirement plan described in section 408 of such Code, and any eligible deferred compensation plan to which section 457(a) of such Code applies.''

[The due date for the report referred to in section 1012(c)(2) of Pub. L. 99–514, set out above, extended to July 1, 1992, by Pub. L. 101–508, title XI, §11831(b), Nov. 5, 1990, 104 Stat. 1388–559.]

TERMINATION OF CERTAIN EXCEPTIONS FROM RULES RELATING TO EXEMPT ORGANIZATIONS WHICH PROVIDE COMMERCIAL-TYPE INSURANCE

Pub. L. 105–277, div. J, title IV, §4003(g), Oct. 21, 1998, 112 Stat. 2681–910, provided that: ''Rules similar to the rules of section 1.1502–75(d)(5) of the Treasury Regulations shall apply with respect to any organization described in section 1042(b) of the 1997 Act [section 1042(b) of Pub. L. 105–34, set out below].''

Pub. L. 105–34, title X, §1042, Aug. 5, 1997, 111 Stat. 939, provided that:

''(a) IN GENERAL.—Subparagraphs (A) and (B) of section 1012(c)(4) of the Tax Reform Act of 1986 [Pub. L. 99–514, set out as an Effective Date note above] shall not apply to any taxable year beginning after December 31, 1997.

''(b) SPECIAL RULES.—In the case of an organization to which section 501(m) of the Internal Revenue Code of 1986 applies solely by reason of the amendment made by subsection (a)—

''(1) no adjustment shall be made under section 481 (or any other provision) of such Code on account of a change in its method of accounting for its first taxable year beginning after December 31, 1997, and

''(2) for purposes of determining gain or loss, the adjusted basis of any asset held on the 1st day of such taxable year shall be treated as equal to its fair market value as of such day.

''(c) RESERVE WEAKENING AFTER JUNE 8, 1997.—Any reserve weakening after June 8, 1997, by an organization described in subsection (b) shall be treated as occurring in such organization's 1st taxable year beginning after December 31, 1997.

''(d) REGULATIONS.—The Secretary of the Treasury or his delegate may prescribe rules for providing proper adjustments for organizations described in subsection (b) with respect to short taxable years which begin during 1998 by reason of section 843 of the Internal Revenue Code of 1986.''

RULES PROVIDING ADJUSTMENTS FOR CERTAIN TAXPAYERS AFFECTED BY SECTION 1012 OF PUB. L. 99–514

Pub. L. 100–647, title I, §1010(b)(3), Nov. 10, 1988, 102 Stat. 3451, provided that: ''The Secretary of the Treasury or his delegate may prescribe rules providing proper adjustments for taxpayers which become subject to subchapter L of chapter 1 of the 1986 Code by reason of the amendments made by section 1012 of the Reform Act [Pub. L. 99–514, enacting this section and amending section 501 of this title] with respect to short taxable years which begin during 1987 by reason of section 843 of such Code.''

§ 834. Determination of taxable investment income

(a) General rule

For purposes of section 831(b), the term ''taxable investment income'' means the gross investment income, minus the deductions provided in subsection (c).

(b) Gross investment income

For purposes of subsection (a), the term ''gross investment income'' means the sum of the following:

(1) The gross amount of income during the taxable year from—

(A) interest, dividends, rents, and royalties,

(B) the entering into of any lease, mortgage, or other instrument or agreement from which the insurance company derives interest, rents, or royalties,

(C) the alteration or termination of any instrument or agreement described in subparagraph (B), and

(D) gains from sales or exchanges of capital assets to the extent provided in subchapter P (relating to capital gains and losses).

(2) The gross income during the taxable year from any trade or business (other than an insurance business) carried on by the insurance company, or by a partnership of which the insurance company is a partner. In computing gross income under this paragraph, there shall be excluded any item described in paragraph (1).

(c) Deductions

In computing taxable investment income, the following deductions shall be allowed:

(1) Tax-free interest

The amount of interest which under section 103 is excluded for the taxable year from gross income.

(2) Investment expenses

Investment expenses paid or accrued during the taxable year. If any general expenses are in part assigned to or included in the investment expenses, the total deduction under this paragraph shall not exceed one-fourth of 1 percent of the mean of the book value of the invested assets held at the beginning and end of the taxable year plus one-fourth of the amount by which taxable investment income (computed without any deduction for investment expenses allowed by this paragraph, for tax-free interest allowed by paragraph (1), or for dividends received allowed by paragraph (7)), exceeds 3¾ percent of the book value of the mean of the invested assets held at the beginning and end of the taxable year.

(3) Real estate expenses

Taxes (as provided in section 164), and other expenses, paid or accrued during the taxable year exclusively on or with respect to the real estate owned by the company. No deduction shall be allowed under this paragraph for any amount paid out for new buildings, or for permanent improvements or betterments made to increase the value of any property.

(4) Depreciation

The depreciation deduction allowed by section 167.

(5) Interest paid or accrued

All interest paid or accrued within the taxable year on indebtedness, except on indebtedness incurred or continued to purchase or carry obligations the interest on which is wholly exempt from taxation under this subtitle.

(6) Capital losses

Capital losses to the extent provided in subchapter P (sec. 1201 and following) plus losses from capital assets sold or exchanged in order to obtain funds to meet abnormal insurance losses and to provide for the payment of dividends and similar distributions to policyholders. Capital assets shall be considered as sold or exchanged in order to obtain funds to meet abnormal insurance losses and to provide for the payment of dividends and similar distributions to policyholders to the extent that the gross receipts from their sale or exchange are not greater than the excess, if any, for the taxable year of the sum of dividends and similar distributions paid to policyholders, losses paid, and expenses paid over the sum of the items described in subsection (b) (other than paragraph (1)(D) thereof) and net premiums received. In the application of section 1212 for purposes of this section, the net capital loss for the taxable year shall be the amount by which losses for such year from sales or exchanges of capital assets exceeds the sum of the gains from such sales or exchanges and whichever of the following amounts is the lesser:

(A) the taxable investment income (computed without regard to gains or losses from sales or exchanges of capital assets); or

(B) losses from the sale or exchange of capital assets sold or exchanged to obtain funds to meet abnormal insurance losses and to provide for the payment of dividends and similar distributions to policyholders.

(7) Special deductions

The special deductions allowed by part VIII (except section 248) of subchapter B (sec. 241 and following, relating to dividends received). In applying section 246(b) (relating to limitation on aggregate amount of deductions for dividends received) for purposes of this paragraph, the reference in such section to ''taxable income'' shall be treated as a reference to ''taxable investment income''.

(8) Trade or business deductions

The deductions allowed by this subtitle (without regard to this part) which are attributable to any trade or business (other than an insurance business) carried on by the insurance company, or by a partnership of which the insurance company is a partner; except that for purposes of this paragraph—

(A) any item, to the extent attributable to the carrying on of the insurance business, shall not be taken into account, and

(B) the deduction for net operating losses provided in section 172 shall not be allowed.

(9) Depletion

The deduction allowed by section 611 (relating to depletion).

(d) Other applicable rules

(1) Rental value of real estate

The deduction under subsection (c)(3) or (4) on account of any real estate owned and occupied in whole or in part by a mutual insurance company subject to the tax imposed by section 831 shall be limited to an amount which bears the same ratio to such deduction (computed without regard to this paragraph) as the rental value of the space not so occupied bears to the rental value of the entire property.

(2) Amortization of premium and accrual of discount

The gross amount of income during the taxable year from interest and the deduction pro-

vided in subsection (c)(1) shall each be decreased to reflect the appropriate amortization of premium and increased to reflect the appropriate accrual of discount attributable to the taxable year on bonds, notes, debentures, or other evidences of indebtedness held by a mutual insurance company subject to the tax imposed by section 831. Such amortization and accrual shall be determined—

(A) in accordance with the method regularly employed by such company, if such method is reasonable, and

(B) in all other cases, in accordance with regulations prescribed by the Secretary.

No accrual of discount shall be required under this paragraph on any bond (as defined in section 171(d)) except in the case of discount which is original issue discount (as defined in section 1273).

(3) Double deductions

Nothing in this part shall permit the same item to be deducted more than once.

(e) Definitions

For purposes of this part—

(1) Net premiums

The term ''net premiums'' means gross premiums (including deposits and assessments) written or received on insurance contracts during the taxable year less return premiums and premiums paid or incurred for reinsurance. Amounts returned where the amount is not fixed in the insurance contract but depends on the experience of the company or the discretion of the management shall not be included in return premiums but shall be treated as dividends to policyholders under paragraph (2).

(2) Dividends to policyholders

The term ''dividends to policyholders'' means dividends and similar distributions paid or declared to policyholders. For purposes of the preceding sentence, the term ''paid or declared'' shall be construed according to the method regularly employed in keeping the books of the insurance company.

(Aug. 16, 1954, ch. 736, 68A Stat. 261, §822; Mar. 13, 1956, ch. 83, §3(a)(3)–(8), 70 Stat. 47, 48; Pub. L. 87–834, §8(b), Oct. 16, 1962, 76 Stat. 991; Pub. L. 88–272, title II, §228(b)(2), Feb. 26, 1964, 78 Stat. 99; Pub. L. 89–809, title I, §104(i)(5), Nov. 13, 1966, 80 Stat. 1562; Pub. L. 94–455, title XIX, §§1901(a)(105), (b)(1)(P)–(S), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1782, 1792, 1834; renumbered §834 and amended Pub. L. 99–514, title X, §1024(a)(3), (c)(7), (8), Oct. 22, 1986, 100 Stat. 2405, 2407; Pub. L. 115–97, title I, §13001(b)(2)(I), Dec. 22, 2017, 131 Stat. 2096.)

AMENDMENTS

2017—Subsec. (b)(1)(D). Pub. L. 115–97 struck out ''sec. 1201 and following,'' before ''relating to capital gains and losses''.

1986—Pub. L. 99–514, §1024(a)(3), renumbered section 822 of this title as this section.

Subsec. (a). Pub. L. 99–514, §1024(c)(7), amended subsec. (a) generally. Prior to amendment, subsec. (a), definitions, read as follows: ''For purposes of this part—

''(1) The term 'taxable investment income' means the gross investment income, minus the deductions provided in subsection (c).

''(2) The term 'investment loss' means the amount by which the deductions provided in subsection (c) exceed the gross investment income.''

Subsec. (d). Pub. L. 99–514, §1024(c)(8), substituted ''section 831'' for ''section 821'' in pars. (1) and (2), and inserted ''except in the case of discount which is original issue discount (as defined in section 1273)'' at end of last sentence in par.

1976—Subsec. (c)(2). Pub. L. 94–455, §1901(b)(1)(P), struck out ''partially tax-exempt interest and'' before ''dividends received allowed by''.

Subsec. (c)(5). Pub. L. 94–455, §1901(a)(105)(A), struck out ''(other than obligations of the United States issued after September 24, 1917, and originally subscribed for by the taxpayer)'' after ''purchase or carry obligations''.

Subsec. (c)(6)(A). Pub. L. 94–455, §1901(b)(1)(Q), struck out ''or to the deduction provided in section 242 for partially tax-exempt interest'' after ''exchanges of capital assets''.

Subsec. (c)(7). Pub. L. 94–455, §1901(b)(1)(R), struck out ''partially tax-exempt interest and to'' after ''and following, relating to''.

Subsec. (d)(2). Pub. L. 94–455, §§1901(a)(105)(B), (b)(1)(S), 1906(b)(13)(A), struck out in subpar. (B) ''or his delegate'' after ''Secretary'' and substituted in provisions preceding subpar. (A) ''and the deduction provided in subsection (c)(1)'' for '', the deduction provided in subsection (c)(1), and the deduction allowed by section 242 (relating to partially tax-exempt interest)'' and in provisions following subpar. (B) ''No accrual'' for ''For taxable years beginning after December 31, 1962, no accrual''.

1966—Subsecs. (e), (f). Pub. L. 89–809 redesignated subsec. (f) as (e). Former subsec. (e), dealing with foreign mutual insurance companies other than life or marine, was struck out.

1964—Subsec. (d)(2). Pub. L. 88–272 provided that for taxable years beginning after Dec. 31, 1962, no accrual of discount shall be required under par. (2) on any bond.

1962—Pub. L. 87–834, §8(b)(1), substituted ''Determination of taxable investment income'' for ''Determination of mutual insurance company taxable income'' in section catchline.

Subsec. (a). Pub. L. 87–834, §8(b)(1), defined ''taxable investment income'' and ''investment loss'' for purposes of this part, and struck out provisions which defined ''mutual insurance company taxable income'' for purposes of section 821 of this title, which provisions are now contained in section 821(b) of this title.

Subsec. (c). Pub. L. 87–834, §8(b)(2), (3), substituted ''taxable investment income'' for ''mutual insurance company taxable income'' in opening provisions and in pars. (2) and (6)(A), and inserted sentence in par. (7) providing that in applying section 246(b) (relating to limitations on aggregate amount of deductions for dividends received) for purposes of par. (7), reference in such section to ''taxable income'' shall be treated as a reference to ''taxable investment income''.

Subsec. (e). Pub. L. 87–834, §8(b)(2), substituted ''taxable investment income'' for ''mutual insurance company taxable income''.

Subsec. (f). Pub. L. 87–834, §8(b)(4), added subsec. (f). Provisions of subsec. (f) were formerly contained in section 823 of this title.

1956—Subsec. (b). Act Mar. 13, 1956, §3(a)(3), principally included royalties, and the income from a trade or business other than the insurance business carried on by the insurance company in ''gross investment income''.

Subsec. (c). Act Mar. 13, 1956, §3(a)(4), (5), (6), clarified the deduction for real estate expenses in par. (3), substituted in par. (6) ''the sum of the items described in subsection (b) (other than paragraph (1)(D) thereof) and net premiums received. In the application of section 1212'' for ''the sum of interest, dividends, rents, and net premiums received. In the application of section 1211'', and inserted pars. (8) and (9).

Subsec. (d)(1). Act Mar. 13, 1956, § 3(a)(7), substituted ''subsection (c)(3) or (4)'' for ''subsection (e)(3) or (4)''.

Subsec. (e). Act Mar. 13, 1956, § 3(a)(8), substituted ''items described in subsection (b) (other than paragraph (1)(D) thereof'' for ''interest, dividends, rents,''.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–97 applicable to taxable years beginning after Dec. 31, 2017, see section 13001(c)(1) of Pub. L. 115–97, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1024(e) of Pub. L. 99–514, set out as a note under section 831 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(105), (b)(1)(P)–(S) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable with respect to taxable years beginning after Dec. 31, 1962, see section 8(h) of Pub. L. 87–834, set out as a note under section 501 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Mar. 13, 1956, applicable only to taxable years beginning after Dec. 31, 1954, see section 6 of act Mar. 13, 1956, set out as a note set out under section 316 of this title.

§ 835. Election by reciprocal

(a) In general

Except as otherwise provided in this section, any mutual insurance company which is an interinsurer or reciprocal underwriter (hereinafter in this section referred to as a ''reciprocal'') subject to the taxes imposed by section 831(a) may, under regulations prescribed by the Secretary, elect to be subject to the limitation provided in subsection (b). Such election shall be effective for the taxable year for which made and for all succeeding taxable years, and shall not be revoked except with the consent of the Secretary.

(b) Limitation

The deduction for amounts paid or incurred in the taxable year to the attorney-in-fact by a reciprocal making the election provided in subsection (a) shall be limited to, but in no case increased by, the deductions of the attorney-in-fact allocable, in accordance with regulations prescribed by the Secretary, to the income received by the attorney-in-fact from the reciprocal.

(c) Exception

An election may not be made by a reciprocal under subsection (a) unless the attorney-in-fact of such reciprocal—

(1) is subject to the tax imposed by section 11;

(2) consents in such manner as the Secretary shall prescribe by regulations to make available such information as may be required during the period in which the election provided in subsection (a) is in effect, under regulations prescribed by the Secretary;

(3) reports the income received from the reciprocal and the deductions allocable thereto under the same method of accounting under which the reciprocal reports deductions for amounts paid to the attorney-in-fact; and

(4) files its return on the calendar year basis.

(d) Credit

Any reciprocal electing to be subject to the limitation provided in subsection (b) shall be credited with so much of the tax paid by the attorney-in-fact as is attributable, under regulations prescribed by the Secretary, to the income received by the attorney-in-fact from the reciprocal in such taxable year.

(e) Benefits of graduated rates denied

Any increase in the taxable income of a reciprocal attributable to the limits provided in subsection (b) shall be taxed at the highest rate of tax specified in section 11(b).

(f) Adjustment for refund

If for any taxable year an attorney-in-fact is allowed a credit or refund for taxes paid with respect to which credit or refund to the reciprocal resulted under subsection (d), the taxes of such reciprocal for such taxable year shall be properly adjusted under regulations prescribed by the Secretary.

(g) Taxes of attorney-in-fact unaffected

Nothing in this section shall increase or decrease the taxes imposed by this chapter on the income of the attorney-in-fact.

(Added Pub. L. 87–834, § 8(c), Oct. 16, 1962, 76 Stat. 996, § 826; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–600, title III, § 301(b)(10), Nov. 6, 1978, 92 Stat. 2822; renumbered § 835 and amended Pub. L. 99–514, title X, § 1024(a)(3), (c)(9), Oct. 22, 1986, 100 Stat. 2405, 2407; Pub. L. 100–647, title I, § 1010(f)(2), (3), Nov. 10, 1988, 102 Stat. 3454.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–647, § 1010(f)(2), substituted ''section 831(a)'' for ''section 821(a)''.

Subsec. (f). Pub. L. 100–647, § 1010(f)(3), substituted ''subsection (d)'' for ''subsection (e)''.

1986—Pub. L. 99–514, § 1024(a)(3), renumbered section 826 of this title as this section.

Subsec. (d). Pub. L. 99–514, § 1024(c)(9)(A), redesignated subsec. (e) as (d) and struck out former subsec. (d), special rule, which read as follows: ''In applying section 824(d)(1)(D), any amount which was added to the protection against loss account by reason of an election under this section shall be treated as having been added by reason of section 824(a)(1)(A).''

Subsec. (e). Pub. L. 99–514, § 1024(c)(9), redesignated subsec. (f) as (e), substituted ''Benefits of graduated rates'' for ''Surtax exemption'' in heading, and amended text generally. Prior to amendment, text read as follows: ''Any increase in taxable income of a reciprocal attributable to the limitation provided in subsection (b) shall be taxed without regard to the surtax exemption provided in section 821(a)(2).'' Former subsec. (e) redesignated (d).

Subsecs. (f) to (h). Pub. L. 99–514, § 1024(c)(9)(A), redesignated subsecs. (f) to (h) as (e) to (g), respectively.

1978—Subsec. (c)(1). Pub. L. 95–600 substituted ''the tax imposed by section 11'' for ''the taxes imposed by section 11(b) and (c)''.

1976—Subsecs. (a), (b), (c)(2), (e), (g). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1024(e) of Pub. L. 99–514, set out as a note under section 831 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95–600, set out as a note under section 11 of this title.

EFFECTIVE DATE

Section applicable with respect to taxable years beginning after Dec. 31, 1962, see section 8(h) of Pub. L. 87–834, set out as an Effective Date of 1962 Amendment note under section 501 of this title.

PART III—PROVISIONS OF GENERAL APPLICATION

Sec.

AMENDMENTS

2017—Pub. L. 115–97, title I, §§13511(b)(2)(A), 13516(a), Dec. 22, 2017, 131 Stat. 2142, 2144, struck out items 844 ''Special loss carryover rules'' and 847 ''Special estimated tax payments''.

1990—Pub. L. 101–508, title XI, §11301(c), Nov. 5, 1990, 104 Stat. 1388–449, added item 848.

1989—Pub. L. 101–239, title VII, §7821(d)(1), Dec. 19, 1989, 103 Stat. 2424, substituted ''companies'' for ''corporations'' in item 842.

1988—Pub. L. 100–647, title VI, §6077(b), Nov. 10, 1988, 102 Stat. 3709, added item 847.

1986—Pub. L. 99–514, title X, §§1023(d), 1024(a)(2), Oct. 22, 1986, 100 Stat. 2404, 2405, redesignated part IV as III and added item 846. Former part III redesignated II.

1984—Pub. L. 98–369, div. A, title II, §212(b), July 18, 1984, 98 Stat. 758, added item 845.

1969—Pub. L. 91–172, title IX, §907(c)(2)(A), Dec. 30, 1969, 83 Stat. 717, added item 844.

1966—Pub. L. 89–809, title I, §104(i)(2), Nov. 13, 1966, 80 Stat. 1561, substituted ''Foreign corporations carrying on insurance business'' for ''Computation of gross income'' in item 842.

1956—Act Mar. 13, 1956, ch. 83, §4(b), 70 Stat. 49, added item 843.

§ 841. Credit for foreign taxes

The taxes imposed by foreign countries or possessions of the United States shall be allowed as a credit against the tax of a domestic insurance company subject to the tax imposed by section 801 or 831, to the extent provided in the case of a domestic corporation in section 901 (relating to foreign tax credit). For purposes of the preceding sentence (and for purposes of applying section 906 with respect to a foreign corporation subject to tax under this subchapter), the term ''taxable income'' as used in section 904 means—

(1) in the case of the tax imposed by section 801, the life insurance company taxable income (as defined in section 801(b)), and

(2) in the case of the tax imposed by section 831, the taxable income (as defined in section 832(a)).

(Aug. 16, 1954, ch. 736, 68A Stat. 267; Mar. 13, 1956, ch. 83, §5(4), 70 Stat. 49; Pub. L. 86–69, §3(b), June 25, 1959, 73 Stat. 139; Pub. L. 87–834, §8(g)(1), Oct. 16, 1962, 76 Stat. 998; Pub. L. 89–809, title I, §104(i)(8), Nov. 13, 1966, 80 Stat. 1562; Pub. L. 98–369, div. A, title II, §211(b)(10), July 18, 1984, 98 Stat. 755; Pub. L. 99–514, title X, §1024(c)(10), Oct. 22, 1986, 100 Stat. 2407.)

AMENDMENTS

1986—Pub. L. 99–514 substituted ''section 801 or 831'' for ''section 801, 821, or 831'' in introductory provisions, redesignated par. (3) as (2), and struck out former par. (2) which read as follows: ''in the case of the tax imposed by section 821(a), the mutual insurance company taxable income (as defined in section 821(b)); and in the case of the tax imposed by section 821(c), the taxable investment income (as defined in section 822(a)), and''.

1984—Pub. L. 98–369 substituted ''section 801'' for ''section 802'', wherever appearing, and ''section 801(b)'' for ''section 802(b)''.

1966—Pub. L. 89–809 substituted ''For purposes of the preceding sentence (and for purposes of applying section 906 with respect to a foreign corporation subject to tax under this subchapter), the term 'taxable income' as used in section 904'' for ''For purposes of the preceding sentence, the term 'taxable income' as used in section 904''.

1962—Pub. L. 87–834 added par. (2) and redesignated former par. (2) as (3).

1959—Pub. L. 86–69 struck out reference to section 811 of this title in first sentence, and substituted ''section 802, the life insurance company taxable income (as defined in section 802(b)), and'' for ''section 802 or 811, the net investment income (as defined in section 803(c))'' in par. (1).

1956—Act Mar. 13, 1956, inserted references to section 811.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1024(e) of Pub. L. 99–514, set out as a note under section 831 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable with respect to taxable years beginning after Dec. 31, 1962, see section 8(h) of Pub. L. 87–834, set out as a note under section 501 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–69 applicable only with respect to taxable years beginning after Dec. 31, 1957, see

section 4 of Pub. L. 86–69, set out as a note under section 381 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Mar. 13, 1956, applicable only to taxable years beginning after Dec. 31, 1954, see section 6 of act Mar. 13, 1956, set out as a note under section 316 of this title.

§ 842. Foreign companies carrying on insurance business

(a) Taxation under this subchapter

If a foreign company carrying on an insurance business within the United States would qualify under part I or II of this subchapter for the taxable year if (without regard to income not effectively connected with the conduct of any trade or business within the United States) it were a domestic corporation, such company shall be taxable under such part on its income effectively connected with its conduct of any trade or business within the United States. With respect to the remainder of its income which is from sources within the United States, such a foreign company shall be taxable as provided in section 881.

(b) Minimum effectively connected net investment income

(1) In general

In the case of a foreign company taxable under part I or II of this subchapter for the taxable year, its net investment income for such year which is effectively connected with the conduct of an insurance business within the United States shall be not less than the product of—

(A) the required United States assets of such company, and

(B) the domestic investment yield applicable to such company for such year.

(2) Required U.S. assets

(A) In general

For purposes of paragraph (1), the required United States assets of any foreign company for any taxable year is an amount equal to the product of—

(i) the mean of such foreign company's total insurance liabilities on United States business, and

(ii) the domestic asset/liability percentage applicable to such foreign company for such year.

(B) Total insurance liabilities

For purposes of this paragraph—

(i) Companies taxable under part I

In the case of a company taxable under part I, the term ''total insurance liabilities'' means the sum of the total reserves (as defined in section 816(c)) plus (to the extent not included in total reserves) the items referred to in paragraphs (3), (4), (5), and (6) of section 807(c).

(ii) Companies taxable under part II

In the case of a company taxable under part II, the term ''total insurance liabilities'' means the sum of unearned premiums and unpaid losses.

(C) Domestic asset/liability percentage

The domestic asset/liability percentage applicable for purposes of subparagraph (A)(ii) to any foreign company for any taxable year is a percentage determined by the Secretary on the basis of a ratio—

(i) the numerator of which is the mean of the assets of domestic insurance companies taxable under the same part of this subchapter as such foreign company, and

(ii) the denominator of which is the mean of the total insurance liabilities of the same companies.

(3) Domestic investment yield

The domestic investment yield applicable for purposes of paragraph (1)(B) to any foreign company for any taxable year is the percentage determined by the Secretary on the basis of a ratio—

(A) the numerator of which is the net investment income of domestic insurance companies taxable under the same part of this subchapter as such foreign company, and

(B) the denominator of which is the mean of the assets of the same companies.

(4) Election to use worldwide yield

(A) In general

If the foreign company makes an election under this paragraph, such company's worldwide current investment yield shall be taken into account in lieu of the domestic investment yield for purposes of paragraph (1)(B).

(B) Worldwide current investment yield

For purposes of subparagraph (A), the term ''worldwide current investment yield'' means the percentage obtained by dividing—

(i) the net investment income of the company from all sources, by

(ii) the mean of all assets of the company (whether or not held in the United States).

(C) Election

An election under this paragraph shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

(5) Net investment income

For purposes of this subsection, the term ''net investment income'' means—

(A) gross investment income (within the meaning of section 834(b)), reduced by

(B) expenses allocable to such income.

(c) Special rules for purposes of subsection (b)

(1) Reduction in section 881 taxes

(A) In general

The tax under section 881 (determined without regard to this paragraph) shall be reduced (but not below zero) by an amount which bears the same ratio to such tax as—

(i) the amount of the increase in effectively connected income of the company resulting from subsection (b), bears to

(ii) the amount which would be subject to tax under section 881 if the amount taxable under such section were determined without regard to sections 103 and 894.

(B) Limitation on reduction

The reduction under subparagraph (A) shall not exceed the increase in taxes under part I or II (as the case may be) by reason of the increase in effectively connected income of the company resulting from subsection (b).

(2) Data used in determining domestic asset/liability percentages and domestic investment yields

Each domestic asset/liability percentage, and each domestic investment yield, for any taxable year shall be based on such representative data with respect to domestic insurance companies for the second preceding taxable year as the Secretary considers appropriate.

(d) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations—

(1) providing for the proper treatment of segregated asset accounts,

(2) providing for proper adjustments in succeeding taxable years where the company's actual net investment income for any taxable year which is effectively connected with the conduct of an insurance business within the United States exceeds the amount required under subsection (b)(1),

(3) providing for the proper treatment of investments in domestic subsidiaries, and

(4) which may provide that, in the case of companies taxable under part II of this subchapter, determinations under subsection (b) will be made separately for categories of such companies established in such regulations.

(Aug. 16, 1954, ch. 736, 68A Stat. 267; Mar. 13, 1956, ch. 83, §5(5), 70 Stat. 49; Pub. L. 86–69, §3(f)(1), June 25, 1959, 73 Stat. 140; Pub. L. 89–809, title I, §104(i)(1), Nov. 13, 1966, 80 Stat. 1561; Pub. L. 99–514, title X, §1024(c)(11), Oct. 22, 1986, 100 Stat. 2408; Pub. L. 100–203, title X, §10242(a), Dec. 22, 1987, 101 Stat. 1330–420; Pub. L. 100–647, title II, §2004(q)(2), (3), Nov. 10, 1988, 102 Stat. 3609; Pub. L. 101–239, title VII, §7821(d)(2), Dec. 19, 1989, 103 Stat. 2424; Pub. L. 108–218, title II, §205(b)(6), Apr. 10, 2004, 118 Stat. 610; Pub. L. 115–97, title I, §13512(b)(7), Dec. 22, 2017, 131 Stat. 2143.)

AMENDMENTS

2017—Subsec. (c). Pub. L. 115–97 redesignated pars. (2) and (3) as (1) and (2), respectively, and struck out former par. (1). Prior to amendment, text of par. (1) read as follows: ''In the case of a foreign company taxable under part I, subsection (b) shall be applied before computing the small life insurance company deduction.''

2004—Subsec. (c)(3), (4). Pub. L. 108–218 redesignated par. (4) as (3) and struck out heading and text of former par. (3). Text read as follows: ''For purposes of section 809, the equity base of any foreign mutual life insurance company as of the close of any taxable year shall be increased by the excess of—

''(A) the required United States assets of the company (determined under subsection (b)(2)), over

''(B) the mean of the assets held in the United States during the taxable year.''

1989—Subsec. (c)(4). Pub. L. 101–239 substituted ''yields'' for ''yeilds'' in heading.

1988—Subsec. (b)(3)(B). Pub. L. 100–647, §2004(q)(2)(A), struck out ''held for the production of such income'' after ''same companies''.

Subsec. (b)(4)(B)(ii). Pub. L. 100–647, §2004(q)(2)(B), struck out ''held for the production of investment income'' after ''United States)''.

Subsec. (d)(4). Pub. L. 100–647, §2004(q)(3), added par. (4).

1987—Pub. L. 100–203 substituted ''companies'' for ''corporations'' in section catchline and amended text generally. Prior to amendment, text read as follows: ''If a foreign corporation carrying on an insurance business within the United States would qualify under part I or II of this subchapter for the taxable year if (without regard to income not effectively connected with the conduct of any trade or business within the United States) it were a domestic corporation, such corporation shall be taxable under such part on its income effectively connected with its conduct of any trade or business within the United States. With respect to the remainder of its income, which is from sources within the United States, such a foreign corporation shall be taxable as provided in section 881.''

1986—Pub. L. 99–514 struck out reference to part III of this subchapter.

1966—Pub. L. 89–809 substituted provisions covering the taxability of foreign corporations that are carrying on an insurance business within the United States which would qualify under part I, II, or III of this subchapter for the taxable year if (without regard to income not effectively connected with the conduct of any trade or business within the United States) it were a domestic corporation for provisions that the gross income of insurance companies subject to the tax imposed by section 802 or 831 shall not be determined in the manner provided in part I of subchapter N (relating to determination of sources of income).

1959—Pub. L. 86–69 struck out reference to section 811.

1956—Act Mar. 13, 1956, inserted reference to section 811.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–97 applicable to taxable years beginning after Dec. 31, 2017, see section 13512(c) of Pub. L. 115–97, set out as a note under section 453B of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–218 applicable to taxable years beginning after Dec. 31, 2004, see section 205(c) of Pub. L. 108–218, set out as a note under section 807 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective as if included in the provision of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 7823 of Pub. L. 101–239, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to taxable years beginning after Dec. 31, 1987, see section 10242(d) of Pub. L. 100–203, set out as a note under section 816 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1024(e) of Pub. L. 99–514, set out as a note under section 831 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of

Pub. L. 89–809, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–69 applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 4 of Pub. L. 86–69, set out as a note under section 381 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Mar. 13, 1956, applicable only to taxable years beginning after Dec. 31, 1954, see section 6 of act Mar. 13, 1956, set out as a note under section 316 of this title.

STUDY OF UNITED STATES REINSURANCE INDUSTRY

Pub. L. 99–514, title XII, § 1244, Oct. 22, 1986, 100 Stat. 2581, directed Secretary of the Treasury or his delegate to conduct a study to determine whether United States reinsurance corporations are placed at a significant competitive disadvantage with foreign reinsurance corporations by existing treaties between the United States and foreign countries, and to report before Jan. 1, 1988, the results of such study to Committee on Finance of United States Senate and Committee on Ways and Means of House of Representatives.

§ 843. Annual accounting period

For purposes of this subtitle, the annual accounting period for each insurance company subject to a tax imposed by this subchapter shall be the calendar year. Under regulations prescribed by the Secretary, an insurance company which joins in the filing of a consolidated return (or is required to so file) may adopt the taxable year of the common parent corporation even though such year is not a calendar year.

(Added Mar. 13, 1956, ch. 83, § 4(a), 70 Stat. 48; amended Pub. L. 94–455, title XV, § 1507(b)(2), Oct. 4, 1976, 90 Stat. 1740.)

AMENDMENTS

1976—Pub. L. 94–455 inserted provision permitting an insurance company which joins in the filing of a consolidated return to adopt the taxable year of the common parent corporation even though such year is not a calendar year.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1980, see section 1507(c)(1) of Pub. L. 94–455, set out as a note under section 1504 of this title.

EFFECTIVE DATE

Section applicable only to taxable years beginning after Dec. 31, 1954, see Effective Date of 1956 Amendment note set out under section 316 of this title.

[§ 844. Repealed. Pub. L. 115–97, title I, § 13511(b)(2)(A), Dec. 22, 2017, 131 Stat. 2142]

Section, added Pub. L. 91–172, title IX, § 907(c)(1), Dec. 30, 1969, 83 Stat. 716; amended Pub. L. 94–455, title XIX, §§ 1901(b)(25), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1798, 1834; Pub. L. 98–369, div. A, title II, § 211(b)(11), July 18, 1984, 98 Stat. 755; Pub. L. 99–514, title X, § 1024(c)(12), title XVIII, § 1899A(20), Oct. 22, 1986, 100 Stat. 2408, 2959; Pub. L. 101–239, title VII, § 7841(d)(16), Dec. 19, 1989, 103 Stat. 2429, related to special loss carryover rules.

EFFECTIVE DATE OF REPEAL

Repeal applicable to losses arising in taxable years beginning after Dec. 31, 2017, see section 13511(c) of Pub. L. 115–97, set out as an Effective Date of 2017 Amendment note under section 381 of this title.

§ 845. Certain reinsurance agreements

(a) Allocation in case of reinsurance agreement involving tax avoidance or evasion

In the case of 2 or more related persons (within the meaning of section 482) who are parties to a reinsurance agreement (or where one of the parties to a reinsurance agreement is, with respect to any contract covered by the agreement, in effect an agent of another party to such agreement or a conduit between related persons), the Secretary may—

(1) allocate between or among such persons income (whether investment income, premium, or otherwise), deductions, assets, reserves, credits, and other items related to such agreement,

(2) recharacterize any such items, or

(3) make any other adjustment,

if he determines that such allocation, recharacterization, or adjustment is necessary to reflect the proper amount, source, or character of the taxable income (or any item described in paragraph (1) relating to such taxable income) of each such person.

(b) Reinsurance contract having significant tax avoidance effect

If the Secretary determines that any reinsurance contract has a significant tax avoidance effect on any party to such contract, the Secretary may make proper adjustments with respect to such party to eliminate such tax avoidance effect (including treating such contract with respect to such party as terminated on December 31 of each year and reinstated on January 1 of the next year).

(Added Pub. L. 98–369, div. A, title II, § 212(a), July 18, 1984, 98 Stat. 757; amended Pub. L. 108–357, title VIII, § 803(a), Oct. 22, 2004, 118 Stat. 1569.)

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–357 substituted ''amount, source, or character'' for ''source and character'' in concluding provisions.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, § 803(b), Oct. 22, 2004, 118 Stat. 1569, provided that: ''The amendments made by this section [amending this section] shall apply to any risk reinsured after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE

Pub. L. 98–369, div. A, title II, § 217(d), July 18, 1984, 98 Stat. 762, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) Subsection (a) of section 845 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this title) shall apply with respect to any risk reinsured on or after September 27, 1983.

''(2) Subsection (b) of section 845 of such Code (as so added) shall apply with respect to risks reinsured after December 31, 1984.''

§ 846. Discounted unpaid losses defined

(a) Discounted losses determined

(1) Separately computed for each accident year

The amount of the discounted unpaid losses as of the end of any taxable year shall be the sum of the discounted unpaid losses (as of such

time) separately computed under this section with respect to unpaid losses in each line of business attributable to each accident year.

(2) Method of discounting

The amount of the discounted unpaid losses as of the end of any taxable year attributable to any accident year shall be the present value of such losses (as of such time) determined by using—

(A) the amount of the undiscounted unpaid losses as of such time,

(B) the applicable interest rate, and

(C) the applicable loss payment pattern.

(3) Limitation on amount of discounted losses

In no event shall the amount of the discounted unpaid losses with respect to any line of business attributable to any accident year exceed the aggregate amount of unpaid losses with respect to such line of business for such accident year included on the annual statement filed by the taxpayer for the year ending with or within the taxable year.

(4) Determination of applicable factors

In determining the amount of the discounted unpaid losses attributable to any accident year—

(A) the applicable interest rate shall be the interest rate determined under subsection (c) for the calendar year with which such accident year ends, and

(B) the applicable loss payment pattern shall be the loss payment pattern determined under subsection (d) which is in effect for the calendar year with which such accident year ends.

(b) Determination of undiscounted unpaid losses

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, the term ''undiscounted unpaid losses'' means the unpaid losses shown in the annual statement filed by the taxpayer for the year ending with or within the taxable year of the taxpayer.

(2) Adjustment if losses discounted on annual statement

If—

(A) the amount of unpaid losses shown in the annual statement is determined on a discounted basis, and

(B) the extent to which the losses were discounted can be determined on the basis of information disclosed on or with the annual statement,

the amount of the unpaid losses shall be determined without regard to any reduction attributable to such discounting.

(c) Rate of interest

(1) In general

For purposes of this section, the rate of interest determined under this subsection shall be the annual rate determined by the Secretary under paragraph (2).

(2) Determination of annual rate

The annual rate determined by the Secretary under this paragraph for any calendar year shall be a rate determined on the basis of the corporate bond yield curve (as defined in section 430(h)(2)(D)(i), determined by substituting ''60-month period'' for ''24-month period'' therein).

(d) Loss payment pattern

(1) In general

For each determination year, the Secretary shall determine a loss payment pattern for each line of business by reference to the historical loss payment pattern applicable to such line of business. Any loss payment pattern determined by the Secretary shall apply to the accident year ending with the determination year and to each of the 4 succeeding accident years.

(2) Method of determination

Determinations under paragraph (1) for any determination year shall be made by the Secretary—

(A) by using the aggregate experience reported on the annual statements of insurance companies,

(B) on the basis of the most recent published aggregate data from such annual statements relating to loss payment patterns available on the 1st day of the determination year,

(C) as if all losses paid or treated as paid during any year are paid in the middle of such year, and

(D) in accordance with the computational rules prescribed in paragraph (3).

(3) Computational rules

For purposes of this subsection—

(A) In general

Except as otherwise provided in this paragraph, the loss payment pattern for any line of business shall be based on the assumption that all losses are paid—

(i) during the accident year and the 3 calendar years following the accident year, or

(ii) in the case of any line of business reported in the schedule or schedules of the annual statement relating to auto liability, other liability, medical malpractice, workers' compensation, and multiple peril lines, during the accident year and the 10 calendar years following the accident year.

(B) Treatment of certain losses

(i) 3-year loss payment pattern

In the case of any line of business not described in subparagraph (A)(ii), losses paid after the 1st year following the accident year shall be treated as paid equally in the 2nd and 3rd year following the accident year.

(ii) 10-year loss payment pattern

(I) In general

The period taken into account under subparagraph (A)(ii) shall be extended to the extent required under subclause (II).

(II) Computation of extension

The amount of losses which would have been treated as paid in the 10th year

after the accident year shall be treated as paid in such 10th year and each subsequent year in an amount equal to the amount of the average of the losses treated as paid in the 7th, 8th, and 9th years after the accident year (or, if lesser, the portion of the unpaid losses not theretofore taken into account). To the extent such unpaid losses have not been treated as paid before the 24th year after the accident year, they shall be treated as paid in such 24th year.

(4) Determination year

For purposes of this section, the term ''determination year'' means calendar year 1987 and each 5th calendar year thereafter.

(e) Other definitions and special rules

For purposes of this section—

(1) Accident year

The term ''accident year'' means the calendar year in which the incident occurs which gives rise to the related unpaid loss.

(2) Unpaid loss adjustment expenses

The term ''unpaid losses'' includes any unpaid loss adjustment expenses shown on the annual statement.

(3) Annual statement

The term ''annual statement'' means the annual statement approved by the National Association of Insurance Commissioners which the taxpayer is required to file with insurance regulatory authorities of a State.

(4) Line of business

The term ''line of business'' means a category for the reporting of loss payment patterns determined on the basis of the annual statement for fire and casualty insurance companies for the calendar year ending with or within the taxable year, except that the multiple peril lines shall be treated as a single line of business.

(5) Multiple peril lines

The term ''multiple peril lines'' means the lines of business relating to farmowners multiple peril, homeowners multiple peril, commercial multiple peril, ocean marine, aircraft (all perils) and boiler and machinery.

(6) Special rule for certain accident and health insurance lines of business

Any determination under subsection (a) with respect to unpaid losses relating to accident and health insurance lines of businesses (other than credit disability insurance) shall be made—

(A) in the case of unpaid losses relating to disability income, by using the general rules prescribed under section 807(d) applicable to noncancellable accident and health insurance contracts and using a mortality or morbidity table reflecting the taxpayer's experience; except that the limitation of subsection (a)(3) shall apply, and

(B) in all other cases, by using an assumption (in lieu of a loss payment pattern) that unpaid losses are paid in the middle of the year following the accident year.

(f) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including—

(1) regulations providing proper treatment of allocated reinsurance, and

(2) regulations providing appropriate adjustments in the application of this section to a taxpayer having a taxable year which is not the calendar year.

(Added Pub. L. 99–514, title X, §1023(c), Oct. 22, 1986, 100 Stat. 2399; amended Pub. L. 100–647, title I, §1010(e)(1), (2), Nov. 10, 1988, 102 Stat. 3453; Pub. L. 101–508, title XI, §11305(b), Nov. 5, 1990, 104 Stat. 1388–451; Pub. L. 115–97, title I, §§13517(b)(3), 13523(a)–(c), Dec. 22, 2017, 131 Stat. 2147, 2152.)

AMENDMENTS

2017—Subsec. (c)(2). Pub. L. 115–97, §13523(a), amended par. (2) generally. Prior to amendment, text read as follows:

''(A) IN GENERAL.—The annual rate determined by the Secretary under this paragraph for any calendar year shall be a rate equal to the average of the applicable Federal mid-term rates (as defined in section 1274(d) but based on annual compounding) effective as of the beginning of each of the calendar months in the test period.

''(B) TEST PERIOD.—For purposes of subparagraph (A), the test period is the most recent 60-calendar-month period ending before the beginning of the calendar year for which the determination is made; except that there shall be excluded from the test period any month beginning before August 1, 1986.''

Subsec. (d)(3)(B) to (G). Pub. L. 115–97, §13523(b), added subpar. (B) and struck out former subpars. (B) to (G) which related to treatment of certain losses, special rule for certain long-tail lines, long-tail line of business, special rule for international and reinsurance lines of business, adjustments if loss experience information available for longer periods, and special rule for 9th year if negative or zero, respectively.

Subsecs. (e), (f). Pub. L. 115–97, §13523(c), redesignated subsecs. (f) and (g) as (e) and (f), respectively, and struck out former subsec. (e) which related to election to use company's historical payment pattern.

Subsec. (f)(6)(A). Pub. L. 115–97, §13517(b)(3), substituted ''except that the limitation of subsection (a)(3) shall apply, and'' for ''except that—

''(i) the prevailing State assumed interest rate shall be the rate in effect for the year in which the loss occurred rather than the year in which the contract was issued, and

''(ii) the limitation of subsection (a)(3) shall apply in lieu of the limitation of the last sentence of section 807(d)(1), and''.

Subsec. (g). Pub. L. 115–97, §13523(c), redesignated subsec. (g) as (f).

1990—Subsec. (g). Pub. L. 101–508 inserted ''and'' at end of par. (1), redesignated par. (3) as (2), and struck out former par. (2) which required regulations providing proper treatment of salvage and reinsurance recoverable attributable to unpaid losses.

1988—Subsec. (f)(6)(B). Pub. L. 100–647, §1010(e)(1), substituted ''paid in the middle of the year'' for ''paid during the year''.

Subsec. (g)(3). Pub. L. 100–647, §1010(e)(2), added par. (3).

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 13517(b)(3) of Pub. L. 115–97 applicable to taxable years beginning after Dec. 31, 2017, with transition rule and transition relief, see section 13517(c) of Pub. L. 115–97, set out as a note under section 807 of this title.

Pub. L. 115–97, title I, §13523(d), Dec. 22, 2017, 131 Stat. 2152, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2017.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1989, see section 11305(c)(1) of Pub. L. 101–508, set out as a note under section 832 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Pub. L. 99–514, title X, §1023(e), Oct. 22, 1986, 100 Stat. 2404, as amended by Pub. L. 100–647, title I, §1010(e)(3), Nov. 10, 1988, 102 Stat. 3453, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section and amending sections 807 and 832 of this title] shall apply to taxable years beginning after December 31, 1986.

''(2) TRANSITIONAL RULE.—For the first taxable year beginning after December 31, 1986—

''(A) the unpaid losses and the expenses unpaid (as defined in paragraphs (5)(B) and (6) of section 832(b) of the Internal Revenue Code of 1986) at the end of the preceding taxable year, and

''(B) the unpaid losses as defined in sections 807(c)(2) and 805(a)(1) of such Code at the end of the preceding taxable year,

shall be determined as if the amendments made by this section had applied to such unpaid losses and expenses unpaid in the preceding taxable year and by using the interest rate and loss payment patterns applicable to accident years ending with calendar year 1987. For subsequent taxable years, such amendments shall be applied with respect to such unpaid losses and expenses unpaid by using the interest rate and loss payment patterns applicable to accident years ending with calendar year 1987.

''(3) FRESH START.—

''(A) IN GENERAL.—Except as otherwise provided in this paragraph, any difference between—

''(i) the amount determined to be the unpaid losses and expenses unpaid for the year preceding the 1st taxable year of an insurance company beginning after December 31, 1986, determined without regard to paragraph (2), and

''(ii) such amount determined with regard to paragraph (2),

shall not be taken into account for purposes of the Internal Revenue Code of 1986.

''(B) RESERVE STRENGTHENING IN YEARS AFTER 1985.—Subparagraph (A) shall not apply to any reserve strengthening in a taxable year beginning in 1986, and such strengthening shall be treated as occurring in the taxpayer's 1st taxable year beginning after December 31, 1986.

''(C) EFFECT ON EARNINGS AND PROFITS.—The earnings and profits of any insurance company for its 1st taxable year beginning after December 31, 1986, shall be increased by the amount of the difference determined under subparagraph (A) with respect to such company.

''(4) APPLICATION OF FRESH START TO COMPANIES WHICH BECOME SUBJECT TO SECTION 831(a) TAX IN LATER TAXABLE YEAR.—If—

''(A) an insurance company was not subject to tax under section 831(a) of the Internal Revenue Code of 1986 for its 1st taxable year beginning after December 31, 1986, by reason of being—

''(i) subject to tax under section 831(b) of such Code, or

''(ii) described in section 501(c) of such Code and exempt from tax under section 501(a) of such Code, and

''(B) such company becomes subject to tax under such section 831(a) for any later taxable year,

paragraph (2) and subparagraphs (A) and (C) of paragraph (3) shall be applied by treating such later taxable year as its 1st taxable year beginning after December 31, 1986, and by treating the calendar year in which such later taxable year begins as 1987; and paragraph (3)(B) shall not apply.''

TRANSITIONAL RULE

Pub. L. 115–97, title I, §13523(e), Dec. 22, 2017, 131 Stat. 2152, provided that: ''For the first taxable year beginning after December 31, 2017—

''(1) the unpaid losses and the expenses unpaid (as defined in paragraphs (5)(B) and (6) of section 832(b) of the Internal Revenue Code of 1986) at the end of the preceding taxable year, and

''(2) the unpaid losses as defined in sections 807(c)(2) and 805(a)(1) of such Code at the end of the preceding taxable year,

shall be determined as if the amendments made by this section [amending this section] had applied to such unpaid losses and expenses unpaid in the preceding taxable year and by using the interest rate and loss payment patterns applicable to accident years ending with calendar year 2018, and any adjustment shall be taken into account ratably in such first taxable year and the 7 succeeding taxable years. For subsequent taxable years, such amendments shall be applied with respect to such unpaid losses and expenses unpaid by using the interest rate and loss payment patterns applicable to accident years ending with calendar year 2018.''

[§ 847. Repealed. Pub. L. 115–97, title I, § 13516(a), Dec. 22, 2017, 131 Stat. 2144]

Section, added Pub. L. 100–647, title VI, §6077(a), Nov. 10, 1988, 102 Stat. 3707; amended Pub. L. 101–239, title VII, §7816(n), Dec. 19, 1989, 103 Stat. 2422; Pub. L. 115–97, title I, §12001(b)(8)(B), Dec. 22, 2017, 131 Stat. 2093, related to special estimated tax payments.

EFFECTIVE DATE OF REPEAL

Pub. L. 115–97, title I, §13516(b), Dec. 22, 2017, 131 Stat. 2144, provided that: ''The amendments made by this section [repealing this section] shall apply to taxable years beginning after December 31, 2017.''

§ 848. Capitalization of certain policy acquisition expenses

(a) General rule

In the case of an insurance company—

(1) specified policy acquisition expenses for any taxable year shall be capitalized, and

(2) such expenses shall be allowed as a deduction ratably over the 180-month period beginning with the first month in the second half of such taxable year.

(b) 5-year amortization for first $5,000,000 of specified policy acquisition expenses

(1) In general

Paragraph (2) of subsection (a) shall be applied with respect to so much of the specified policy acquisition expenses of an insurance company for any taxable year as does not exceed $5,000,000 by substituting ''60-month'' for ''180-month''.

(2) Phase-out

If the specified policy acquisition expenses of an insurance company exceed $10,000,000 for any taxable year, the $5,000,000 amount under paragraph (1) shall be reduced (but not below zero) by the amount of such excess.

(3) Special rule for members of controlled group

In the case of any controlled group—

(A) all insurance companies which are members of such group shall be treated as 1 company for purposes of this subsection, and

(B) the amount to which paragraph (1) applies shall be allocated among such companies in such manner as the Secretary may prescribe.

For purposes of the preceding sentence, the term ''controlled group'' means any controlled group of corporations as defined in section 1563(a); except that subsections (a)(4) and (b)(2)(D) of section 1563 shall not apply, and subsection (b)(2)(C) of section 1563 shall not apply to the extent it excludes a foreign corporation to which section 842 applies.

(4) Exception for acquisition expenses attributable to certain reinsurance contracts

Paragraph (1) shall not apply to any specified policy acquisition expenses for any taxable year which are attributable to premiums or other consideration under any reinsurance contract.

(c) Specified policy acquisition expenses

For purposes of this section—

(1) In general

The term ''specified policy acquisition expenses'' means, with respect to any taxable year, so much of the general deductions for such taxable year as does not exceed the sum of—

(A) 2.09 percent of the net premiums for such taxable year on specified insurance contracts which are annuity contracts,

(B) 2.45 percent of the net premiums for such taxable year on specified insurance contracts which are group life insurance contracts, and

(C) 9.2 percent of the net premiums for such taxable year on specified insurance contracts not described in subparagraph (A) or (B).

(2) General deductions

The term ''general deductions'' means the deductions provided in part VI of subchapter B (sec. 161 and following, relating to itemized deductions) and in part I of subchapter D (sec. 401 and following, relating to pension, profit sharing, stock bonus plans, etc.).

(d) Net premiums

For purposes of this section—

(1) In general

The term ''net premiums'' means, with respect to any category of specified insurance contracts set forth in subsection (c)(1), the excess (if any) of—

(A) the gross amount of premiums and other consideration on such contracts, over

(B) return premiums on such contracts and premiums and other consideration incurred for reinsurance of such contracts.

The rules of section 803(b) shall apply for purposes of the preceding sentence.

(2) Amounts determined on accrual basis

In the case of an insurance company subject to tax under part II of this subchapter, all computations entering into determinations of net premiums for any taxable year shall be made in the manner required under section 811(a) for life insurance companies.

(3) Treatment of certain policyholder dividends and similar amounts

Net premiums shall be determined without regard to section 808(e) and without regard to other similar amounts treated as paid to, and returned by, the policyholder.

(4) Special rules for reinsurance

(A) Premiums and other consideration incurred for reinsurance shall be taken into account under paragraph (1)(B) only to the extent such premiums and other consideration are includible in the gross income of an insurance company taxable under this subchapter or are subject to tax under this chapter by reason of subpart F of part III of subchapter N.

(B) The Secretary shall prescribe such regulations as may be necessary to ensure that premiums and other consideration with respect to reinsurance are treated consistently by the ceding company and the reinsurer.

(e) Classification of contracts

For purposes of this section—

(1) Specified insurance contract

(A) In general

Except as otherwise provided in this paragraph, the term ''specified insurance contract'' means any life insurance, annuity, or noncancellable accident and health insurance contract (or any combination thereof).

(B) Exceptions

The term ''specified insurance contract'' shall not include—

(i) any pension plan contract (as defined in section 818(a)),

(ii) any flight insurance or similar contract,

(iii) any qualified foreign contract (as defined in section 807(e)(3) without regard to paragraph (5) of this subsection),

(iv) any contract which is an Archer MSA (as defined in section 220(d)), and

(v) any contract which is a health savings account (as defined in section 223(d)).

(2) Group life insurance contract

The term ''group life insurance contract'' means any life insurance contract—

(A) which covers a group of individuals defined by reference to employment relationship, membership in an organization, or similar factor,

(B) the premiums for which are determined on a group basis, and

(C) the proceeds of which are payable to (or for the benefit of) persons other than the employer of the insured, an organization to which the insured belongs, or other similar person.

(3) Treatment of annuity contracts combined with noncancellable accident and health insurance

Any annuity contract combined with noncancellable accident and health insurance

shall be treated as a noncancellable accident and health insurance contract and not as an annuity contract.

(4) Treatment of guaranteed renewable contracts

The rules of section 816(e) shall apply for purposes of this section.

(5) Treatment of reinsurance contract

A contract which reinsures another contract shall be treated in the same manner as the reinsured contract.

(6) Treatment of certain qualified long-term care insurance contract arrangements

An annuity or life insurance contract which includes a qualified long-term care insurance contract as a part of or a rider on such annuity or life insurance contract shall be treated as a specified insurance contract not described in subparagraph (A) or (B) of subsection (c)(1).

(f) Special rule where negative net premiums

(1) In general

If for any taxable year there is a negative capitalization amount with respect to any category of specified insurance contracts set forth in subsection (c)(1)—

(A) the amount otherwise required to be capitalized under this section for such taxable year with respect to any other category of specified insurance contracts shall be reduced (but not below zero) by such negative capitalization amount, and

(B) such negative capitalization amount (to the extent not taken into account under subparagraph (A))—

(i) shall reduce (but not below zero) the unamortized balance (as of the beginning of such taxable year) of the amounts previously capitalized under subsection (a) (beginning with the amount capitalized for the most recent taxable year), and

(ii) to the extent taken into account as such a reduction, shall be allowed as a deduction for such taxable year.

(2) Negative capitalization amount

For purposes of paragraph (1), the term ''negative capitalization amount'' means, with respect to any category of specified insurance contracts, the percentage (applicable under subsection (c)(1) to such category) of the amount (if any) by which—

(A) the amount determined under subparagraph (B) of subsection (d)(1) with respect to such category, exceeds

(B) the amount determined under subparagraph (A) of subsection (d)(1) with respect to such category.

(g) Treatment of certain ceding commissions

Nothing in any provision of law (other than this section or section 197) shall require the capitalization of any ceding commission incurred on or after September 30, 1990, under any contract which reinsures a specified insurance contract.

(h) Secretarial authority to adjust capitalization amounts

(1) In general

Except as provided in paragraph (2), the Secretary may provide that a type of insurance contract will be treated as a separate category for purposes of this section (and prescribe a percentage applicable to such category) if the Secretary determines that the deferral of acquisition expenses for such type of contract which would otherwise result under this section is substantially greater than the deferral of acquisition expenses which would have resulted if actual acquisition expenses (including indirect expenses) and the actual useful life for such type of contract had been used.

(2) Adjustment to other contracts

If the Secretary exercises his authority with respect to any type of contract under paragraph (1), the Secretary shall adjust the percentage which would otherwise have applied under subsection (c)(1) to the category which includes such type of contract so that the exercise of such authority does not result in a decrease in the amount of revenue received under this chapter by reason of this section for any fiscal year.

(Added Pub. L. 101–508, title XI, §11301(a), Nov. 5, 1990, 104 Stat. 1388–445; amended Pub. L. 103–66, title XIII, §13261(d), Aug. 10, 1993, 107 Stat. 539; Pub. L. 104–191, title III, §301(h), Aug. 21, 1996, 110 Stat. 2052; Pub. L. 106–554, §1(a)(7) [title II, §202(a)(5), (b)(10)], Dec. 21, 2000, 114 Stat. 2763, 2763A–628, 2763A–629; Pub. L. 108–173, title XII, §1201(h), Dec. 8, 2003, 117 Stat. 2479; Pub. L. 109–280, title VIII, §844(e), Aug. 17, 2006, 120 Stat. 1013; Pub. L. 113–295, div. A, title II, §221(a)(70), Dec. 19, 2014, 128 Stat. 4048; Pub. L. 115–97, title I, §§12001(b)(8)(C), 13517(b)(4), 13519(a), (b), Dec. 22, 2017, 131 Stat. 2093, 2147, 2148.)

AMENDMENTS

2017—Subsec. (a)(2). Pub. L. 115–97, §13519(a)(1), substituted ''180-month'' for ''120-month''.

Subsec. (b)(1). Pub. L. 115–97, §13519(b), substituted ''180-month'' for ''120-month''.

Subsec. (c)(1)(A). Pub. L. 115–97, §13519(a)(2), substituted ''2.09 percent'' for ''1.75 percent''.

Subsec. (c)(1)(B). Pub. L. 115–97, §13519(a)(3), which directed substitution of ''2.45 percent'' for ''2.05 percent'' in par. (2), was executed to par. (1)(B) to reflect the probable intent of Congress.

Subsec. (c)(1)(C). Pub. L. 115–97, §13519(a)(4), which directed substitution of ''9.2 percent'' for ''7.7 percent'' in par. (3), was executed to par. (1)(C) to reflect the probable intent of Congress. Subsec. (c) does not contain a par. (3).

Subsec. (e)(1)(B)(iii). Pub. L. 115–97, §13517(b)(4), substituted ''807(e)(3)'' for ''807(e)(4)''.

Subsec. (i). Pub. L. 115–97, §12001(b)(8)(C), struck out subsec. (i). Text read as follows: ''For purposes of determining adjusted current earnings under section 56(g), acquisition expenses with respect to contracts described in clause (iii) of subsection (e)(1)(B) shall be capitalized and amortized in accordance with the treatment generally required under generally accepted accounting principles as if this subsection applied to such contracts for all taxable years.''

2014—Subsec. (j). Pub. L. 113–295 struck out subsec. (j). Text read as follows: ''In the case of any taxable year which includes September 30, 1990, the amount taken into account as the net premiums (or negative capitalization amount) with respect to any category of specified insurance contracts shall be the amount which bears the same ratio to the amount which (but for this subsection) would be so taken into account as the number of days in such taxable year on or after September 30, 1990, bears to the total number of days in such taxable year.''

2006—Subsec. (e)(6). Pub. L. 109–280 added par. (6).

2003—Subsec. (e)(1)(B)(v). Pub. L. 108–173 added cl. (v).

2000—Subsec. (e)(1)(B)(iv). Pub. L. 106–554, §1(a)(7) [title II, §202(b)(10)], substituted ''an Archer MSA'' for ''a Archer MSA''.

Pub. L. 106–554, §1(a)(7) [title II, §202(a)(5)], substituted ''Archer MSA'' for ''medical savings account''.

1996—Subsec. (e)(1)(B)(iv). Pub. L. 104–191 added cl. (iv).

1993—Subsec. (g). Pub. L. 103–66 substituted ''this section or section 197'' for ''this section''.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 12001(b)(8)(C) of Pub. L. 115–97 applicable to taxable years beginning after Dec. 31, 2017, see section 12001(c) of Pub. L. 115–97, set out as a note under section 11 of this title.

Amendment by section 13517(b)(4) of Pub. L. 115–97 applicable to taxable years beginning after Dec. 31, 2017, with transition rule and transition relief, see section 13517(c) of Pub. L. 115–97, set out as a note under section 807 of this title.

Pub. L. 115–97, title I, §13519(c), Dec. 22, 2017, 131 Stat. 2148, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to net premiums for taxable years beginning after December 31, 2017.

''(2) TRANSITION RULE.—Specified policy acquisition expenses first required to be capitalized in a taxable year beginning before January 1, 2018, will continue to be allowed as a deduction ratably over the 120-month period beginning with the first month in the second half of such taxable year.''

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113–295, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 applicable to contracts issued after Dec. 31, 1996, but only with respect to taxable years beginning after Dec. 31, 2009, and to specified policy acquisition expenses determined for taxable years beginning after Dec. 31, 2009, see section 844(g)(1), (4) of Pub. L. 109–280, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–173 applicable to taxable years beginning after Dec. 31, 2003, see section 1201(k) of Pub. L. 108–173, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–191 applicable to taxable years beginning after Dec. 31, 1996, see section 301(j) of Pub. L. 104–191, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable, except as otherwise provided, with respect to property acquired after Aug. 10, 1993, see section 13261(g) of Pub. L. 103–66, set out as an Effective Date note under section 197 of this title.

EFFECTIVE DATE

Pub. L. 101–508, title XI, §11301(d)(1), Nov. 5, 1990, 104 Stat. 1388–449, provided that: ''The amendments made by subsections (a) and (c) [enacting this section] shall apply to taxable years ending on or after September 30, 1990. Any capitalization required by reason of such amendments shall not be treated as a change in method of accounting for purposes of the Internal Revenue Code of 1986.''

Subchapter M—Regulated Investment Companies and Real Estate Investment Trusts

AMENDMENTS

2004—Pub. L. 108–357, title VIII, §835(b)(12), Oct. 22, 2004, 118 Stat. 1594, struck out item for part V ''Financial asset securitization investment trusts''.

1996—Pub. L. 104–188, title I, §1621(c), Aug. 20, 1996, 110 Stat. 1867, added item for part V.

1988—Pub. L. 100–647, title I, §1018(u)(30), Nov. 10, 1988, 102 Stat. 3591, added item for part IV.

1978—Pub. L. 95–600, title III, §362(d)(8), Nov. 6, 1978, 92 Stat. 2852, added item for part III.

PART I—REGULATED INVESTMENT COMPANIES

AMENDMENTS

2009—Pub. L. 111–5, div. B, title I, §1541(b)(3), Feb. 17, 2009, 123 Stat. 362, added item 853A.

1980—Pub. L. 96–223, title IV, §404(b)(7), Apr. 2, 1980, 94 Stat. 307, inserted ''and taxable interest'' after ''dividends'' in item 854 for taxable years after Dec. 31, 1980, and before Jan. 1, 1982.

1960—Pub. L. 86–779, §10(b)(1), Sept. 14, 1960, 74 Stat. 1008, inserted ''and Real Estate Investment Trusts'' in subchapter M heading, part I and part II designations thereunder and part I designation preceding table of sections numbered 851 to 855.

§ 851. Definition of regulated investment company

(a) General rule

For purposes of this subtitle, the term ''regulated investment company'' means any domestic corporation—

(1) which, at all times during the taxable year—

(A) is registered under the Investment Company Act of 1940, as amended (15 U.S.C. 80a–1 to 80b–2) as a management company or unit investment trust, or

(B) has in effect an election under such Act to be treated as a business development company, or

(2) which is a common trust fund or similar fund excluded by section 3(c)(3) of such Act (15 U.S.C. 80a–3(c)) from the definition of ''investment company'' and is not included in the definition of ''common trust fund'' by section 584(a).

(b) Limitations

A corporation shall not be considered a regulated investment company for any taxable year unless—

(1) it files with its return for the taxable year an election to be a regulated investment company or has made such election for a previous taxable year;

(2) at least 90 percent of its gross income is derived from—

(A) dividends, interest, payments with respect to securities loans (as defined in section 512(a)(5)), and gains from the sale or other disposition of stock or securities (as defined in section 2(a)(36) of the Investment Company Act of 1940, as amended) or foreign currencies, or other income (including but not limited to gains from options, futures or forward contracts) derived with respect to its business of investing in such stock, securities, or currencies, and

(B) net income derived from an interest in a qualified publicly traded partnership (as defined in subsection (h)); and

(3) at the close of each quarter of the taxable year—

(A) at least 50 percent of the value of its total assets is represented by—

(i) cash and cash items (including receivables), Government securities and securities of other regulated investment companies, and

(ii) other securities for purposes of this calculation limited, except and to the extent provided in subsection (e), in respect of any one issuer to an amount not greater in value than 5 percent of the value of the total assets of the taxpayer and to not more than 10 percent of the outstanding voting securities of such issuer, and

(B) not more than 25 percent of the value of its total assets is invested in—

(i) the securities (other than Government securities or the securities of other regulated investment companies) of any one issuer,

(ii) the securities (other than the securities of other regulated investment companies) of two or more issuers which the taxpayer controls and which are determined, under regulations prescribed by the Secretary, to be engaged in the same or similar trades or businesses or related trades or businesses, or

(iii) the securities of one or more qualified publicly traded partnerships (as defined in subsection (h)).

For purposes of paragraph (2), there shall be treated as dividends amounts included in gross income under section 951(a)(1)(A) or 1293(a) for the taxable year to the extent that, under section 959(a)(1) or 1293(c) (as the case may be), there is a distribution out of the earnings and profits of the taxable year which are attributable to the amounts so included. For purposes of paragraph (2), the Secretary may by regulation exclude from qualifying income foreign currency gains which are not directly related to the company's principal business of investing in stock or securities (or options and futures with respect to stock or securities). For purposes of paragraph (2), amounts excludable from gross income under section 103(a) shall be treated as included in gross income. Income derived from a partnership (other than a qualified publicly traded partnership as defined in subsection (h)) or trust shall be treated as described in paragraph (2) only to the extent such income is attributable to items of income of the partnership or trust (as the case may be) which would be described in paragraph (2) if realized by the regulated investment company in the same manner as realized by the partnership or trust.

(c) Rules applicable to subsection (b)(3)

For purposes of subsection (b)(3) and this subsection—

(1) In ascertaining the value of the taxpayer's investment in the securities of an issuer, for the purposes of subparagraph (B), there shall be included its proper proportion of the investment of any other corporation, a member of a controlled group, in the securities of such issuer, as determined under regulations prescribed by the Secretary.

(2) The term ''controls'' means the ownership in a corporation of 20 percent or more of the total combined voting power of all classes of stock entitled to vote.

(3) The term ''controlled group'' means one or more chains of corporations connected through stock ownership with the taxpayer if—

(A) 20 percent or more of the total combined voting power of all classes of stock entitled to vote of each of the corporations (except the taxpayer) is owned directly by one or more of the other corporations, and

(B) the taxpayer owns directly 20 percent or more of the total combined voting power of all classes of stock entitled to vote, of at least one of the other corporations.

(4) The term ''value'' means, with respect to securities (other than those of majority-owned subsidiaries) for which market quotations are readily available, the market value of such securities; and with respect to other securities and assets, fair value as determined in good faith by the board of directors, except that in the case of securities of majority-owned subsidiaries which are investment companies such fair value shall not exceed market value or asset value, whichever is higher.

(5) The term ''outstanding voting securities of such issuer'' shall include the equity securities of a qualified publicly traded partnership (as defined in subsection (h)).

(6) All other terms shall have the same meaning as when used in the Investment Company Act of 1940, as amended.

(d) Determination of status

(1) In general

A corporation which meets the requirements of subsections (b)(3) and (c) at the close of any quarter shall not lose its status as a regulated investment company because of a discrepancy during a subsequent quarter between the value of its various investments and such requirements unless such discrepancy exists immediately after the acquisition of any security or other property and is wholly or partly the result of such acquisition. A corporation which does not meet such requirements at the close of any quarter by reason of a discrepancy ex-

isting immediately after the acquisition of any security or other property which is wholly or partly the result of such acquisition during such quarter shall not lose its status for such quarter as a regulated investment company if such discrepancy is eliminated within 30 days after the close of such quarter and in such cases it shall be considered to have met such requirements at the close of such quarter for purposes of applying the preceding sentence.

(2) Special rules regarding failure to satisfy requirements

If paragraph (1) does not preserve a corporation's status as a regulated investment company for any particular quarter—

(A) In general

A corporation that fails to meet the requirements of subsection (b)(3) (other than a failure described in subparagraph (B)(i) of this paragraph) for such quarter shall nevertheless be considered to have satisfied the requirements of such subsection for such quarter if—

(i) following the corporation's identification of the failure to satisfy the requirements of such subsection for such quarter, a description of each asset that causes the corporation to fail to satisfy the requirements of such subsection at the close of such quarter is set forth in a schedule for such quarter filed in the manner provided by the Secretary,

(ii) the failure to meet the requirements of such subsection for such quarter is due to reasonable cause and not due to willful neglect, and

(iii)(I) the corporation disposes of the assets set forth on the schedule specified in clause (i) within 6 months after the last day of the quarter in which the corporation's identification of the failure to satisfy the requirements of such subsection occurred or such other time period prescribed by the Secretary and in the manner prescribed by the Secretary, or

(II) the requirements of such subsection are otherwise met within the time period specified in subclause (I).

(B) Rule for certain de minimis failures

A corporation that fails to meet the requirements of subsection (b)(3) for such quarter shall nevertheless be considered to have satisfied the requirements of such subsection for such quarter if—

(i) such failure is due to the ownership of assets the total value of which does not exceed the lesser of—

(I) 1 percent of the total value of the corporation's assets at the end of the quarter for which such measurement is done, or

(II) $10,000,000, and

(ii)(I) the corporation, following the identification of such failure, disposes of assets in order to meet the requirements of such subsection within 6 months after the last day of the quarter in which the corporation's identification of the failure to satisfy the requirements of such subsection occurred or such other time period prescribed by the Secretary and in the manner prescribed by the Secretary, or

(II) the requirements of such subsection are otherwise met within the time period specified in subclause (I).

(C) Tax

(i) Tax imposed

If subparagraph (A) applies to a corporation for any quarter, there is hereby imposed on such corporation a tax in an amount equal to the greater of—

(I) $50,000, or

(II) the amount determined (pursuant to regulations promulgated by the Secretary) by multiplying the net income generated by the assets described in the schedule specified in subparagraph (A)(i) for the period specified in clause (ii) by the highest rate of tax specified in section 11.

(ii) Period

For purposes of clause (i)(II), the period described in this clause is the period beginning on the first date that the failure to satisfy the requirements of subsection (b)(3) occurs as a result of the ownership of such assets and ending on the earlier of the date on which the corporation disposes of such assets or the end of the first quarter when there is no longer a failure to satisfy such subsection.

(iii) Administrative provisions

For purposes of subtitle F, a tax imposed by this subparagraph shall be treated as an excise tax with respect to which the deficiency procedures of such subtitle apply.

(e) Investment companies furnishing capital to development corporations

(1) General rule

If the Securities and Exchange Commission determines, in accordance with regulations issued by it, and certifies to the Secretary not earlier than 60 days prior to the close of the taxable year of a management company or a business development company described in subsection (a)(1), that such investment company is principally engaged in the furnishing of capital to other corporations which are principally engaged in the development or exploitation of inventions, technological improvements, new processes, or products not previously generally available, such investment company may, in the computation of 50 percent of the value of its assets under subparagraph (A) of subsection (b)(3) for any quarter of such taxable year, include the value of any securities of an issuer, whether or not the investment company owns more than 10 percent of the outstanding voting securities of such issuer, the basis of which, when added to the basis of the investment company for securities of such issuer previously acquired, did not exceed 5 percent of the value of the total assets of the investment company at the time of the subsequent acquisition of securities. The preceding sentence shall not apply to the securities of an issuer if the investment com-

pany has continuously held any security of such issuer (or of any predecessor company of such issuer as determined under regulations prescribed by the Secretary) for 10 or more years preceding such quarter of such taxable year.

(2) Limitation

The provisions of this subsection shall not apply at the close of any quarter of a taxable year to an investment company if at the close of such quarter more than 25 percent of the value of its total assets is represented by securities of issuers with respect to each of which the investment company holds more than 10 percent of the outstanding voting securities of such issuer and in respect of each of which or any predecessor thereof the investment company has continuously held any security for 10 or more years preceding such quarter unless the value of its total assets so represented is reduced to 25 percent or less within 30 days after the close of such quarter.

(3) Determination of status

For purposes of this subsection, unless the Securities and Exchange Commission determines otherwise, a corporation shall be considered to be principally engaged in the development or exploitation of inventions, technological improvements, new processes, or products not previously generally available, for at least 10 years after the date of the first acquisition of any security in such corporation or any predecessor thereof by such investment company if at the date of such acquisition the corporation or its predecessor was principally so engaged, and an investment company shall be considered at any date to be furnishing capital to any company whose securities it holds if within 10 years prior to such date it has acquired any of such securities, or any securities surrendered in exchange therefor, from such other company or predecessor thereof. For purposes of the certification under this subsection, the Securities and Exchange Commission shall have authority to issue such rules, regulations and orders, and to conduct such investigations and hearings, either public or private, as it may deem appropriate.

(4) Definitions

The terms used in this subsection shall have the same meaning as in subsections (b)(3) and (c) of this section.

(f) Certain unit investment trusts

For purposes of this title—

(1) A unit investment trust (as defined in the Investment Company Act of 1940)—

(A) which is registered under such Act and issues periodic payment plan certificates (as defined in such Act) in one or more series,

(B) substantially all of the assets of which, as to all such series, consist of (i) securities issued by a single management company (as defined in such Act) and securities acquired pursuant to subparagraph (C), or (ii) securities issued by a single other corporation, and

(C) which has no power to invest in any other securities except securities issued by a single other management company, when permitted by such Act or the rules and regulations of the Securities and Exchange Commission,

shall not be treated as a person.

(2) In the case of a unit investment trust described in paragraph (1)—

(A) each holder of an interest in such trust shall, to the extent of such interest, be treated as owning a proportionate share of the assets of such trust;

(B) the basis of the assets of such trust which are treated under subparagraph (A) as being owned by a holder of an interest in such trust shall be the same as the basis of his interest in such trust; and

(C) in determining the period for which the holder of an interest in such trust has held the assets of the trust which are treated under subparagraph (A) as being owned by him, there shall be included the period for which such holder has held his interest in such trust.

This subsection shall not apply in the case of a unit investment trust which is a segregated asset account under the insurance laws or regulations of a State.

(g) Special rule for series funds

(1) In general

In the case of a regulated investment company (within the meaning of subsection (a)) having more than one fund, each fund of such regulated investment company shall be treated as a separate corporation for purposes of this title (except with respect to the definitional requirement of subsection (a)).

(2) Fund defined

For purposes of paragraph (1) the term ''fund'' means a segregated portfolio of assets, the beneficial interests in which are owned by the holders of a class or series of stock of the regulated investment company that is preferred over all other classes or series in respect of such portfolio of assets.

(h) Qualified publicly traded partnership

For purposes of this section, the term ''qualified publicly traded partnership'' means a publicly traded partnership described in section 7704(b) other than a partnership which would satisfy the gross income requirements of section 7704(c)(2) if qualifying income included only income described in subsection (b)(2)(A).

(i) Failure to satisfy gross income test

(1) Disclosure requirement

A corporation that fails to meet the requirement of paragraph (2) of subsection (b) for any taxable year shall nevertheless be considered to have satisfied the requirement of such paragraph for such taxable year if—

(A) following the corporation's identification of the failure to meet such requirement for such taxable year, a description of each item of its gross income described in such paragraph is set forth in a schedule for such taxable year filed in the manner provided by the Secretary, and

(B) the failure to meet such requirement is due to reasonable cause and not due to willful neglect.

(2) Imposition of tax on failures

If paragraph (1) applies to a regulated investment company for any taxable year, there is hereby imposed on such company a tax in an amount equal to the excess of—

(A) the gross income of such company which is not derived from sources referred to in subsection (b)(2), over

(B) 1/9 of the gross income of such company which is derived from such sources.

(Aug. 16, 1954, ch. 736, 68A Stat. 268; Pub. L. 85–866, title I, § 38, Sept. 2, 1958, 72 Stat. 1638; Pub. L. 91–172, title IX, § 908(a), Dec. 30, 1969, 83 Stat. 717; Pub. L. 94–12, title VI, § 602(a)(2), Mar. 29, 1975, 89 Stat. 58; Pub. L. 94–455, title XIX, §§ 1901(a)(109), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1783, 1834; Pub. L. 95–345, § 2(a)(3), Aug. 15, 1978, 92 Stat. 481; Pub. L. 95–600, title VII, § 701(s)(1), Nov. 6, 1978, 92 Stat. 2911; Pub. L. 97–424, title V, § 547(b)(1), Jan. 6, 1983, 96 Stat. 2199; Pub. L. 98–369, div. A, title X, § 1071(a)(1), July 18, 1984, 98 Stat. 1049; Pub. L. 99–514, title VI, §§ 652(a), (b), 653(a)–(c), 654(a), title XII, § 1235(f)(3), Oct. 22, 1986, 100 Stat. 2297, 2298, 2575; Pub. L. 100–647, title I, § 1006(m), (n)(1), (2)(A), (B), (4), (5), (*o*), Nov. 10, 1988, 102 Stat. 3415, 3416; Pub. L. 105–34, title XII, § 1271(a)–(b)(7), Aug. 5, 1997, 111 Stat. 1036, 1037; Pub. L. 108–357, title III, § 331(a)–(d), (f), Oct. 22, 2004, 118 Stat. 1476; Pub. L. 111–325, title II, § 201(a), (b), Dec. 22, 2010, 124 Stat. 3539, 3540; Pub. L. 113–295, div. A, title II, § 205(e), Dec. 19, 2014, 128 Stat. 4027; Pub. L. 115–97, title I, § 14212(b)(1)(B), Dec. 22, 2017, 131 Stat. 2217.)

REFERENCES IN TEXT

The Investment Company Act of 1940, as amended, referred to in subsecs. (a)(1), (b)(2)(A), (c)(6), and (f)(1), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§ 80a–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. Section 2(a)(36) of the Act is classified to section 80a–2(a)(36) of Title 15. For complete classification of this Act to the Code, see section 80a–51 of Title 15 and Tables.

AMENDMENTS

2017—Subsec. (b). Pub. L. 115–97 substituted ''section 951(a)(1)(A)'' for ''section 951(a)(1)(A)(i)'' in concluding provisions.

2014—Subsec. (d)(2)(A). Pub. L. 113–295 inserted ''of this paragraph'' after ''subparagraph (B)(i)'' in introductory provisions.

2010—Subsec. (d). Pub. L. 111–325, § 201(a), designated existing provisions as par. (1), inserted heading, and added par. (2).

Subsec. (i). Pub. L. 111–325, § 201(b), added subsec. (i).

2004—Subsec. (b). Pub. L. 108–357, § 331(b), inserted ''(other than a qualified publicly traded partnership as defined in subsection (h))'' after ''derived from a partnership'' in concluding provisions.

Subsec. (b)(2). Pub. L. 108–357, § 331(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''at least 90 percent of its gross income is derived from dividends, interest, payments with respect to securities loans (as defined in section 512(a)(5)), and gains from the sale or other disposition of stock or securities (as defined in section 2(a)(36) of the Investment Company Act of 1940, as amended) or foreign currencies, or other income (including but not limited to gains from options, futures, or forward contracts) derived with respect to its business of investing in such stock, securities, or currencies; and''.

Subsec. (b)(3)(B). Pub. L. 108–357, § 331(f), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''not more than 25 percent of the value of its total assets is invested in the securities (other than Government securities or the securities of other regulated investment companies) of any one issuer, or of two or more issuers which the taxpayer controls and which are determined, under regulations prescribed by the Secretary, to be engaged in the same or similar trades or businesses or related trades or businesses.''

Subsec. (c)(5), (6). Pub. L. 108–357, § 331(c), added par. (5) and redesignated former par. (5) as (6).

Subsec. (h). Pub. L. 108–357, § 331(d), added subsec. (h).

1997—Subsec. (b). Pub. L. 105–34, § 1271(b)(1), in concluding provisions, substituted ''paragraph (2), amounts excludable'' for ''paragraphs (2) and (3), amounts excludable'' and struck out ''In the case of the taxable year in which a regulated investment company is completely liquidated, there shall not be taken into account under paragraph (3) any gain from the sale, exchange, or distribution of any property after the adoption of the plan of complete liquidation.'' at end.

Subsec. (b)(2). Pub. L. 105–34, § 1271(a), inserted ''and'' at end.

Subsec. (b)(3), (4). Pub. L. 105–34, § 1271(a), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: ''less than 30 percent of its gross income is derived from the sale or disposition of any of the following which was held for less than 3 months:

''(A) stock or securities (as defined in section 2(a)(36) of the Investment Company Act of 1940, as amended),

''(B) options, futures, or forward contracts (other than options, futures, or forward contracts on foreign currencies), or

''(C) foreign currencies (or options, futures, or forward contracts on foreign currencies) but only if such currencies (or options, futures, or forward contracts) are not directly related to the company's principal business of investing in stock or securities (or options and futures with respect to stocks or securities), and''.

Subsec. (c). Pub. L. 105–34, § 1271(b)(2), substituted ''subsection (b)(3)'' for ''subsection (b)(4)'' in heading and introductory provisions.

Subsec. (d). Pub. L. 105–34, § 1271(b)(3), substituted ''subsections (b)(3)'' for ''subsections (b)(4)''.

Subsec. (e)(1). Pub. L. 105–34, § 1271(b)(4), substituted ''subsection (b)(3)'' for ''subsection (b)(4)''.

Subsec. (e)(4). Pub. L. 105–34, § 1271(b)(5), substituted ''subsections (b)(3)'' for ''subsections (b)(4)''.

Subsec. (g). Pub. L. 105–34, § 1271(b)(6), redesignated subsec. (h) as (g) and struck out former subsec. (g) which provided for treatment of certain hedging transactions.

Subsec. (g)(3). Pub. L. 105–34, § 1271(b)(7), struck out par. (3) which provided special rule for abnormal redemptions.

Subsec. (h). Pub. L. 105–34, § 1271(b)(6), redesignated subsec. (h) as (g).

1988—Subsec. (a)(1). Pub. L. 100–647, § 1006(m)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''which, at all times during the taxable year, is registered under the Investment Company Act of 1940, as amended (15 U.S.C. 80a–1 to 80b–2), as a management company, business development company, or unit investment trust, or''.

Subsec. (b). Pub. L. 100–647, § 1006(n)(1), (5), inserted at end ''Income derived from a partnership or trust shall be treated as described in paragraph (2) only to the extent such income is attributable to items of income of the partnership or trust (as the case may be) which would be described in paragraph (2) if realized by the regulated investment company in the same manner as realized by the partnership or trust. In the case of the taxable year in which a regulated investment company is completely liquidated, there shall not be taken into account under paragraph (3) any gain from the sale, exchange, or distribution of any property after the adoption of the plan of complete liquidation.''

Pub. L. 100–647, § 1006(n)(2)(B), substituted ''which are not directly related'' for ''which are not ancillary'' in last sentence.

Subsec. (b)(3). Pub. L. 100–647, §1006(n)(2)(A), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''less than 30 percent of its gross income is derived from the sale or other disposition of stock or securities held for less than 3 months; and''.

Subsec. (e)(1). Pub. L. 100–647, §1006(m)(2), substituted ''a management company or a business development company described in subsection (a)(1)'' for ''a registered management company or registered business development company''.

Subsec. (g)(2)(A)(i). Pub. L. 100–647, §1006(n)(4), substituted ''contractual obligation'' for ''contractual option''.

Subsec. (h). Pub. L. 100–647, §1006(*o*)(1), redesignated subsec. (q) as (h).

Subsec. (h)(3). Pub. L. 100–647, §1006(*o*)(2), added par. (3).

Subsec. (q). Pub. L. 100–647, §1006(*o*)(1), redesignated subsec. (q) as (h).

1986—Subsec. (a)(1). Pub. L. 99–514, §652(a), substituted ''as a management company, business development company, or unit investment trust'' for ''either as a management company or as a unit investment trust''.

Subsec. (b). Pub. L. 99–514, §1235(f)(3), inserted ''or 1293(a)'' and ''or 1293(c) (as the case may be)'', in concluding provision.

Pub. L. 99–514, §653(c), inserted before last sentence ''For purposes of paragraph (2), the Secretary may by regulation exclude from qualifying income foreign currency gains which are not ancillary to the company's principal business of investing in stock or securities (or options and futures with respect to stock or securities).''

Subsec. (b)(2). Pub. L. 99–514, §653(b), inserted ''(as defined in section 2(a)(36) of the Investment Company Act of 1940, as amended) or foreign currencies, or other income (including but not limited to gains from options, futures, or forward contracts) derived with respect to its business of investing in such stock, securities, or currencies''.

Subsec. (e)(1). Pub. L. 99–514, §652(b), substituted ''registered management company or registered business development company'' for ''registered management company''.

Subsec. (g). Pub. L. 99–514, §653(a), added subsec. (g).

Subsec. (q). Pub. L. 99–514, §654(a), added subsec. (q).

1984—Subsec. (a). Pub. L. 98–369 struck out ''(other than a personal holding company as defined in section 542)'' after ''any domestic corporation'' in introductory provisions.

1983—Subsec. (b). Pub. L. 97–424 substituted ''section 103(a)'' for ''section 103(a)(1)'' after ''gross income under''.

1978—Subsec. (b). Pub. L. 95–600 required that for purposes of pars. (2) and (3), amounts excludable from gross income under section 103(a)(1) shall be treated as included in gross income.

Subsec. (b)(2). Pub. L. 95–345 inserted provision relating to payments with respect to securities loans.

1976—Subsec. (a)(1). Pub. L. 94–455, §1901(a)(109)(A), struck out ''54 Stat. 789;'' before ''15 U.S.C. 80a–1 to 80b–2)''.

Subsec. (b)(1), (4)(B). Pub. L. 94–455, §1901(a)(109)(B), struck out ''which began after December 31, 1941'' after ''previous taxable year'' in par. (1), and ''or his delegate'' after ''Secretary'' in par. (4)(B).

Subsecs. (c), (d). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' wherever appearing.

1975—Subsec. (b). Pub. L. 94–12 inserted provisions directing that, for purposes of par. (2), there shall be treated as dividends amounts included in gross income under section 951(a)(1)(A)(i) for the taxable year to the extent that, under section 959(a)(1), there is a distribution out of earnings and profits of the taxable year which are attributable to the amounts so included.

1969—Subsec. (f). Pub. L. 91–172 added subsec. (f).

1958—Subsec. (e)(1). Pub. L. 85–866, §38(a), substituted ''not earlier than 60 days'' for ''not less than 60 days'' in first sentence.

Subsec. (e)(2). Pub. L. 85–866, §38(b), substituted ''issuer'' for ''issues''.

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–97, title I, §14212(c), Dec. 22, 2017, 131 Stat. 2217, provided that: ''The amendments made by this section [amending this section and sections 951, 952, 953, 964, and 970 of this title and repealing section 955 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 2017, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end.''

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–295 effective as if included in the provision of the Regulated Investment Company Modernization Act of 2010, Pub. L. 111–325, to which such amendment relates, with savings provision in certain cases of an election by a regulated investment company under section 852(b)(8) of this title, see section 205(f) of Pub. L. 113–295, set out as a note under section 852 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–325, title II, §201(d), Dec. 22, 2010, 124 Stat. 3541, provided that: ''The amendments made by this section [amending this section and section 852 of this title] shall apply to taxable years with respect to which the due date (determined with regard to any extensions) of the return of tax for such taxable year is after the date of the enactment of this Act [Dec. 22, 2010].''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years beginning after Oct. 22, 2004, see section 331(h) of Pub. L. 108–357, set out as a note under section 469 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to taxable years beginning after Aug. 5, 1997, see section 1271(c) of Pub. L. 105–34, set out as a note under section 817 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1006(n)(2)(C), Nov. 10, 1988, 102 Stat. 3415, provided that: ''Subparagraph (C) of section 851(b)(3) of the 1986 Code (as amended by subparagraph (A)), and the amendment made by subparagraph (B) [amending this section], shall apply to taxable years beginning after the date of the enactment of this Act [Nov. 10, 1988].''

Amendment by section 1006(m), (n)(1), (2)(A), (4), (5), (*o*) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title VI, §652(c), Oct. 22, 1986, 100 Stat. 2297, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1986.''

Pub. L. 99–514, title VI, §653(d), Oct. 22, 1986, 100 Stat. 2298, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 22, 1986].''

Pub. L. 99–514, title VI, §654(b), Oct. 22, 1986, 100 Stat. 2298, provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 22, 1986].

''(2) TREATMENT OF CERTAIN EXISTING SERIES FUNDS.—In the case of a regulated investment company which has more than one fund on the date of the enactment

of this act, and has before such date been treated for Federal income tax purposes as a single corporation—

''(A) the amendment made by subsection (a), and the resulting treatment of each fund as a separate corporation, shall not give rise to the realization or recognition of income or loss by such regulated investment company, its funds, or its shareholders, and

''(B) the tax attributes of such regulated investment company shall be appropriately allocated among its funds.''

Amendment by section 1235(f)(3) of Pub. L. 99–514 applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, see section 1235(h) of Pub. L. 99–514, set out as an Effective Date note under section 1291 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1982, with certain exceptions, see section 1071(a)(5) of Pub. L. 98–369, set out as a note under section 852 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title VII, § 701(s)(3), Nov. 6, 1978, 92 Stat. 2911, provided that: ''The amendments made by this section [amending this section and section 852 of this title] shall apply to taxable years beginning after December 31, 1975.''

Amendment by Pub. L. 95–345 applicable with respect to amounts received after Dec. 31, 1976, as payments with respect to securities loans (as defined in section 512(a)(5) of this title), and transfers of securities, under agreements described in section 1058 of this title, occurring after such date, see section 2(e) of Pub. L. 95–345, set out as a note under section 509 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(109) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–12 applicable to taxable years of foreign corporations beginning after Dec. 31, 1975, and to taxable years of United States shareholders (within the meaning of section 951(b) of this title) within which or with which such taxable years of such foreign corporations end, see section 602(f) of Pub. L. 94–12, set out as an Effective Date note under section 954 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title IX, § 908(b), Dec. 30, 1969, 83 Stat. 718, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years of unit investment trusts ending after December 31, 1968, and to taxable years of holders of interests in such trusts ending with or within such taxable years of such trusts. The enactment of this section shall not be construed to result in the realization of gain or loss by any unit investment trust or by any holder of an interest in a unit investment trust.''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

§ 852. Taxation of regulated investment companies and their shareholders

(a) Requirements applicable to regulated investment companies

The provisions of this part (other than subsection (c) of this section) shall not be applicable to a regulated investment company for a taxable year unless—

(1) the deduction for dividends paid during the taxable year (as defined in section 561, but without regard to capital gain dividends) equals or exceeds the sum of—

(A) 90 percent of its investment company taxable income for the taxable year determined without regard to subsection (b)(2)(D); and

(B) 90 percent of the excess of (i) its interest income excludable from gross income under section 103(a) over (ii) its deductions disallowed under sections 265, 171(a)(2), and

(2) either—

(A) the provisions of this part applied to the investment company for all taxable years ending on or after November 8, 1983, or

(B) as of the close of the taxable year, the investment company has no earnings and profits accumulated in any taxable year to which the provisions of this part (or the corresponding provisions of prior law) did not apply to it.

The Secretary may waive the requirements of paragraph (1) for any taxable year if the regulated investment company establishes to the satisfaction of the Secretary that it was unable to meet such requirements by reason of distributions previously made to meet the requirements of section 4982.

(b) Method of taxation of companies and shareholders

(1) Imposition of tax on regulated investment companies

There is hereby imposed for each taxable year upon the investment company taxable income of every regulated investment company a tax computed as provided in section 11, as though the investment company taxable income were the taxable income referred to in section 11.

(2) Investment company taxable income

The investment company taxable income shall be the taxable income of the regulated investment company adjusted as follows:

(A) There shall be excluded the amount of the net capital gain, if any.

(B) The net operating loss deduction provided in section 172 shall not be allowed.

(C) The deductions for corporations provided in part VIII (except section 248) in subchapter B (section 241 and following, relating to the deduction for dividends received, etc.) shall not be allowed.

(D) the[1] deduction for dividends paid (as defined in section 561) shall be allowed, but shall be computed without regard to capital gain dividends and exempt-interest dividends.

(E) The taxable income shall be computed without regard to section 443(b) (relating to computation of tax on change of annual accounting period).

(F) The taxable income shall be computed without regard to section 454(b) (relating to short-term obligations issued on a discount basis) if the company so elects in a manner prescribed by the Secretary.

[1] So in original. Probably should be capitalized.

(G) There shall be deducted an amount equal to the tax imposed by subsections (d)(2) and (i) of section 851 for the taxable year.

(3) Capital gains

(A) Imposition of tax

There is hereby imposed for each taxable year in the case of every regulated investment company a tax, determined as provided in section 11(b), on the excess, if any, of the net capital gain over the deduction for dividends paid (as defined in section 561) determined with reference to capital gain dividends only.

(B) Treatment of capital gain dividends by shareholders

A capital gain dividend shall be treated by the shareholders as a gain from the sale or exchange of a capital asset held for more than 1 year.

(C) Definition of capital gain dividend

For purposes of this part—

(i) In general

Except as provided in clause (ii), a capital gain dividend is any dividend, or part thereof, which is reported by the company as a capital gain dividend in written statements furnished to its shareholders.

(ii) Excess reported amounts

If the aggregate reported amount with respect to the company for any taxable year exceeds the net capital gain of the company for such taxable year, a capital gain dividend is the excess of—

(I) the reported capital gain dividend amount, over

(II) the excess reported amount which is allocable to such reported capital gain dividend amount.

(iii) Allocation of excess reported amount

(I) In general

Except as provided in subclause (II), the excess reported amount (if any) which is allocable to the reported capital gain dividend amount is that portion of the excess reported amount which bears the same ratio to the excess reported amount as the reported capital gain dividend amount bears to the aggregate reported amount.

(II) Special rule for noncalendar year taxpayers

In the case of any taxable year which does not begin and end in the same calendar year, if the post-December reported amount equals or exceeds the excess reported amount for such taxable year, subclause (I) shall be applied by substituting ''post-December reported amount'' for ''aggregate reported amount'' and no excess reported amount shall be allocated to any dividend paid on or before December 31 of such taxable year.

(iv) Definitions

For purposes of this subparagraph—

(I) Reported capital gain dividend amount

The term ''reported capital gain dividend amount'' means the amount reported to its shareholders under clause (i) as a capital gain dividend.

(II) Excess reported amount

The term ''excess reported amount'' means the excess of the aggregate reported amount over the net capital gain of the company for the taxable year.

(III) Aggregate reported amount

The term ''aggregate reported amount'' means the aggregate amount of dividends reported by the company under clause (i) as capital gain dividends for the taxable year (including capital gain dividends paid after the close of the taxable year described in section 855).

(IV) Post-December reported amount

The term ''post-December reported amount'' means the aggregate reported amount determined by taking into account only dividends paid after December 31 of the taxable year.

(v) Adjustment for determinations

If there is an increase in the excess described in subparagraph (A) for the taxable year which results from a determination (as defined in section 860(e)), the company may, subject to the limitations of this subparagraph, increase the amount of capital gain dividends reported under clause (i).

(vi) Special rule for losses late in the calendar year

For special rule for certain losses after October 31, see paragraph (8).

(D) Treatment by shareholders of undistributed capital gains

(i) Every shareholder of a regulated investment company at the close of the company's taxable year shall include, in computing his long-term capital gains in his return for his taxable year in which the last day of the company's taxable year falls, such amount as the company shall designate in respect of such shares in a written notice mailed to its shareholders at any time prior to the expiration of 60 days after close of its taxable year, but the amount so includible by any shareholder shall not exceed that part of the amount subjected to tax in subparagraph (A) which he would have received if all of such amount had been distributed as capital gain dividends by the company to the holders of such shares at the close of its taxable year.

(ii) For purposes of this title, every such shareholder shall be deemed to have paid, for his taxable year under clause (i), the tax imposed by subparagraph (A) on the amounts required by this subparagraph to be included in respect of such shares in computing his long-term capital gains for that year; and such shareholder shall be allowed credit or refund, as the case may be, for the tax so deemed to have been paid by him.

(iii) The adjusted basis of such shares in the hands of the shareholder shall be in-

creased, with respect to the amounts required by this subparagraph to be included in computing his long-term capital gains, by the difference between the amount of such includible gains and the tax deemed paid by such shareholder in respect of such shares under clause (ii).

(iv) In the event of such designation the tax imposed by subparagraph (A) shall be paid by the regulated investment company within 30 days after close of its taxable year.

(v) The earnings and profits of such regulated investment company, and the earnings and profits of any such shareholder which is a corporation, shall be appropriately adjusted in accordance with regulations prescribed by the Secretary.

(E) Certain distributions

In the case of a distribution to which section 897 does not apply by reason of the second sentence of section 897(h)(1), the amount of such distribution which would be included in computing long-term capital gains for the shareholder under subparagraph (B) or (D) (without regard to this subparagraph)—

(i) shall not be included in computing such shareholder's long-term capital gains, and

(ii) shall be included in such shareholder's gross income as a dividend from the regulated investment company.

(4) Loss on sale or exchange of stock held 6 months or less

(A) Loss attributable to capital gain dividend

If—

(i) subparagraph (B) or (D) of paragraph (3) provides that any amount with respect to any share is to be treated as long-term capital gain, and

(ii) such share is held by the taxpayer for 6 months or less,

then any loss (to the extent not disallowed under subparagraph (B)) on the sale or exchange of such share shall, to the extent of the amount described in clause (i), be treated as a long-term capital loss.

(B) Loss attributable to exempt-interest dividend

If—

(i) a shareholder of a regulated investment company receives an exempt-interest dividend with respect to any share, and

(ii) such share is held by the taxpayer for 6 months or less,

then any loss on the sale or exchange of such share shall, to the extent of the amount of such exempt-interest dividend, be disallowed.

(C) Determination of holding periods

For purposes of this paragraph, in determining the period for which the taxpayer has held any share of stock—

(i) the rules of paragraphs (3) and (4) of section 246(c) shall apply, and

(ii) there shall not be taken into account any day which is more than 6 months after the date on which such share becomes ex-dividend.

(D) Losses incurred under a periodic liquidation plan

To the extent provided in regulations, subparagraphs (A) and (B) shall not apply to losses incurred on the sale or exchange of shares of stock in a regulated investment company pursuant to a plan which provides for the periodic liquidation of such shares.

(E) Exception to holding period requirement for certain regularly declared exempt-interest dividends

(i) Daily dividend companies

Except as otherwise provided by regulations, subparagraph (B) shall not apply with respect to a regular dividend paid by a regulated investment company which declares exempt-interest dividends on a daily basis in an amount equal to at least 90 percent of its net tax-exempt interest and distributes such dividends on a monthly or more frequent basis.

(ii) Authority to shorten required holding period with respect to other companies

In the case of a regulated investment company (other than a company described in clause (i)) which regularly distributes at least 90 percent of its net tax-exempt interest, the Secretary may by regulations prescribe that subparagraph (B) (and subparagraph (C) to the extent it relates to subparagraph (B)) shall be applied on the basis of a holding period requirement shorter than 6 months; except that such shorter holding period requirement shall not be shorter than the greater of 31 days or the period between regular distributions of exempt-interest dividends.

(5) Exempt-interest dividends

If, at the close of each quarter of its taxable year, at least 50 percent of the value (as defined in section 851(c)(4)) of the total assets of the regulated investment company consists of obligations described in section 103(a), such company shall be qualified to pay exempt-interest dividends, as defined herein, to its shareholders.

(A) Definition of exempt-interest dividend

(i) In general

Except as provided in clause (ii), an exempt-interest dividend is any dividend or part thereof (other than a capital gain dividend) paid by a regulated investment company and reported by the company as an exempt-interest dividend in written statements furnished to its shareholders.

(ii) Excess reported amounts

If the aggregate reported amount with respect to the company for any taxable year exceeds the exempt interest of the company for such taxable year, an exempt-interest dividend is the excess of—

(I) the reported exempt-interest dividend amount, over

(II) the excess reported amount which is allocable to such reported exempt-interest dividend amount.

(iii) Allocation of excess reported amount

(I) In general

Except as provided in subclause (II), the excess reported amount (if any) which is allocable to the reported exempt-interest dividend amount is that portion of the excess reported amount which bears the same ratio to the excess reported amount as the reported exempt-interest dividend amount bears to the aggregate reported amount.

(II) Special rule for noncalendar year taxpayers

In the case of any taxable year which does not begin and end in the same calendar year, if the post-December reported amount equals or exceeds the excess reported amount for such taxable year, subclause (I) shall be applied by substituting ''post-December reported amount'' for ''aggregate reported amount'' and no excess reported amount shall be allocated to any dividend paid on or before December 31 of such taxable year.

(iv) Definitions

For purposes of this subparagraph—

(I) Reported exempt-interest dividend amount

The term ''reported exempt-interest dividend amount'' means the amount reported to its shareholders under clause (i) as an exempt-interest dividend.

(II) Excess reported amount

The term ''excess reported amount'' means the excess of the aggregate reported amount over the exempt interest of the company for the taxable year.

(III) Aggregate reported amount

The term ''aggregate reported amount'' means the aggregate amount of dividends reported by the company under clause (i) as exempt-interest dividends for the taxable year (including exempt-interest dividends paid after the close of the taxable year described in section 855).

(IV) Post-December reported amount

The term ''post-December reported amount'' means the aggregate reported amount determined by taking into account only dividends paid after December 31 of the taxable year.

(V) Exempt interest

The term ''exempt interest'' means, with respect to any regulated investment company, the excess of the amount of interest excludable from gross income under section 103(a) over the amounts disallowed as deductions under sections 265 and 171(a)(2).

(B) Treatment of exempt-interest dividends by shareholders

An exempt-interest dividend shall be treated by the shareholders for all purposes of this subtitle as an item of interest excludable from gross income under section 103(a). Such purposes include but are not limited to—

(i) the determination of gross income and taxable income,

(ii) the determination of distributable net income under subchapter J,

(iii) the allowance of, or calculation of the amount of, any credit or deduction, and

(iv) the determination of the basis in the hands of any shareholder of any share of stock of the company.

(6) Section 311(b) not to apply to certain distributions

Section 311(b) shall not apply to any distribution by a regulated investment company to which this part applies, if such distribution is in redemption of its stock upon the demand of the shareholder.

(7) Time certain dividends taken into account

For purposes of this title, any dividend declared by a regulated investment company in October, November, or December of any calendar year and payable to shareholders of record on a specified date in such a month shall be deemed—

(A) to have been received by each shareholder on December 31 of such calendar year, and

(B) to have been paid by such company on December 31 of such calendar year (or, if earlier, as provided in section 855).

The preceding sentence shall apply only if such dividend is actually paid by the company during January of the following calendar year.

(8) Elective deferral of certain late-year losses

(A) In general

Except as otherwise provided by the Secretary, a regulated investment company may elect for any taxable year to treat any portion of any qualified late-year loss for such taxable year as arising on the first day of the following taxable year for purposes of this title.

(B) Qualified late-year loss

For purposes of this paragraph, the term ''qualified late-year loss'' means—

(i) any post-October capital loss, and

(ii) any late-year ordinary loss.

(C) Post-October capital loss

For purposes of this paragraph, the term ''post-October capital loss'' means—

(i) any net capital loss attributable to the portion of the taxable year after October 31, or

(ii) if there is no such loss—

(I) any net long-term capital loss attributable to such portion of the taxable year, or

(II) any net short-term capital loss attributable to such portion of the taxable year.

(D) Late-year ordinary loss

For purposes of this paragraph, the term ''late-year ordinary loss'' means the sum of

any post-October specified loss and any post-December ordinary loss.

(E) Post-October specified loss

For purposes of this paragraph, the term ''post-October specified loss'' means the excess (if any) of—

(i) the specified losses (as defined in section 4982(e)(5)(B)(ii)) attributable to the portion of the taxable year after October 31, over

(ii) the specified gains (as defined in section 4982(e)(5)(B)(i)) attributable to such portion of the taxable year.

(F) Post-December ordinary loss

For purposes of this paragraph, the term ''post-December ordinary loss'' means the excess (if any) of—

(i) the ordinary losses not described in subparagraph (E)(i) and attributable to the portion of the taxable year after December 31, over

(ii) the ordinary income not described in subparagraph (E)(ii) and attributable to such portion of the taxable year.

(G) Special rule for companies determining required capital gain distributions on taxable year basis

In the case of a company to which an election under section 4982(e)(4) applies—

(i) if such company's taxable year ends with the month of November, the amount of qualified late-year losses (if any) shall be computed without regard to any income, gain, or loss described in subparagraphs (C) and (E), and

(ii) if such company's taxable year ends with the month of December, subparagraph (A) shall not apply.

(9) Dividends treated as received by company on ex-dividend date

For purposes of this title, if a regulated investment company is the holder of record of any share of stock on the record date for any dividend payable with respect to such stock, such dividend shall be included in gross income by such company as of the later of—

(A) the date such share became ex-dividend with respect to such dividend, or

(B) the date such company acquired such share.

(c) Earnings and profits

(1) Treatment of nondeductible items

(A) Net capital loss

If a regulated investment company has a net capital loss for any taxable year—

(i) such net capital loss shall not be taken into account for purposes of determining the company's earnings and profits, and

(ii) any capital loss arising on the first day of the next taxable year by reason of clause (ii) or (iii) of section 1212(a)(3)(A) shall be treated as so arising for purposes of determining earnings and profits.

(B) Other nondeductible items

(i) In general

The earnings and profits of a regulated investment company for any taxable year (but not its accumulated earnings and profits) shall not be reduced by any amount which is not allowable as a deduction (other than by reason of section 265 or 171(a)(2)) in computing its taxable income for such taxable year.

(ii) Coordination with treatment of net capital losses

Clause (i) shall not apply to a net capital loss to which subparagraph (A) applies.

(2) Coordination with tax on undistributed income

For purposes of applying this chapter to distributions made by a regulated investment company with respect to any calendar year, the earnings and profits of such company shall be determined without regard to any net capital loss attributable to the portion of the taxable year after October 31, without regard to any late-year ordinary loss (as defined in subsection (b)(8)(D)), without regard to any capital loss arising on the first day of the taxable year by reason of clauses (ii) and (iii) of section 1212(a)(3)(A), and with such other adjustments as the Secretary may prescribe. The preceding sentence shall apply—

(A) only to the extent that the amount distributed by the company with respect to the calendar year does not exceed the required distribution for such calendar year (as determined under section 4982 by substituting ''100 percent'' for each percentage set forth in section 4982(b)(1)), and

(B) except as provided in regulations, only if an election under section 4982(e)(4) is not in effect with respect to such company.

(3) Distributions to meet requirements of subsection (a)(2)(B)

Any distribution which is made in order to comply with the requirements of subsection (a)(2)(B)—

(A) shall be treated for purposes of this subsection and subsection (a)(2)(B) as made from earnings and profits which, but for the distribution, would result in a failure to meet such requirements (and allocated to such earnings on a first-in, first-out basis), and

(B) to the extent treated under subparagraph (A) as made from accumulated earnings and profits, shall not be treated as a distribution for purposes of subsection (b)(2)(D) and section 855.

(4) Regulated investment company

For purposes of this subsection, the term ''regulated investment company'' includes a domestic corporation which is a regulated investment company determined without regard to the requirements of subsection (a).

(d) Distributions in redemption of interests in unit investment trusts

In the case of a unit investment trust—

(1) which is registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 and following) and issues periodic payment plan certificates (as defined in such Act), and

(2) substantially all of the assets of which consist of securities issued by a management company (as defined in such Act),

section 562(c) (relating to preferential dividends) shall not apply to a distribution by such trust to a holder of an interest in such trust in redemption of part or all of such interest, with respect to the capital gain net income of such trust attributable to such redemption.

(e) Procedures similar to deficiency dividend procedures made applicable

(1) In general

If—

(A) there is a determination that the provisions of this part do not apply to an investment company for any taxable year (hereinafter in this subsection referred to as the ''non-RIC year''), and

(B) such investment company meets the distribution requirements of paragraph (2) with respect to the non-RIC year,

for purposes of applying subsection (a)(2) to subsequent taxable years, the provisions of this part shall be treated as applying to such investment company for the non-RIC year. If the determination under subparagraph (A) is solely as a result of the failure to meet the requirements of subsection (a)(2), the preceding sentence shall also apply for purposes of applying subsection (a)(2) to the non-RIC year and the amount referred to in paragraph (2)(A)(i) shall be the portion of the accumulated earnings and profits which resulted in such failure.

(2) Distribution requirements

(A) In general

The distribution requirements of this paragraph are met with respect to any non-RIC year if, within the 90-day period beginning on the date of the determination (or within such longer period as the Secretary may permit), the investment company makes 1 or more qualified designated distributions and the amount of such distributions is not less than the excess of—

(i) the portion of the accumulated earnings and profits of the investment company (as of the date of the determination) which are attributable to the non-RIC year, over

(ii) any interest payable under paragraph (3).

(B) Qualified designated distribution

For purposes of this paragraph, the term ''qualified designated distribution'' means any distribution made by the investment company if—

(i) section 301 applies to such distribution, and

(ii) such distribution is designated (at such time and in such manner as the Secretary shall by regulations prescribe) as being taken into account under this paragraph with respect to the non-RIC year.

(C) Effect on dividends paid deduction

Any qualified designated distribution shall not be included in the amount of dividends paid for purposes of computing the dividends paid deduction for any taxable year.

(3) Interest charge

(A) In general

If paragraph (1) applies to any non-RIC year of an investment company, such investment company shall pay interest at the underpayment rate established under section 6621—

(i) on an amount equal to 50 percent of the amount referred to in paragraph (2)(A)(i),

(ii) for the period—

(I) which begins on the last day prescribed for payment of the tax imposed for the non-RIC year (determined without regard to extensions), and

(II) which ends on the date the determination is made.

(B) Coordination with subtitle F

Any interest payable under subparagraph (A) may be assessed and collected at any time during the period during which any tax imposed for the taxable year in which the determination is made may be assessed and collected.

(4) Provision not to apply in the case of fraud

The provisions of this subsection shall not apply if the determination contains a finding that the failure to meet any requirement of this part was due to fraud with intent to evade tax.

(5) Determination

For purposes of this subsection, the term ''determination'' has the meaning given to such term by section 860(e). Such term also includes a determination by the investment company filed with the Secretary that the provisions of this part do not apply to the investment company for a taxable year.

(f) Treatment of certain load charges

(1) In general

If—

(A) the taxpayer incurs a load charge in acquiring stock in a regulated investment company and, by reason of incurring such charge or making such acquisition, the taxpayer acquires a reinvestment right,

(B) such stock is disposed of before the 91st day after the date on which such stock was acquired, and

(C) the taxpayer acquires, during the period beginning on the date of the disposition referred to in subparagraph (B) and ending on January 31 of the calendar year following the calendar year that includes the date of such disposition, stock in such regulated investment company or in another regulated investment company and the otherwise applicable load charge is reduced by reason of the reinvestment right,

the load charge referred to in subparagraph (A) (to the extent it does not exceed the reduction referred to in subparagraph (C)) shall not be taken into account for purposes of determining the amount of gain or loss on the disposition referred to in subparagraph (B). To the extent such charge is not taken into account in determining the amount of such gain

or loss, such charge shall be treated as incurred in connection with the acquisition referred to in subparagraph (C) (including for purposes of reapplying this paragraph).

(2) Definitions and special rules

For purposes of this subsection—

(A) Load charge

The term ''load charge'' means any sales or similar charge incurred by a person in acquiring stock of a regulated investment company. Such term does not include any charge incurred by reason of the reinvestment of a dividend.

(B) Reinvestment right

The term ''reinvestment right'' means any right to acquire stock of 1 or more regulated investment companies without the payment of a load charge or with the payment of a reduced charge.

(C) Nonrecognition transactions

If the taxpayer acquires stock in a regulated investment company from another person in a transaction in which gain or loss is not recognized, the taxpayer shall succeed to the treatment of such other person under this subsection.

(g) Special rules for fund of funds

(1) In general

In the case of a qualified fund of funds—

(A) such fund shall be qualified to pay exempt-interest dividends to its shareholders without regard to whether such fund satisfies the requirements of the first sentence of subsection (b)(5), and

(B) such fund may elect the application of section 853 (relating to foreign tax credit allowed to shareholders) without regard to the requirement of subsection (a)(1) thereof.

(2) Qualified fund of funds

For purposes of this subsection, the term ''qualified fund of funds'' means a regulated investment company if (at the close of each quarter of the taxable year) at least 50 percent of the value of its total assets is represented by interests in other regulated investment companies.

(Aug. 16, 1954, ch. 736, 68A Stat. 271; July 11, 1956, ch. 573, § 2(a), 70 Stat. 530; Pub. L. 85–866, title I, §§ 39(a), 101(a), (b), Sept. 2, 1958, 72 Stat. 1638, 1674; Pub. L. 86–779, § 10(b)(2), (3), Sept. 14, 1960, 74 Stat. 1009; Pub. L. 88–272, title II, § 229(a)(1), (2), (b), Feb. 26, 1964, 78 Stat. 99; Pub. L. 91–172, title V, § 511(c)(2), Dec. 30, 1969, 83 Stat. 637; Pub. L. 94–455, title XIV, § 1402(b)(1)(N), (2), title XIX, §§ 1901(a)(110)(A), (B)(i), (C), (b)(1)(V), (6)(B), (33)(I), (J), (N), 1906(b)(13)(A), title XXI, § 2137(a)–(c), Oct. 4, 1976, 90 Stat. 1732, 1783, 1792, 1794, 1801, 1802, 1834, 1930, 1931; Pub. L. 95–600, title III, §§ 301(b)(11), 362(c), title VII, § 701(s)(2), Nov. 6, 1978, 92 Stat. 2822, 2851, 2911; Pub. L. 96–222, title I, § 104(a)(3)(B), Apr. 1, 1980, 94 Stat. 215; Pub. L. 97–424, title V, § 547(b)(2), Jan. 6, 1983, 96 Stat. 2199; Pub. L. 98–369, div. A, title I, § 55(a), title X, §§ 1001(b)(11), (e), 1071(a)(2)–(4), (b)(1), July 18, 1984, 98 Stat. 571, 1011, 1012, 1049, 1050, 1052; Pub. L. 99–514, title III, § 311(b)(1), title VI, §§ 631(e)(11), 651(b)(1)(A), (2), (3), 655(a)(1), (2), title XI, § 1173(b)(1)(B), title XV, § 1511(c)(6), title XVIII, §§ 1804(c)(1)–(5), 1878(j), Oct. 22, 1986, 100 Stat. 2219, 2274, 2296, 2298, 2299, 2515, 2745, 2799, 2800, 2905; Pub. L. 100–647, title I, §§ 1006(*l*)(1)(A), (3), (4), (7)–(10), 1011B(h)(4), 1018(p), Nov. 10, 1988, 102 Stat. 3413–3415, 3491, 3585; Pub. L. 101–239, title VII, § 7204(b)(1), (c)(1), Dec. 19, 1989, 103 Stat. 2334, 2335; Pub. L. 103–66, title XIII, § 13221(c)(1), Aug. 10, 1993, 107 Stat. 477; Pub. L. 104–188, title I, § 1602(b)(3), Aug. 20, 1996, 110 Stat. 1833; Pub. L. 105–34, title XI, § 1122(c)(2), (3), title XII, § 1254(b)(2), Aug. 5, 1997, 111 Stat. 977, 1033; Pub. L. 106–170, title V, § 566(a)(1), (c), Dec. 17, 1999, 113 Stat. 1950; Pub. L. 109–222, title V, § 505(c)(1), May 17, 2006, 120 Stat. 356; Pub. L. 110–172, § 11(a)(17)(A), Dec. 29, 2007, 121 Stat. 2486; Pub. L. 111–325, title II, § 201(c), title III, §§ 301(a)(1), (b), 302(a), (b)(1), 303(a), 308(a)–(b)(2), 309(a), (b), title V, § 502(a), Dec. 22, 2010, 124 Stat. 3541, 3542, 3547, 3548, 3550–3552, 3554; Pub. L. 113–295, div. A, title II, § 205(a)(2), (c), Dec. 19, 2014, 128 Stat. 4025, 4026; Pub. L. 115–97, title I, § 13001(b)(2)(J), (4), Dec. 22, 2017, 131 Stat. 2096, 2098.)

REFERENCES IN TEXT

The Investment Company Act of 1940, referred to in subsec. (d), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§ 80a–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a–51 of Title 15 and Tables.

AMENDMENTS

2017—Subsec. (b)(1). Pub. L. 115–97, § 13001(b)(4), struck out ''In the case of a regulated investment company which is a personal holding company (as defined in section 542) or which fails to comply for the taxable year with regulations prescribed by the Secretary for the purpose of ascertaining the actual ownership of its stock, such tax shall be computed at the highest rate of tax specified in section 11(b).'' at end.

Subsec. (b)(3)(A). Pub. L. 115–97, § 13001(b)(2)(J), substituted ''section 11(b)'' for ''section 1201(a)''.

2014—Subsec. (b)(8)(C) to (G). Pub. L. 113–295, § 205(c)(1), added subpars. (C) to (F), redesignated former subpar. (E) as (G), and struck out former subpars. (C) and (D) which related to post-October capital loss and late-year ordinary loss, respectively.

Subsec. (b)(8)(G)(i). Pub. L. 113–295, § 205(c)(2), substituted ''and (E)'' for '', (D)(i)(I), and (D)(ii)(I)''.

Subsec. (c)(2). Pub. L. 113–295, § 205(c)(3), in introductory provisions, substituted '', without regard to any capital loss'' for '', and without regard to any capital loss'' and inserted '', and with such other adjustments as the Secretary may prescribe'' after ''section 1212(a)(3)(A)''.

Pub. L. 113–295, § 205(a)(2), in introductory provisions, substituted ''October 31, without regard to'' for ''October 31 and without regard to'' and inserted '', and without regard to any capital loss arising on the first day of the taxable year by reason of clauses (ii) and (iii) of section 1212(a)(3)(A)'' after ''subsection (b)(8)(D))''.

2010—Subsec. (b)(2)(G). Pub. L. 111–325, § 201(c), added subpar. (G).

Subsec. (b)(3)(C). Pub. L. 111–325, § 301(a)(1), amended subpar. (C) generally. Prior to amendment, subpar. (C) related to definition of capital gain dividend.

Subsec. (b)(4)(E). Pub. L. 111–325, § 309(a), (b), substituted ''Exception to holding period requirement for certain regularly declared exempt-interest dividends'' for ''Authority to shorten required holding period'' in heading, added cl. (i), inserted cl. (ii) designation and heading before ''In the case of'', and inserted ''(other than a company described in clause (i))'' after ''regulated investment company''.

Subsec. (b)(5)(A). Pub. L. 111–325, § 301(b), amended subpar. (A) generally. Prior to amendment, text read as follows: ''An exempt-interest dividend means any dividend or part thereof (other than a capital gain dividend) paid by a regulated investment company and designated by it as an exempt-interest dividend in a written notice mailed to its shareholders not later than 60 days after the close of its taxable year. If the aggregate amount so designated with respect to a taxable year of the company (including exempt-interest dividends paid after the close of the taxable year as described in section 855) is greater than the excess of—

''(i) the amount of interest excludable from gross income under section 103(a), over

''(ii) the amounts disallowed as deductions under sections 265 and 171(a)(2),

the portion of such distribution which shall constitute an exempt-interest dividend shall be only that proportion of the amount so designated as the amount of such excess for such taxable year bears to the amount so designated.''

Subsec. (b)(8). Pub. L. 111–325, § 308(a), amended par. (8) generally. Prior to amendment, text read as follows: ''To the extent provided in regulations, the taxable income of a regulated investment company (other than a company to which an election under section 4982(e)(4) applies) shall be computed without regard to any net foreign currency loss attributable to transactions after October 31 of such year, and any such net foreign currency loss shall be treated as arising on the 1st day of the following taxable year.''

Subsec. (b)(10). Pub. L. 111–325, § 308(b)(1), struck out par. (10). Text read as follows: ''To the extent provided in regulations, the taxable income of a regulated investment company (other than a company to which an election under section 4982(e)(4) applies) shall be computed without regard to any net reduction in the value of any stock of a passive foreign investment company with respect to which an election under section 1296(k) is in effect occurring after October 31 of the taxable year, and any such reduction shall be treated as occurring on the first day of the following taxable year.''

Subsec. (c)(1). Pub. L. 111–325, § 302(a), amended par. (1) generally. Prior to amendment, text read as follows: ''The earnings and profits of a regulated investment company for any taxable year (but not its accumulated earnings and profits) shall not be reduced by any amount which is not allowable as a deduction in computing its taxable income for such taxable year. For purposes of this subsection, the term 'regulated investment company' includes a domestic corporation which is a regulated investment company determined without regard to the requirements of subsection (a).''

Subsec. (c)(2). Pub. L. 111–325, § 308(b)(2), in introductory provisions, substituted ''For purposes of applying this chapter to distributions made by a regulated investment company with respect to any calendar year, the earnings and profits of such company shall be determined without regard to any net capital loss attributable to the portion of the taxable year after October 31 and without regard to any late-year ordinary loss (as defined in subsection (b)(8)(D)).'' for ''For purposes of applying this chapter to distributions made by a regulated investment company with respect to any calendar year, the earnings and profits of such company shall be determined without regard to any net capital loss (or net foreign currency loss) attributable to transactions after October 31 of such year, without regard to any net reduction in the value of any stock of a passive foreign investment company with respect to which an election under section 1296(k) is in effect occurring after October 31 of such year, and with such other adjustments as the Secretary may by regulations prescribe.''

Subsec. (c)(4). Pub. L. 111–325, § 302(b)(1), added par. (4).

Subsec. (f)(1)(C). Pub. L. 111–325, § 502(a), substituted ''acquires, during the period beginning on the date of the disposition referred to in subparagraph (B) and ending on January 31 of the calendar year following the calendar year that includes the date of such disposition,'' for ''subsequently acquires''.

Subsec. (g). Pub. L. 111–325, § 303(a), added subsec. (g).

2007—Subsec. (b)(4)(C). Pub. L. 110–172 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''For purposes of this paragraph, the rules of paragraphs (3) and (4) of section 246(c) shall apply in determining the period for which the taxpayer has held any share of stock; except that '6 months' shall be substituted for each number of days specified in subparagraph (B) of section 246(c)(3).''

2006—Subsec. (b)(3)(E). Pub. L. 109–222 added subpar. (E).

1999—Subsec. (c)(3). Pub. L. 106–170, § 566(a)(1), added par. (3).

Subsec. (e)(1). Pub. L. 106–170, § 566(c), inserted at end ''If the determination under subparagraph (A) is solely as a result of the failure to meet the requirements of subsection (a)(2), the preceding sentence shall also apply for purposes of applying subsection (a)(2) to the non-RIC year and the amount referred to in paragraph (2)(A)(i) shall be the portion of the accumulated earnings and profits which resulted in such failure.''

1997—Subsec. (b)(3)(D)(iii). Pub. L. 105–34, § 1254(b)(2), substituted ''by the difference between the amount of such includible gains and the tax deemed paid by such shareholder in respect of such shares under clause (ii).'' for ''by 65 percent of so much of such amounts as equals the amount subject to tax in accordance with section 1201(a).''

Subsec. (b)(10). Pub. L. 105–34, § 1122(c)(2), added par. (10).

Subsec. (c)(2). Pub. L. 105–34, § 1122(c)(3), inserted '', without regard to any net reduction in the value of any stock of a passive foreign investment company with respect to which an election under section 1296(k) is in effect occurring after October 31 of such year,'' after ''October 31 of such year''.

1996—Subsec. (b)(5)(C). Pub. L. 104–188 struck out subpar. (C). Prior to amendment, subpar. (C) read as follows:

''(C) INTEREST ON CERTAIN LOANS USED TO ACQUIRE EMPLOYER SECURITIES.—For purposes of this section—

''(i) 50 percent of the amount of any loan of the regulated investment company which qualifies as a securities acquisition loan (as defined in section 133) shall be treated as an obligation described in section 103(a), and

''(ii) 50 percent of the interest received on such loan shall be treated as interest excludable from gross income under section 103.''

1993—Subsec. (b)(3)(D)(iii). Pub. L. 103–66 substituted ''65 percent'' for ''66 percent''.

1989—Subsec. (b)(9). Pub. L. 101–239, § 7204(c)(1), added par. (9).

Subsec. (f). Pub. L. 101–239, § 7204(b)(1), added subsec. (f).

1988—Subsec. (a). Pub. L. 100–647, § 1006(*l*)(8), inserted at end ''The Secretary may waive the requirements of paragraph (1) for any taxable year if the regulated investment company establishes to the satisfaction of the Secretary that it was unable to meet such requirements by reason of distributions previously made to meet the requirements of section 4982.''

Subsec. (b)(3)(C). Pub. L. 100–647, § 1006(*l*)(4), substituted ''net capital loss or net long-term capital loss'' for ''net capital loss'' in two places in third sentence, and ''computing the taxable income of the regulated investment company'' for ''computing regulated investment company taxable income'' in fourth sentence.

Subsec. (b)(5)(C). Pub. L. 100–647, § 1011B(h)(4), substituted ''section'' for ''paragraph''.

Subsec. (b)(6). Pub. L. 100–647, § 1006(*l*)(1)(A), redesignated par. (6), relating to time certain dividends are taken into account, as (7).

Subsec. (b)(7). Pub. L. 100–647, § 1006(*l*)(9), substituted ''in October, November, or December'' for ''in December'' and ''in such a month'' for ''in such month'', in introductory text, ''on December 31 of such calendar year'' for ''on such date'' in subpars. (A) an (B), and ''during January'' for ''before February 1'' in last sentence.

Pub. L. 100–647, § 1006(*l*)(1)(A), redesignated par. (6), relating to time certain dividends are taken into account, as (7).

Subsec. (b)(8). Pub. L. 100–647, § 1006(*l*)(7), added par. (8).

Subsec. (c)(2). Pub. L. 100–647, § 1006(*l*)(3), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''A regulated investment company shall be treated as having sufficient earnings and profits to treat as a dividend any distribution (other than in a redemption to which section 302(a) applies) which is treated as a dividend by such company. The preceding sentence shall not apply to the extent that the amount distributed during any calendar year by the company exceeds the required distribution for such calendar year (as determined under section 4982).''

Subsec. (e)(1). Pub. L. 100–647, §§ 1006(*l*)(10), 1018(p), amended par. (1) identically, substituting ''subsection (a)(2)'' for ''subsection (a)(3)'' in last sentence.

1986—Subsec. (a)(2), (3). Pub. L. 99–514, § 1878(j)(1), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''the investment company complies for such year with regulations prescribed by the Secretary for the purpose of ascertaining the actual ownership of its outstanding stock, and''.

Subsec. (b)(1). Pub. L. 99–514, § 1878(j)(2), substituted last sentence for former last sentence which read as follows: ''In the case of a regulated investment company which is a personal holding company (as defined in section 542), that tax shall be computed at the highest rate of tax specified in section 11(b).''

Subsec. (b)(3)(C). Pub. L. 99–514, § 655(a)(1), substituted ''60 days'' for ''45 days''.

Pub. L. 99–514, § 651(b)(3), inserted provision for determination of the amount of the net capital gain for a taxable year (to which an election under section 4982(e)(4) does not apply) and made such provision applicable also for purposes of computing regulated investment company taxable income.

Subsec. (b)(3)(D)(i). Pub. L. 99–514, § 655(a)(1), substituted ''60 days'' for ''45 days''.

Subsec. (b)(3)(D)(iii). Pub. L. 99–514, § 311(b)(1), substituted ''66 percent'' for ''72 percent''.

Subsec. (b)(4). Pub. L. 99–514, § 1804(c)(5), substituted ''6 months or less'' for ''less than 31 days'' in heading.

Subsec. (b)(4)(B)(ii). Pub. L. 99–514, § 1804(c)(1), substituted ''6 months or less'' for ''less than 31 days''.

Subsec. (b)(4)(C). Pub. L. 99–514, § 1804(c)(2), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''For purposes of this paragraph, the rules of paragraphs (3) and (4) of section 246(c) shall apply in determining the period for which the taxpayer held any share of stock; except that for the number of days specified in subparagraph (B) of section 246(c)(3) there shall be substituted—

''(i) '6 months' for purposes of subparagraph (A), and

''(ii) '30 days' for purposes of subparagraph (B).''

Subsec. (b)(4)(D). Pub. L. 99–514, § 1804(c)(3), substituted ''subparagraphs (A) and (B)'' for ''subparagraph (A)''.

Subsec. (b)(4)(E). Pub. L. 99–514, § 1804(c)(4), added subpar. (E).

Subsec. (b)(5)(A). Pub. L. 99–514, § 655(a)(2), substituted ''60 days'' for ''45 days''.

Subsec. (b)(5)(C). Pub. L. 99–514, § 1173(b)(1)(B), added subpar. (C).

Subsec. (b)(6). Pub. L. 99–514, § 651(b)(1)(A), added par. (6) relating to time certain dividends are taken into account.

Pub. L. 99–514, § 631(e)(11), added par. (6) relating to inapplicability of section 311(b) to certain distributions.

Subsec. (c). Pub. L. 99–514, § 651(b)(2), amended subsec. (c) generally, designating existing provisions as par. (1), inserting heading, and adding par. (2).

Subsec. (e)(3)(A). Pub. L. 99–514, § 1511(c)(6), substituted ''the underpayment rate established under section 6621'' for ''the annual rate established under section 6621''.

1984—Subsec. (a)(3). Pub. L. 98–369, § 1071(a)(3), added par. (3).

Subsec. (b)(1). Pub. L. 98–369, § 1071(a)(2), inserted provision that in the case of a regulated investment company which is a personal holding company (as defined in section 542), that tax shall be computed at the highest rate of tax specified in section 11.

Subsec. (b)(2)(F). Pub. L. 98–369, § 1071(b)(1), added subpar. (F).

Subsec. (b)(3)(B). Pub. L. 98–369, § 1001(b)(11), (e), substituted ''6 months'' for ''1 year'', applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

Subsec. (b)(4)(A)(i). Pub. L. 98–369, § 55(a)(1), substituted ''subparagraph (B) or (D) of paragraph (3) provides that any amount with respect to any share is to be treated as long-term capital gain'' for ''under subparagraph (B) or (D) of paragraph (3) a shareholder of a regulated investment company is required, with respect to any share, to treat any amount as a long-term capital gain''.

Subsec. (b)(4)(A)(ii). Pub. L. 98–369, § 55(a)(1), substituted ''6 months or less'' for ''less than 31 days''.

Subsec. (b)(4)(C). Pub. L. 98–369, § 55(a)(2), substituted ''the rules of paragraphs (3) and (4) of section 246(c) shall apply in determining the period for which the taxpayer held any share of stock;'' for ''the rules of section 246(c)(3) shall apply in determining whether any share of stock has been held for less than 31 days;'' and substituted provisions dealing with the applicable number of days for former provisions which set forth different applicable days.

Subsec. (b)(4)(D). Pub. L. 98–369, § 55(a)(3), added subpar. (D).

Subsec. (e). Pub. L. 98–369, § 1071(a)(4), added subsec. (e).

1983—Subsec. (b)(5). Pub. L. 97–424 substituted ''section 103(a)'' for ''section 103(a)(1)'' wherever appearing.

1980—Subsec. (b)(3)(D)(iii). Pub. L. 96–222 substituted ''72 percent'' for ''70 percent''.

1978—Subsec. (b)(1). Pub. L. 95–600, § 301(b)(11), substituted ''a tax'' for ''a normal tax and surtax''.

Subsec. (b)(3)(C). Pub. L. 95–600, § 362(c), inserted '', except that, if there is an increase in the excess described in subparagraph (A) of this paragraph for such year which results from a determination (as defined in section 860(e)), such designation may be made with respect to such increase at any time before the expiration of 120 days after the date of such determination'' after ''amount so designated''.

Subsec. (b)(4). Pub. L. 95–600, § 701(s)(2), designated first sentence, including subpars. (A) and (B), as subpar. (A), cls. (i) and (ii); added subpar. (A) heading and substituted ''shall, to the extent of the amount described in clause (i), be treated as a long-term capital loss'' for ''shall, to the extent of the amount described in subparagraph (A) of this paragraph, be treated as loss from the sale or exchange of a capital asset held for more than 1 year''; added subpar. (B); and designated second sentence as subpar. (C).

1976—Subsec. (a)(1). Pub. L. 94–455, §§ 1901(b)(6)(B), 2137(a), designated existing provisions as introductory material and subpar. (A) and added subpar. (B).

Subsec. (a)(2). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (b)(1). Pub. L. 94–455, § 1901(b)(1)(V), struck out provision relating to the computation of the normal tax under section 11 of this title.

Subsec. (b)(2)(A). Pub. L. 94–455, § 1901(b)(33)(I), substituted ''the amount of the net capital gain, if any'' for ''the excess, if any, of the net long-term capital gain over the short-term capital loss''.

Subsec. (b)(2)(D). Pub. L. 94–455, § 2137(b), inserted reference to exempt-interest dividends.

Subsec. (b)(3)(A). Pub. L. 94–455, § 1901(b)(33)(J)(i), among other changes, struck out reference to the sum of the net short-term capital loss.

Subsec. (b)(3)(B). Pub. L. 94–455, § 1402(b)(2), provided that ''9 months'' would be changed to ''1 year''.

Pub. L. 94–455, § 1402(b)(1)(N), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

Subsec. (b)(3)(C). Pub. L. 94–455, §1901(a)(110)(A), (b)(33)(J)(ii), substituted ''net capital gain'' for ''excess of the net long-term capital gain over the net short-term capital loss'' in two places and struck out provision requiring for purpose of the deduction for capital gains dividends paid, the deductions shall in the case of a taxable year beginning before Jan. 1, 1975, first be made from the amount subject to tax in accordance with section 1201(a)(1)(B), to the extent thereof, and then from the amount subject to tax in accordance with section 1201(a)(1)(A).

Subsec. (b)(3)(D)(iii). Pub. L. 94–455, §1901(a)(110)(B)(i), struck out ''by 75 percent of so much of such amounts as equals the amount subject to tax in accordance with section 1201(a)(1)(A) and'' after ''his long term capital gains,'' and ''(72 percent in the case of a taxable year beginning after December 31, 1969, and before January 1, 1971)'' after ''by 70 percent'' and substituted ''section 1201(a)'' for ''section 1201(a)(1)(B) or (2)''.

Subsec. (b)(3)(D)(v). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (b)(4). Pub. L. 94–455, §1402(b)(2), provided that ''9 months'' would be changed to ''1 year''.

Pub. L. 94–455, §1402(b)(1)(N), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

Subsec. (b)(5). Pub. L. 94–455, §2137(c), added par. (5).

Subsec. (d). Pub. L. 94–455, §1901(a)(110)(C), (b)(33)(N), inserted in par. (1) ''(15 U.S.C. 80a–1 and following)'' after ''Investment company Act of 1940'' and substituted in provision following par. (2) ''capital gain net income'' for ''net capital gain''.

1969—Subsec. (b)(3)(A). Pub. L. 91–172, §511(c)(2)(A), substituted ''determined as provided in section 1201(a), on'' for ''of 25 percent of''.

Subsec. (b)(3)(C). Pub. L. 91–172, §511(c)(2)(B), inserted provision requiring for the purposes of the deduction for capital gains dividends paid the deduction shall, in the case of a taxable year beginning before Jan. 1, 1975, first be made from the amount subject to tax in accordance with section 1201(a)(1)(B), to the extent thereof, and then from the amount subject to tax in accordance with section 1201(a)(1)(A).

Subsec. (b)(3)(D). Pub. L. 91–172, §511(c)(2)(C), (D), struck out ''of 25 percent'' in cl. (ii), substituted reference in cl. (iii) to the increase of the adjusted basis of shares in the hands of the shareholder, with respect to the amounts required by this subpar., by 75 percent of so much of such amounts as equals the amount subject to tax in accordance with section 1201(a)(1)(A) and by 70 percent (72 percent in the case of a taxable year beginning after Dec. 31, 1969, and before Jan. 1, 1971) of so much of such amounts as equals the amount subject to tax in accordance with section 1201(a)(1)(B) or (2), for reference to the increase of the adjusted basis of shares in the hand of the shareholder by 75 percent of the amounts required by this subpar. to be included in computing his long-term capital gains.

1964—Subsec. (b)(3)(C), (D)(i). Pub. L. 88–272, §229(a)(1), (2), substituted ''45 days'' for ''30 days''.

Subsec. (d). Pub. L. 88–272, §229(b), added subsec. (d).

1960—Subsec. (a). Pub. L. 86–779, §10(b)(2), substituted ''this part'' for ''this subchapter''.

Subsec. (b)(3)(C). Pub. L. 86–779, §10(b)(3), substituted ''For purposes of this part, a capital gain dividend is'' for ''A capital gain dividend means''.

1958—Subsec. (a). Pub. L. 85–866, §101(a), inserted ''(other than subsection (c) of this section)''.

Subsec. (b)(4). Pub. L. 85–866, §39(a), added par. (4).

Subsec. (c). Pub. L. 85–866, §101(b), inserted sentence defining regulated investment company.

1956—Subsec. (b)(3)(D). Act July 11, 1956, added subpar. (D).

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–97 applicable to taxable years beginning after Dec. 31, 2017, see section 13001(c)(1) of Pub. L. 115–97, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113–295, div. A, title II, §205(f), Dec. 19, 2014, 128 Stat. 4027, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section, sections 851, 855, and 4982 of this title, and provisions set out as a note under section 1212 of this title] shall take effect as if included in the provision of the Regulated Investment Company Modernization Act of 2010 [Pub. L. 111–325] to which they relate.

''(2) SAVINGS PROVISION.—In the case of an election by a regulated investment company under section 852(b)(8) of the Internal Revenue Code of 1986 with respect to any taxable year beginning before the date of the enactment of this Act [Dec. 19, 2014], such company may treat the amendments made by paragraphs (1) and (2) of subsection (c) [amending this section] as not applying with respect to any such election.''

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 201(c) of Pub. L. 111–325 applicable to taxable years with respect to which the due date (determined with regard to any extensions) of the return of tax for such taxable year is after Dec. 22, 2010, see section 201(d) of Pub. L. 111–325, set out as a note under section 851 of this title.

Pub. L. 111–325, title III, §301(h), Dec. 22, 2010, 124 Stat. 3547, provided that: ''The amendments made by this section [amending this section and sections 853, 853A, 854, 855, 860, and 871 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Dec. 22, 2010].''

Pub. L. 111–325, title III, §302(c), Dec. 22, 2010, 124 Stat. 3548, provided that: ''The amendments made by this section [amending this section and section 871 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Dec. 22, 2010].''

Pub. L. 111–325, title III, §303(b), Dec. 22, 2010, 124 Stat. 3548, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Dec. 22, 2010].''

Pub. L. 111–325, title III, §308(c), Dec. 22, 2010, 124 Stat. 3551, provided that: ''The amendments made by this section [amending this section and section 871 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Dec. 22, 2010].''

Pub. L. 111–325, title III, §309(c), Dec. 22, 2010, 124 Stat. 3552, provided that: ''The amendments made by this section [amending this section] shall apply to losses incurred on shares of stock for which the taxpayer's holding period begins after the date of the enactment of this Act [Dec. 22, 2010].''

Pub. L. 111–325, title V, §502(b), Dec. 22, 2010, 124 Stat. 3555, provided that: ''The amendment made by this section [amending this section] shall apply to charges incurred in taxable years beginning after the date of the enactment of this Act [Dec. 22, 2010].''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–222, title V, §505(d), May 17, 2006, 120 Stat. 357, provided that: ''The amendments made by this section [amending this section and sections 871, 897, and 1445 of this title] shall apply to taxable years of qualified investment entities beginning after December 31, 2005, except that no amount shall be required to be withheld under section 1441, 1442, or 1445 of the Internal Revenue Code of 1986 with respect to any distribution before the date of the enactment of this Act [May 17, 2006] if such amount was not otherwise required to be withheld under any such section as in effect before such amendments.''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title V, §566(d), Dec. 17, 1999, 113 Stat. 1950, provided that: ''The amendments made by this section [amending this section and section 857 of this title] shall apply to distributions after December 31, 2000.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 1122(c)(2), (3) of Pub. L. 105–34 applicable to taxable years of United States persons beginning after Dec. 31, 1997, and to taxable years of foreign corporations ending with or within such taxable years of United States persons, see section 1124 of Pub. L. 105–34, set out as a note under section 532 of this title.

Pub. L. 105–34, title XII, § 1263, Aug. 5, 1997, 111 Stat. 1036, provided that: ''The amendments made by this part [probably means subtitle D (§§ 1251–1263) of title XII of Pub. L. 105–34, amending this section and sections 856 and 857 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1602(b)(1) of Pub. L. 104–188 applicable to loans made after Aug. 20, 1996, with exception and provisions relating to certain refinancings, see section 1602(c) of Pub. L. 104–188, set out as an Effective Date of Repeal note under former section 133 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years beginning on or after Jan. 1, 1993, see section 13221(d) of Pub. L. 103–66 set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, § 7204(b)(2), Dec. 19, 1989, 103 Stat. 2335, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to charges incurred after October 3, 1989, in taxable years ending after such date.''

Pub. L. 101–239, title VII, § 7204(c)(2), Dec. 19, 1989, 103 Stat. 2335, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to dividends in cases where the stock becomes ex-dividend after the date of the enactment of this Act [Dec. 19, 1989].''

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, § 1006(*l*)(9), Nov. 10, 1988, 102 Stat. 3414, provided that the amendment made by that section is effective with respect to dividends declared in 1988 and subsequent calendar years.

Amendment by sections 1006(*l*)(1)(A), (3), (4), (7), (8), (10), 1011B(h)(4), and 1018(p) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 311(b)(1) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 311(c) of Pub. L. 99–514, set out as a note under section 593 of this title.

Amendment by section 631(e)(11) of Pub. L. 99–514 applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, set out as an Effective Date note under section 336 of this title.

Amendment by section 651(b)(1)(A), (2), (3) of Pub. L. 99–514 applicable to calendar years beginning after Dec. 31, 1986, see section 651(d) of Pub. L. 99–514, set out as an Effective Date note under section 4982 of this title.

Pub. L. 99–514, title VI, § 655(b), Oct. 22, 1986, 100 Stat. 2299, provided that: ''The amendments made by subsection (a) [amending this section and sections 853 to 855 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 22, 1986].''

Pub. L. 99–514, title XI, § 1173(c)(2)(A), Oct. 22, 1986, 100 Stat. 2516, provided that: ''The amendments made by subsection (b)(1) [amending this section and former section 133 of this title] shall apply to loans used to acquire employer securities after the date of the enactment of this Act [Oct. 22, 1986], including loans used to refinance loans used to acquire employer securities before such date if such loans were used to acquire employer securities after May 23, 1984.''

Amendment by section 1511(c)(6) of Pub. L. 99–514 applicable for purposes of determining interest for periods after Dec. 31, 1986, see section 1511(d) of Pub. L. 99–514, set out as a note under section 47 of this title.

Pub. L. 99–514, title XVIII, § 1804(c)(6), Oct. 22, 1986, 100 Stat. 2800, provided that: ''The amendments made by this subsection [amending this section] shall apply to stock with respect to which the taxpayer's holding period begins after March 28, 1985.''

Amendment by section 1878(j) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, § 55(c), July 18, 1984, 98 Stat. 572, provided that: ''The amendments made by this section [amending this section and section 857 of this title] shall apply to losses incurred with respect to shares of stock and beneficial interests with respect to which the taxpayer's holding period begins after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 1001(b)(11) of Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

Pub. L. 98–369, div. A, title X, § 1071(a)(5), July 18, 1984, 98 Stat. 1051, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendments made by this subsection [amending this section and section 851 of this title] shall apply to taxable years beginning after December 31, 1982.

''(B) INVESTMENT COMPANIES WHICH WERE REGULATED INVESTMENT COMPANIES FOR YEARS ENDING BEFORE NOVEMBER 8, 1983.—In the case of any investment company to which the provisions of part I of subchapter M of chapter 1 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] applied for any taxable year ending before November 8, 1983, for purposes of section 852(a)(3)(B) of the Internal Revenue Code of 1986 (as amended by this subsection), no earnings and profits accumulated in any taxable year ending before January 1, 1984, shall be taken into account.

''(C) INVESTMENT COMPANIES BEGINNING BUSINESS IN 1983.—In the case of an investment company which began business in 1983 (and was not a successor corporation), earnings and profits accumulated during its first taxable year shall not be taken into account for purposes of section 852(a)(3)(B) of such Code (as so amended).

''(D) INVESTMENT COMPANIES REGISTERING BEFORE NOVEMBER 8, 1983.—In the case of any investment company—

''(i) which, during the period after December 31, 1981, and before November 8, 1983—

''(I) was engaged in the active conduct of a trade or business,

''(II) sold substantially all of its operating assets, and

''(III) registered under the Investment Company Act of 1940 [15 U.S.C. § 80a–1 et seq.] as either a management company or a unit investment trust, and

''(ii) to which the provisions of part I of subchapter M of chapter 1 of the Internal Revenue Code of 1986

applied for its first taxable year beginning after November 8, 1983,

for purposes of section 852(a)(3)(A) of such Code (as amended by paragraph (3)), the provisions of part I of subchapter M of chapter 1 of such Code shall be treated as applying to such investment company for its first taxable year ending after November 8, 1983. For purposes of the preceding sentence, all members of an affiliated group (as defined in section 1504(a) of such Code) filing a consolidated return shall be treated as 1 taxpayer.''

Pub. L. 98–369, div. A, title X, §1071(b)(2), July 18, 1984, 98 Stat. 1052 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1978.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 301(b)(11) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95–600, set out as a note under section 11 of this title.

Amendment by section 362(c) of Pub. L. 95–600 applicable with respect to determinations (as defined in section 860(e) of this title) after Nov. 6, 1978, see section 362(e) of Pub. L. 95–600, set out as an Effective Date note under section 860 of this title.

Amendment by section 701(s)(2) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1975, see section 701(s)(3) of Pub. L. 95–600, set out as a note under section 851 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XIV, §1402(b)(1), Oct. 4, 1976, 90 Stat. 1731, provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Pub. L. 94–455, title XIV, §1402(b)(2), Oct. 4, 1976, 90 Stat. 1732, provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

Amendment by section 1901(a)(110)(A), (C), (b)(1)(V), (6)(B), (33)(I), (J), (N) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 2 of this title.

Pub. L. 94–455, title XIX, §1901(a)(110)(B)(ii), Oct. 4, 1976, 90 Stat. 1783, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by clause (i) [amending this section] shall not be considered to affect the amount of any increase in the basis of stock under the provisions of section 852(b)(3)(D)(iii) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] which is based upon amounts subject to tax under section 1201 of such Code [former section 1201 of this title] in taxable years beginning before January 1, 1975.''

Pub. L. 94–455, title XXI, §2137(e), Oct. 4, 1976, 90 Stat. 1931, provided that: ''The amendments made by this section [amending this section and sections 103 and 265 of this title] shall apply to taxable years beginning after December 31, 1975.''

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title V, §511(d), Dec. 30, 1969, 83 Stat. 638, provided that: ''The amendments made by this section [amending this section and sections 802, 857, 1201, 1222, and 1378 of this title] shall apply to taxable years beginning after December 31, 1969.''

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–272, title II, §229(c), Feb. 26, 1964, 78 Stat. 99, provided that: ''The amendments made by subsection (a) [amending this section and sections 853, 854, and 855 of this title] shall apply to taxable years of regulated investment companies ending on or after the date of the enactment of this Act [Feb. 26, 1964]. The amendment made by subsection (b) [amending this section] shall apply to taxable years of regulated investment companies ending after December 31, 1963.''

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment of section by Pub. L. 86–779 applicable with respect to taxable years of real estate investment trusts beginning after Dec. 31, 1960, see section 10(k) of Pub. L. 86–779, set out as an Effective Date note under section 856 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–866, title I, §39(b), Sept. 2, 1958, 72 Stat. 1638, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years ending after December 31, 1957, but only with respect to shares of stock acquired after December 31, 1957.''

Pub. L. 85–866, title I, §101(c), Sept. 2, 1958, 72 Stat. 1674, provided that: ''The amendments made by this section [amending this section] shall apply with respect to taxable years of regulated investment companies beginning on or after March 1, 1958.''

EFFECTIVE DATE OF 1956 AMENDMENT

Act July 11, 1956, ch. 573, §2(b), 70 Stat. 530, provided that: ''The amendment made by this section [amending this section] shall apply only with respect to taxable years of regulated investment companies beginning after December 31, 1956.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 853. Foreign tax credit allowed to shareholders

(a) General rule

A regulated investment company—

(1) more than 50 percent of the value (as defined in section 851(c)(4)) of whose total assets at the close of the taxable year consists of stock or securities in foreign corporations, and

(2) which meets the requirements of section 852(a) for the taxable year,

may, for such taxable year, elect the application of this section with respect to income, war profits, and excess profits taxes described in section 901(b)(1), which are paid by the investment company during such taxable year to foreign countries and possessions of the United States.

(b) Effect of election

If the election provided in subsection (a) is effective for a taxable year—

(1) the regulated investment company—

(A) shall not, with respect to such taxable year, be allowed a deduction under section 164(a) or a credit under section 901 for taxes to which subsection (a) is applicable, and

(B) shall be allowed as an addition to the dividends paid deduction for such taxable year the amount of such taxes;

(2) each shareholder of such investment company shall—

(A) include in gross income and treat as paid by him his proportionate share of such taxes, and

(B) treat as gross income from sources within the respective foreign countries and possessions of the United States, for purposes of applying subpart A of part III of subchapter N, the sum of his proportionate share of such taxes and the portion of any dividend paid by such investment company which represents income derived from sources within foreign countries or possessions of the United States.

(c) Statements to shareholders

The amounts to be treated by the shareholder, for purposes of subsection (b)(2), as his proportionate share of—

(1) taxes paid to any foreign country or possession of the United States, and

(2) gross income derived from sources within any foreign country or possession of the United States,

shall not exceed the amounts so reported by the company in a written statement furnished to such shareholder.

(d) Manner of making election

The election provided in subsection (a) shall be made in such manner as the Secretary may prescribe by regulations.

(e) Treatment of certain taxes not allowed as a credit under section 901

This section shall not apply to any tax with respect to which the regulated investment company is not allowed a credit under section 901 by reason of subsection (k) or (*l*) of such section.

(f) Cross references

(1) For treatment by shareholders of taxes paid to foreign countries and possessions of the United States, see section 164(a) and section 901.

(2) For definition of foreign corporation, see section 7701(a)(5).

(Aug. 16, 1954, ch. 736, 68A Stat. 272; Pub. L. 88–272, title II, § 229(a)(3), Feb. 26, 1964, 78 Stat. 99; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 99–514, title VI, § 655(a)(3), Oct. 22, 1986, 100 Stat. 2299; Pub. L. 105–34, title X, § 1053(b), Aug. 5, 1997, 111 Stat. 943; Pub. L. 105–206, title VI, § 6010(k)(1), (2), July 22, 1998, 112 Stat. 815; Pub. L. 109–135, title IV, § 403(aa)(1), Dec. 21, 2005, 119 Stat. 2630; Pub. L. 111–325, title III, § 301(c), Dec. 22, 2010, 124 Stat. 3544.)

AMENDMENTS

2010—Subsec. (c). Pub. L. 111–325, § 301(c)(1)(B), substituted ''Statements'' for ''Notice'' in heading.

Pub. L. 111–325, § 301(c)(1)(A), which directed amendment by substituting ''so reported by the company in a written statement furnished to such shareholder'' for ''so designated by the company in a written notice mailed to its shareholders not later than 60 days after the close of the taxable year'', was executed by making the substitution for ''so designated by the company in a written notice mailed to its shareholders not later than 60 days after the close of its taxable year'' in concluding provisions to reflect the probable intent of Congress.

Subsec. (d). Pub. L. 111–325, § 301(c)(2), struck out ''and notifying shareholders'' after ''election'' in heading and ''and the notice to shareholders required by subsection (c)'' after ''subsection (a)'' in text.

2005—Subsec. (e). Pub. L. 109–135 amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows: ''This section shall not apply to any tax with respect to which the regulated investment company is not allowed a credit under section 901 by reason of section 901(k).''

1998—Subsec. (c). Pub. L. 105–206, § 6010(k)(2), struck out at end ''Such notice shall also include the amount of such taxes which (without regard to the election under this section) would not be allowable as a credit under section 901(a) to the regulated investment company by reason of section 901(k).''

Subsecs. (e), (f). Pub. L. 105–206, § 6010(k)(1), added subsec. (e) and redesignated former subsec. (e) as (f).

1997—Subsec. (c). Pub. L. 105–34 inserted at end ''Such notice shall also include the amount of such taxes which (without regard to the election under this section) would not be allowable as a credit under section 901(a) to the regulated investment company by reason of section 901(k).''

1986—Subsec. (c). Pub. L. 99–514 substituted ''60 days'' for ''45 days''.

1976—Subsec. (d). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

1964—Subsec. (c). Pub. L. 88–272 substituted ''45 days'' for ''30 days''.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–325 applicable to taxable years beginning after Dec. 22, 2010, see section 301(h) of Pub. L. 111–325, set out as a note under section 852 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title X, § 1053(c), Aug. 5, 1997, 111 Stat. 943, provided that: ''The amendments made by this section [amending this section and section 901 of this title] shall apply to dividends paid or accrued more than 30 days after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Oct. 22, 1986, see section 655(b) of Pub. L. 99–514, set out as a note under section 852 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to taxable years of regulated investment companies ending on or after Feb. 26, 1964, see section 229(c) of Pub. L. 88–272, set out as a note under section 852 of this title.

§ 853A. Credits from tax credit bonds allowed to shareholders

(a) General rule

A regulated investment company—

(1) which holds (directly or indirectly) one or more tax credit bonds on one or more applicable dates during the taxable year, and

(2) which meets the requirements of section 852(a) for the taxable year (determined after the application of this section),

may elect the application of this section with respect to some or all of the credits allowable (determined without regard to this section and sections 54(c), 54A(c)(1), 54AA(c)(1), and 1397E(c))[1] to the investment company during such taxable year with respect to such bonds.

(b) Effect of election

If the election provided in subsection (a) is in effect with respect to any credits for any taxable year—

(1) the regulated investment company—

(A) shall not be allowed such credits,

(B) shall include in gross income (as interest) for such taxable year the amount which would have been so included with respect to such credits had the application of this section not been elected,

(C) shall include in earnings and profits the amount so included in gross income, and

(D) shall be treated as making one or more distributions of money with respect to its stock equal to the amount of such credits on the date or dates (on or after the applicable date for any such credit) during such taxable year (or following the close of the taxable year pursuant to section 855) selected by the company, and

(2) each shareholder of such investment company shall—

(A) be treated as receiving such shareholder's proportionate share of any distribution of money which is treated as made by such investment company under paragraph (1)(D), and

(B) be allowed credits against the tax imposed by this chapter equal to the amount of such distribution, subject to the provisions of this title applicable to the credit involved.

(c) Statements[2] to shareholders

The amount treated as a distribution of money received by a shareholder under subsection (b)(2)(A) (and as credits allowed to such shareholder under subsection (b)(2)(B)) shall not exceed the amount so reported by the regulated investment company in a written statement furnished to such shareholder.

(d) Manner of making election

The election provided in subsection (a) shall be made in such manner as the Secretary may prescribe.

(e) Definitions and special rules

(1) Definitions

For purposes of this subsection—

(A) Tax credit bond

The term ''tax credit bond'' means—

(i) a qualified tax credit bond (as defined in section 54A(d)),[1]

(ii) a build America bond (as defined in section 54AA(d))[1] other than a qualified bond described in section 54AA(g),[1] and

(iii) any bond for which a credit is allowable under subpart H of part IV of subchapter A of this chapter.[1]

(B) Applicable date

The term ''applicable date'' means—

(i) in the case of a qualified tax credit bond or a bond described in subparagraph (A)(iii), any credit allowance date (as defined in section 54A(e)(1)),[1] and

(ii) in the case of a build America bond (as defined in section 54AA(d)),[1] any interest payment date (as defined in section 54AA(e)).[1]

(2) Stripped tax credit bonds

If the ownership of a tax credit bond is separated from the credit with respect to such bond, subsection (a) shall be applied by reference to the instruments evidencing the entitlement to the credit rather than the tax credit bond.

(f) Regulations, etc.

The Secretary shall prescribe such regulations or other guidance as may be necessary or appropriate to carry out the purposes of this section, including methods for determining a shareholder's proportionate share of credits.

(Added Pub. L. 111–5, div. B, title I, §1541(a), Feb. 17, 2009, 123 Stat. 360; amended Pub. L. 111–325, title III, §301(d), Dec. 22, 2010, 124 Stat. 3544; Pub. L. 113–295, div. A, title II, §209(h), Dec. 19, 2014, 128 Stat. 4029.)

REFERENCES IN TEXT

Sections 54, 54A, and 54AA, referred to in subsecs. (a) and (e)(1), were repealed by Pub. L. 115–97, title I, §13404(a), Dec. 22, 2017, 131 Stat. 2138.

Section 1397E, referred to in subsec. (a), was repealed by Pub. L. 115–97, title I, §13404(c)(1), Dec. 22, 2017, 131 Stat. 2138.

Subpart H of part IV of subchapter A of this chapter, referred to in subsec. (e)(1)(A)(iii), is subpart H (§54) of part IV of subchapter A of chapter 1 of this title, which was repealed by Pub. L. 115–97, title I, §13404(a), Dec. 22, 2017, 131 Stat. 2138.

AMENDMENTS

2014—Subsec. (a). Pub. L. 113–295, §209(h)(2), in concluding provisions, substituted ''with respect to some or all of the credits'' for ''with respect to credits'' and inserted ''(determined without regard to this section and sections 54(c), 54A(c)(1), 54AA(c)(1), and 1397E(c))'' after ''credits allowable''.

Subsec. (a)(2). Pub. L. 113–295, §209(h)(1), inserted ''(determined after the application of this section)'' before comma at end.

Subsec. (b). Pub. L. 113–295, §209(h)(3), amended subsec. (b) generally. Prior to amendment, subsec. (b) consisted of pars. (1) to (3) relating to effects of elections under subsec. (a).

Subsec. (c). Pub. L. 113–295, §209(h)(4), amended subsec. (c) generally. The amendment was effective as if included in the provisions of the American Recovery and Reinvestment Tax Act of 2009 (Pub. L. 111–5, div. B, title I) to which it relates. As enacted by Pub. L. 111–5, §1541(a), subsec. (c) read as follows: ''NOTICE TO SHAREHOLDERS.—For purposes of subsection (b)(3), the shareholder's proportionate share of—

''(1) credits described in subsection (a), and

''(2) gross income in respect of such credits,

shall not exceed the amounts so designated by the regulated investment company in a written notice mailed to its shareholders not later than 60 days after the close of its taxable year.''

[1] See References in Text note below.

[2] See 2010 Amendment note below.

Subsec. (e)(1)(A)(ii). Pub. L. 113–295, § 209(h)(5), inserted ''other than a qualified bond described in section 54AA(g)'' after ''as defined in section 54AA(d))''.

2010—Subsec. (c). Pub. L. 111–325, § 301(d)(1), which directed substitution of ''Statements'' for ''Notice'' in heading and ''so reported by the regulated investment company in a written statement furnished to such shareholder'' for ''so designated by the regulated investment company in a written notice mailed to its shareholders not later than 60 days after the close of its taxable year'' in text, could not be executed to the text because the words ''so reported by the regulated investment company in a written statement furnished to such shareholder'' already appeared after the subsequent general amendment of subsec. (c) by Pub. L. 113–295 which was effective as if included in the provisions of the American Recovery and Reinvestment Tax Act of 2009 (Pub. L. 111–5, div. B, title I) to which it relates. However, the substitution was executed to the heading to reflect the probable intent of Congress. See 2014 Amendment note above and Effective Date of 2014 Amendment note below.

Subsec. (d). Pub. L. 111–325, § 301(d)(2), struck out ''and notifying shareholders'' after ''election'' in heading and ''and the notice to shareholders required by subsection (c)'' after ''subsection (a)'' in text.

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–295 effective as if included in the provisions of the American Recovery and Reinvestment Tax Act of 2009, Pub. L. 111–5, div. B, title I, to which such amendment relates, see section 209(k) of Pub. L. 113–295, set out as a note under section 24 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–325 applicable to taxable years beginning after Dec. 22, 2010, see section 301(h) of Pub. L. 111–325, set out as a note under section 852 of this title.

EFFECTIVE DATE

Pub. L. 111–5, div. B, title I, § 1541(c), Feb. 17, 2009, 123 Stat. 362, provided that: ''The amendments made by this section [enacting this section and amending sections 54 and 54A of this title] shall apply to taxable years ending after the date of the enactment of this Act [Feb. 17, 2009].''

§ 854. Limitations applicable to dividends received from regulated investment company

(a) Capital gain dividend

For purposes of section 1(h)(11) (relating to maximum rate of tax on dividends) and section 243 (relating to deductions for dividends received by corporations), a capital gain dividend (as defined in section 852(b)(3)) received from a regulated investment company shall not be considered as a dividend.

(b) Other dividends

(1) Amount treated as dividend

(A) Deduction under section 243

In any case in which—

(i) a dividend is received from a regulated investment company (other than a dividend to which subsection (a) applies), and

(ii) such investment company meets the requirements of section 852(a) for the taxable year during which it paid such dividend,

then, in computing any deduction under section 243, there shall be taken into account only that portion of such dividend reported by the regulated investment company as eligible for such deduction in written statements furnished to its shareholders and such dividend shall be treated as received from a corporation which is not a 20-percent owned corporation.

(B) Maximum rate under section 1(h)

(i) In general

In any case in which—

(I) a dividend is received from a regulated investment company (other than a dividend to which subsection (a) applies),

(II) such investment company meets the requirements of section 852(a) for the taxable year during which it paid such dividend, and

(III) the qualified dividend income of such investment company for such taxable year is less than 95 percent of its gross income,

then, in computing qualified dividend income, there shall be taken into account only that portion of such dividend reported by the regulated investment company as qualified dividend income in written statements furnished to its shareholders.

(ii) Gross income

For purposes of clause (i), in the case of 1 or more sales or other dispositions of stock or securities, the term ''gross income'' includes only the excess of—

(I) the net short-term capital gain from such sales or dispositions, over

(II) the net long-term capital loss from such sales or dispositions.

(C) Limitations

(i) Subparagraph (a)

The aggregate amount which may be reported as dividends under subparagraph (A) shall not exceed the aggregate dividends received by the company for the taxable year.

(ii) Subparagraph (b)

The aggregate amount which may be reported as qualified dividend income under subparagraph (B) shall not exceed the sum of—

(I) the qualified dividend income of the company for the taxable year, and

(II) the amount of any earnings and profits which were distributed by the company for such taxable year and accumulated in a taxable year with respect to which this part did not apply.

(2) Aggregate dividends

For purposes of this subsection—

(A) In general

In computing the amount of aggregate dividends received, there shall only be taken into account dividends received from domestic corporations.

(B) Dividends

For purposes of subparagraph (A), the term ''dividend'' shall not include any distribution from—

(i) a corporation which, for the taxable year of the corporation in which the distribution is made, or for the next preceding taxable year of the corporation, is a corporation exempt from tax under section 501 (relating to certain charitable, etc., organizations) or section 521 (relating to farmers' cooperative associations), or

(ii) a real estate investment trust which, for the taxable year of the trust in which the dividend is paid, qualifies under part II of subchapter M (section 856 and following).

(C) Limitations on dividends from regulated investment companies

In determining the amount of any dividend for purposes of this paragraph, a dividend received from a regulated investment company shall be subject to the limitations prescribed in this section.

(3) Special rule for computing deduction under section 243

For purposes of subparagraph (A) of paragraph (1), an amount shall be treated as a dividend for the purpose of paragraph (1) only if a deduction would have been allowable under section 243 to the regulated investment company determined—

(A) as if section 243 applied to dividends received by a regulated investment company,

(B) after the application of section 246 (but without regard to subsection (b) thereof), and

(C) after the application of section 246A.

(4) Qualified dividend income

For purposes of this subsection, the term ''qualified dividend income'' has the meaning given such term by section 1(h)(11)(B).

(Aug. 16, 1954, ch. 736, 68A Stat. 273; Pub. L. 88–272, title II, §§ 201(d)(8)–(10), 229(a)(4), Feb. 26, 1964, 78 Stat. 32, 99; Pub. L. 96–223, title IV, § 404(b)(6), Apr. 2, 1980, 94 Stat. 307; Pub. L. 97–34, title III, § 302(c)(4), (d)(1), Aug. 13, 1981, 95 Stat. 272, 274; Pub. L. 98–369, div. A, title I, §§ 16(a), 52(a)–(c), July 18, 1984, 98 Stat. 505, 564, 565; Pub. L. 99–514, title VI, §§ 612(b)(6), 655(a)(4), Oct. 22, 1986, 100 Stat. 2250, 2299; Pub. L. 100–203, title X, § 10221(d)(3), Dec. 22, 1987, 101 Stat. 1330–409; Pub. L. 100–647, title I, § 1006(b)(2), Nov. 10, 1988, 102 Stat. 3393; Pub. L. 108–27, title III, § 302(c), May 28, 2003, 117 Stat. 762; Pub. L. 108–311, title IV, § 402(a)(5)(A)–(D), Oct. 4, 2004, 118 Stat. 1184; Pub. L. 111–325, title III, § 301(e), Dec. 22, 2010, 124 Stat. 3544.)

AMENDMENTS

2010—Subsec. (b)(1)(A). Pub. L. 111–325, § 301(e)(1)(A), in concluding provisions, substituted ''reported by the regulated investment company as eligible for such deduction in written statements furnished to its shareholders'' for ''designated under this subparagraph by the regulated investment company''.

Subsec. (b)(1)(B)(i). Pub. L. 111–325, § 301(e)(1)(B), in concluding provisions, substituted ''reported by the regulated investment company as qualified dividend income in written statements furnished to its shareholders'' for ''designated by the regulated investment company''.

Subsec. (b)(1)(C)(i). Pub. L. 111–325, § 301(e)(1)(C), substituted ''reported'' for ''designated''.

Subsec. (b)(1)(C)(ii). Pub. L. 111–325, § 301(e)(1)(D), substituted ''reported'' for ''designated'' in introductory provisions.

Subsec. (b)(2) to (5). Pub. L. 111–325, § 301(e)(2), redesignated pars. (3) to (5) as (2) to (4), respectively, and struck out former par. (2). Prior to amendment, text read as follows: ''The amount of any distribution by a regulated investment company which may be taken into account as qualified dividend income for purposes of section 1(h)(11) and as dividends for purposes of the deduction under section 243 shall not exceed the amount so designated by the company in a written notice to its shareholders mailed not later than 60 days after the close of its taxable year.''

2004—Subsec. (b)(1)(B)(i). Pub. L. 108–311, § 402(a)(5)(A)(ii), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''If the aggregate dividends received by a regulated investment company during any taxable year are less than 95 percent of its gross income, then, in computing the maximum rate under section 1(h)(11), rules similar to the rules of subparagraph (A) shall apply.''

Subsec. (b)(1)(B)(iii), (iv). Pub. L. 108–311, § 402(a)(5)(A)(i), struck out cls. (iii) and (iv) which related to dividends from real estate investment trusts and dividends from qualified foreign corporations, respectively.

Subsec. (b)(1)(C). Pub. L. 108–311, § 402(a)(5)(B), amended heading and text of subpar. (C) generally. Prior to amendment, text read as follows: ''The aggregate amount which may be designated as dividends under subparagraph (A) or (B) shall not exceed the aggregate dividends received by the company for the taxable year.''

Subsec. (b)(2). Pub. L. 108–311, § 402(a)(5)(C), substituted ''as qualified dividend income for purposes of section 1(h)(11) and as dividends for purposes of'' for ''as a dividend for purposes of the maximum rate under section 1(h)(11) and''.

Subsec. (b)(5). Pub. L. 108–311, § 402(a)(5)(D), amended heading and text of par. (5) generally. Prior to amendment, text read as follows: ''For purposes of paragraph (1)(B), an amount shall be treated as a dividend only if the amount is qualified dividend income (within the meaning of section 1(h)(11)(B)).''

2003—Subsec. (a). Pub. L. 108–27, § 302(c)(1), inserted ''section 1(h)(11) (relating to maximum rate of tax on dividends) and'' after ''For purposes of''.

Subsec. (b)(1)(B). Pub. L. 108–27, § 302(c)(2), added subpar. (B). Former subpar. (B) redesignated (C).

Subsec. (b)(1)(C). Pub. L. 108–27, § 302(c)(2), (3), redesignated subpar. (B) as (C) and substituted ''subparagraph (A) or (B)'' for ''subparagraph (A)''.

Subsec. (b)(2). Pub. L. 108–27, § 302(c)(4), inserted ''the maximum rate under section 1(h)(11) and'' after ''for purposes of''.

Subsec. (b)(5). Pub. L. 108–27, § 302(c)(5), added par. (5).

1988—Subsec. (b)(3). Pub. L. 100–647 substituted ''Aggregate dividends'' for ''Definitions'' in heading and amended text generally, substituting subpars. (A) to (C) for former subpars. (A) and (B).

1987—Subsec. (b)(1)(A). Pub. L. 100–203 inserted ''and such dividend shall be treated as received from a corporation which is not a 20-percent owned corporation'' before period at end.

1986—Subsec. (a). Pub. L. 99–514, § 612(b)(6)(A), which directed that ''section 116 (relating to an exclusion for dividends received by individuals), and'' be struck out, was executed by striking out ''section 116 (relating to an exclusion for dividends received by individuals) and'' before ''section 243'' as the probable intent of Congress.

Subsec. (b)(1)(B), (C). Pub. L. 99–514, § 612(b)(6)(B)(i), (ii), redesignated subpar. (C) as (B), struck out ''or (B)'' before ''shall not exceed'', and struck out former subpar. (B), exclusion under section 116, which read as follows: ''If the aggregate dividends received by a regulated investment company during any taxable year are less than 95 percent of its gross income, then, in computing the exclusion under section 116, rules similar to the rules of subparagraph (A) shall apply.''

Subsec. (b)(2). Pub. L. 99–514, § 655(a)(4), substituted ''60 days'' for ''45 days''.

Pub. L. 99–514, § 612(b)(6)(B)(iii), struck out ''the exclusion under section 116 and'' before ''the deduction under section 243''.

Subsec. (b)(3)(B). Pub. L. 99–514, § 612(b)(6)(B)(iv), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''The term 'aggregate dividends received' includes only dividends received from domestic corporations other than dividends described in section 116(b) (relating to dividends excluded from gross income). In determining the amount of any dividend for purposes of this subparagraph, the rules provided in section 116(c) (relating to certain distributions) shall apply.''

1984—Subsec. (b). Pub. L. 98–369, § 16(a), repealed amendments made by Pub. L. 97–34, § 302(c). See 1981 Amendment note below.

Subsec. (b)(1). Pub. L. 98–369, § 52(a), increased the required amount of dividends by substituting provisions directing that in any case in which (i) a dividend is received from a regulated investment company (other than a dividend to which subsection (a) applies), and (ii) such investment company meets the requirements of section 852(a) for the taxable year during which it paid such dividend, then, in computing any deduction under section 243, there shall be taken into account only that portion of such dividend thus designated by the regulated investment company, that if the aggregate dividends received by a regulated investment company during any taxable year are less than 95 percent of its gross income, then, in computing the exclusion under section 116, similar rules applied, and that the aggregate amount which may be designated thus dividends shall not exceed the aggregate dividends received by the company for the taxable year for provisions which had directed that in the case of a dividend received from a regulated investment company (other than a dividend to which subsection (a) applied) (A) if such investment company met the requirements of section 852(a) for the taxable year during which it paid such dividend; and (B) the aggregate dividends received by such company during such taxable year were less than 75 percent of its gross income, then, in computing the exclusion under section 116 and the deduction under section 243, there was taken into account only that portion of the dividend which bore the same ratio to the amount of such dividend as the aggregate dividends received by such company during such taxable year to its gross income for such taxable year.

Subsec. (b)(3)(A). Pub. L. 98–369, § 52(c), substituted provisions directing that in the case of 1 or more sales or other dispositions of stock and securities, the term ''gross income'' include only the excess of (i) the net short-term capital gain from such sales or dispositions, over (ii) the net long-term capital loss from such sales or dispositions for provisions which had directed that the term ''gross income'' not include gain from the sale or other disposition of stock or securities.

Subsec. (b)(4). Pub. L. 98–369, § 52(b), added par. (4).

1981—Subsec. (b). Pub. L. 97–34, § 302(c)(4), (d)(1), provided for general amendment of subsec. (b) so as to include provisions relating to taxable interest described in section 128 of this title, applicable to taxable years beginning after Dec. 31, 1984. Section 16(a) of Pub. L. 98–369, repealed section 302(c) of Pub. L. 97–34, and provided that this title shall be applied and administered as if section 302(c), and the amendments made by section 302(c), had not been enacted.

1980—Subsec. (b). Pub. L. 96–223, § 404(b)(6), temporarily substituted ''Other dividends and taxable interest'' for ''Other dividends'' in heading, substituted ''Deduction under section 243'' for ''General rule'' in heading for par. (1), struck out ''the exclusion under section 116 and'' after ''in computing'' in text of par. (1) following subpar. (B), added par. (2), redesignated former pars. (2) and (3) as (3) and (4), respectively, and, in par. (4) as so redesignated, substituted ''116(b)(2)'' for ''116(b)'' and ''116(c)(2)'' for ''116(c)'' in subpar. (B) and added subpar. (C).

1964—Subsec. (a). Pub. L. 88–272, § 201(d)(8), struck out ''section 34(a) (relating to credit for dividends received by individuals),'' before ''section 116'' and the comma before ''and''.

Subsec. (b). Pub. L. 88–272, §§ 201(d)(9), (10), 229(a)(4), substituted ''45 days'' for ''30 days'' in par. (2), and struck out ''the credit under section 34(a),'' before ''the exclusion'' in par. (1), and ''the credit under section 34,'' before ''the exclusion'' in par. (2).

EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

Amendment by Pub. L. 111–325 applicable to taxable years beginning after Dec. 22, 2010, see section 301(h) of Pub. L. 111–325, set out as an Effective Date of 2010 Amendment note under section 852 of this title.

Pub. L. 111–325, title III, § 301(i), Dec. 22, 2010, 124 Stat. 3547, provided that: ''Section 303 of the Jobs and Growth Tax Relief Reconciliation Act of 2003 [Pub. L. 108–27, which was repealed by Pub. L. 112–240, title I, § 102(a), Jan. 2, 2013, 126 Stat. 2318, was formerly set out as an Effective and Termination Dates of 2003 Amendment note under section 1 of this title] shall apply to the amendments made by subparagraphs (B) and (D) of subsection (e)(1) [amending this section] to the same extent and in the same manner as section 303 of such Act applies to the amendments made by section 302 of such Act [amending this section and sections 1, 163, 301, 306, 338, 467, 531, 541, 584, 702, 857, 1255, and 1257 of this title and repealing section 341 of this title].''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 effective as if included in section 302 of the Jobs and Growth Tax Relief Reconciliation Act of 2003, Pub. L. 108–27, see section 402(b) of Pub. L. 108–311, set out a note under section 1 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–27 applicable, except as otherwise provided, to taxable years beginning after Dec. 31, 2002, see section 302(f) of Pub. L. 108–27, set out as an Effective and Termination Dates of 2003 Amendment note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to dividends received or accrued after Dec. 31, 1987, in taxable years ending after such date, see section 10221(e)(1) of Pub. L. 100–203, set out as a note under section 243 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 612(b)(6) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 612(c) of Pub. L. 99–514, set out as a note under section 301 of this title.

Amendment by section 655(a)(4) of Pub. L. 99–514 applicable to taxable years beginning after Oct. 22, 1986, see section 655(b) of Pub. L. 99–514, set out as a note under section 852 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 16(a) of Pub. L. 98–369 applicable to taxable years ending after Dec. 31, 1983, see section 18(a) of Pub. L. 98–369, set out as a note under section 48 of this title.

Pub. L. 98–369, div. A, title I, § 52(d), July 18, 1984, 98 Stat. 565, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years of regulated investment companies beginning after the date of the enactment of this Act [July 18, 1984].''

EFFECTIVE AND TERMINATION DATES OF 1980 AMENDMENT

Amendment by Pub. L. 96–223 applicable with respect to taxable years beginning after Dec. 31, 1980, and before Jan. 1, 1982, see section 404(c) of Pub. L. 96–223, set out as a note under section 265 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by section 201(d)(8)–(10) of Pub. L. 88–272 applicable to dividends received after Dec. 31, 1964, in taxable years ending after such date, see section 201(e) of Pub. L. 88–272, set out as a note under section 22 of this title.

Amendment by section 229(a)(4) of Pub. L. 88–272 applicable to taxable years of regulated investment companies ending on or after Feb. 26, 1964, see section 229(c) of Pub. L. 88–272, set out as a note under section 852 of this title.

QUALIFIED DIVIDEND NOTICE PERIOD

Pub. L. 108–311, title IV, § 402(a)(5)(F), Oct. 4, 2004, 118 Stat. 1185, provided that: ''With respect to any taxable year of a regulated investment company or real estate investment trust ending on or before November 30, 2003, the period for providing notice of the qualified dividend amount to shareholders under [former, as to 854(b)(2)] sections 854(b)(2) and 857(c)(2)(C) of the Internal Revenue Code of 1986, as amended by this section, shall not expire before the date on which the statement under section 6042(c) of such Code is required to be furnished with respect to the last calendar year beginning in such taxable year.''

§ 855. Dividends paid by regulated investment company after close of taxable year

(a) General rule

For purposes of this chapter, if a regulated investment company—

(1) declares a dividend on or before the later of—

(A) the 15th day of the 9th month following the close of the taxable year, or

(B) in the case of an extension of time for filing the company's return for the taxable year, the due date for filing such return taking into account such extension, and

(2) distributes the amount of such dividend to shareholders in the 12-month period following the close of such taxable year and not later than the date of the first dividend payment of the same type of dividend made after such declaration,

the amount so declared and distributed shall, to the extent the company elects in such return in accordance with regulations prescribed by the Secretary, be considered as having been paid during such taxable year, except as provided in subsections (b) and (c). For purposes of paragraph (2), a dividend attributable to any short-term capital gain with respect to which a notice is required under the Investment Company Act of 1940 shall be treated as the same type of dividend as a capital gain dividend.

(b) Receipt by shareholder

Except as provided in section 852(b)(7), amounts to which subsection (a) is applicable shall be treated as received by the shareholder in the taxable year in which the distribution is made.

(c) Foreign tax election

If an investment company to which section 853 is applicable for the taxable year makes a distribution as provided in subsection (a) of this section, the shareholders shall consider the amounts described in section 853(b)(2) allocable to such distribution as paid or received, as the case may be, in the taxable year in which the distribution is made.

(Aug. 16, 1954, ch. 736, 68A Stat. 274; Pub. L. 86–779, § 10(b)(2), Sept. 14, 1960, 74 Stat. 1009; Pub. L. 88–272, title II, § 229(a)(5), Feb. 26, 1964, 78 Stat. 99; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 99–514, title VI, §§ 651(b)(1)(B), 655(a)(5), Oct. 22, 1986, 100 Stat. 2296, 2299; Pub. L. 100–647, title I, § 1006(*l*)(1)(B), Nov. 10, 1988, 102 Stat. 3413; Pub. L. 111–325, title III, §§ 301(g), 304(a)–(c), Dec. 22, 2010, 124 Stat. 3547–3549; Pub. L. 113–295, div. A, title II, § 205(b), Dec. 19, 2014, 128 Stat. 4026.)

REFERENCES IN TEXT

The Investment Company Act of 1940, referred to in subsec. (a), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter I (§ 80a–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a–51 of Title 15 and Tables.

AMENDMENTS

2014—Subsec. (a)(1). Pub. L. 113–295 inserted ''on or'' before ''before'' in introductory provisions.

2010—Subsec. (a). Pub. L. 111–325, § 304(c), in concluding provisions, inserted at end ''For purposes of paragraph (2), a dividend attributable to any short-term capital gain with respect to which a notice is required under the Investment Company Act of 1940 shall be treated as the same type of dividend as a capital gain dividend.''

Pub. L. 111–325, § 301(g)(2), substituted ''and (c)'' for '', (c) and (d)'' in concluding provisions.

Subsec. (a)(1). Pub. L. 111–325, § 304(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''declares a dividend prior to the time prescribed by law for the filing of its return for a taxable year (including the period of any extension of time granted for filing such return), and''.

Subsec. (a)(2). Pub. L. 111–325, § 304(b), substituted ''the first dividend payment of the same type of dividend'' for ''the first regular dividend payment''.

Subsecs. (c), (d). Pub. L. 111–325, § 301(g)(1), redesignated subsec. (d) as (c) and struck out former subsec. (c). Text of former subsec. (c) read as follows: ''In the case of amounts to which subsection (a) is applicable, any notice to shareholders required under this part with respect to such amounts shall be made not later than 60 days after the close of the taxable year in which the distribution is made.''

1988—Subsec. (b). Pub. L. 100–647 substituted ''section 852(b)(7)'' for ''section 852(b)(6)''.

1986—Subsec. (b). Pub. L. 99–514, § 651(b)(1)(B), substituted ''Except as provided in section 852(b)(6), amounts'' for ''Amounts''.

Subsec. (c). Pub. L. 99–514, § 655(a)(5), substituted ''60 days'' for ''45 days''.

1976—Subsec. (a). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

1964—Subsec. (c). Pub. L. 88–272 substituted ''45 days'' for ''30 days''.

1960—Subsec. (c). Pub. L. 86–779 substituted ''this part'' for ''this subchapter''.

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–295 effective as if included in the provision of the Regulated Investment Company Modernization Act of 2010, Pub. L. 111–325, to which such amendment relates, with savings provision in certain cases of an election by a regulated investment company under section 852(b)(8) of this title, see sec-

tion 205(f) of Pub. L. 113–295, set out as a note under section 852 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 301(g) of Pub. L. 111–325 applicable to taxable years beginning after Dec. 22, 2010, see section 301(h) of Pub. L. 111–325, set out as a note under section 852 of this title.

Pub. L. 111–325, title III, § 304(d), Dec. 22, 2010, 124 Stat. 3549, provided that: ''The amendments made by this section [amending this section] shall apply to distributions in taxable years beginning after the date of the enactment of this Act [Dec. 22, 2010].''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 651(b)(1)(B) of Pub. L. 99–514 applicable to calendar years beginning after Dec. 31, 1986, see section 651(d) of Pub. L. 99–514, set out as an Effective Date note under section 4982 of this title.

Amendment by section 655(a)(5) of Pub. L. 99–514 applicable to taxable years beginning after Oct. 22, 1986, see section 655(b) of Pub. L. 99–514, set out as a note under section 852 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to taxable years of regulated investment companies ending on or after Feb. 26, 1964, see section 229(c) of Pub. L. 88–272, set out as a note under section 852 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–779 applicable with respect to taxable years of real estate investment trusts beginning after Dec. 31, 1960, see section 10(k) of Pub. L. 86–779, set out as an Effective Date note under section 856 of this title.

PART II—REAL ESTATE INVESTMENT TRUSTS

AMENDMENTS

1978—Pub. L. 95–600, title III, § 362(d)(7), Nov. 6, 1978, 92 Stat. 2852, substituted in item 859 ''Adoption of annual accounting period'' for ''Deduction of deficiency dividends'' and struck out item 860 ''Adoption of annual accounting period''.

1976—Pub. L. 94–455, title XVI, §§ 1601(a)(2), 1604(i)(2), Oct. 4, 1976, 90 Stat. 1745, 1752, added items 859 and 860.

1960—Pub. L. 86–779, § 10(a), Sept. 14, 1960, 74 Stat. 1003, added part II analysis.

§ 856. Definition of real estate investment trust

(a) In general

For purposes of this title, the term ''real estate investment trust'' means a corporation, trust, or association—

(1) which is managed by one or more trustees or directors;

(2) the beneficial ownership of which is evidenced by transferable shares, or by transferable certificates of beneficial interest;

(3) which (but for the provisions of this part) would be taxable as a domestic corporation;

(4) which is neither (A) a financial institution referred to in section 582(c)(2), nor (B) an insurance company to which subchapter L applies;

(5) the beneficial ownership of which is held by 100 or more persons;

(6) subject to the provisions of subsection (k), which is not closely held (as determined under subsection (h)); and

(7) which meets the requirements of subsection (c).

(b) Determination of status

The conditions described in paragraphs (1) to (4), inclusive, of subsection (a) must be met during the entire taxable year, and the condition described in paragraph (5) must exist during at least 335 days of a taxable year of 12 months, or during a proportionate part of a taxable year of less than 12 months.

(c) Limitations

A corporation, trust, or association shall not be considered a real estate investment trust for any taxable year unless—

(1) it files with its return for the taxable year an election to be a real estate investment trust or has made such election for a previous taxable year, and such election has not been terminated or revoked under subsection (g);

(2) at least 95 percent (90 percent for taxable years beginning before January 1, 1980) of its gross income (excluding gross income from prohibited transactions) is derived from—

(A) dividends;

(B) interest;

(C) rents from real property;

(D) gain from the sale or other disposition of stock, securities, and real property (including interests in real property and interests in mortgages on real property) which is not property described in section 1221(a)(1);

(E) abatements and refunds of taxes on real property;

(F) income and gain derived from foreclosure property (as defined in subsection (e));

(G) amounts (other than amounts the determination of which depends in whole or in part on the income or profits of any person) received or accrued as consideration for entering into agreements (i) to make loans secured by mortgages on real property or on interests in real property or (ii) to purchase or lease real property (including interests in real property and interests in mortgages on real property);

(H) gain from the sale or other disposition of a real estate asset which is not a prohibited transaction solely by reason of section 857(b)(6); and

(I) mineral royalty income earned in the first taxable year beginning after the date of the enactment of this subparagraph from real property owned by a timber real estate investment trust and held, or once held, in connection with the trade or business of producing timber by such real estate investment trust;

(3) at least 75 percent of its gross income (excluding gross income from prohibited transactions) is derived from—

(A) rents from real property;

(B) interest on obligations secured by mortgages on real property or on interests in real property;

(C) gain from the sale or other disposition of real property (including interests in real property and interests in mortgages on real property) which is not property described in section 1221(a)(1);

(D) dividends or other distributions on, and gain (other than gain from prohibited transactions) from the sale or other disposition of, transferable shares (or transferable certificates of beneficial interest) in other real estate investment trusts which meet the requirements of this part;

(E) abatements and refunds of taxes on real property;

(F) income and gain derived from foreclosure property (as defined in subsection (e));

(G) amounts (other than amounts the determination of which depends in whole or in part on the income or profits of any person) received or accrued as consideration for entering into agreements (i) to make loans secured by mortgages on real property or on interests in real property or (ii) to purchase or lease real property (including interests in real property and interests in mortgages on real property);

(H) gain from the sale or other disposition of a real estate asset (other than a nonqualified publicly offered REIT debt instrument) which is not a prohibited transaction solely by reason of section 857(b)(6); and

(I) qualified temporary investment income; and

(4) at the close of each quarter of the taxable year—

(A) at least 75 percent of the value of its total assets is represented by real estate assets, cash and cash items (including receivables), and Government securities; and

(B)(i) not more than 25 percent of the value of its total assets is represented by securities (other than those includible under subparagraph (A)),

(ii) not more than 20 percent of the value of its total assets is represented by securities of one or more taxable REIT subsidiaries,

(iii) not more than 25 percent of the value of its total assets is represented by nonqualified publicly offered REIT debt instruments, and

(iv) except with respect to a taxable REIT subsidiary and securities includible under subparagraph (A)—

(I) not more than 5 percent of the value of its total assets is represented by securities of any one issuer,

(II) the trust does not hold securities possessing more than 10 percent of the total voting power of the outstanding securities of any one issuer, and

(III) the trust does not hold securities having a value of more than 10 percent of the total value of the outstanding securities of any one issuer.

A real estate investment trust which meets the requirements of this paragraph at the close of any quarter shall not lose its status as a real estate investment trust because of a discrepancy during a subsequent quarter between the value of its various investments and such requirements (including a discrepancy caused solely by the change in the foreign currency exchange rate used to value a foreign asset) unless such discrepancy exists immediately after the acquisition of any security or other property and is wholly or partly the result of such acquisition. A real estate investment trust which does not meet such requirements at the close of any quarter by reason of a discrepancy existing immediately after the acquisition of any security or other property which is wholly or partly the result of such acquisition during such quarter shall not lose its status for such quarter as a real estate investment trust if such discrepancy is eliminated within 30 days after the close of such quarter and in such cases it shall be considered to have met such requirements at the close of such quarter for purposes of applying the preceding sentence.

(5) For purposes of this part—

(A) The term ''value'' means, with respect to securities for which market quotations are readily available, the market value of such securities; and with respect to other securities and assets, fair value as determined in good faith by the trustees, except that in the case of securities of real estate investment trusts such fair value shall not exceed market value or asset value, whichever is higher.

(B) The term ''real estate assets'' means real property (including interests in real property and interests in mortgages on real property or on interests in real property), shares (or transferable certificates of beneficial interest) in other real estate investment trusts which meet the requirements of this part, and debt instruments issued by publicly offered REITs. Such term also includes any property (not otherwise a real estate asset) attributable to the temporary investment of new capital, but only if such property is stock or a debt instrument, and only for the 1-year period beginning on the date the real estate trust receives such capital.

(C) The term ''interests in real property'' includes fee ownership and co-ownership of land or improvements thereon, leaseholds of land or improvements thereon, options to acquire land or improvements thereon, and options to acquire leaseholds of land or improvements thereon, but does not include mineral, oil, or gas royalty interests.

(D) QUALIFIED TEMPORARY INVESTMENT INCOME.—

(i) IN GENERAL.—The term ''qualified temporary investment income'' means any income which—

(I) is attributable to stock or a debt instrument (within the meaning of section 1275(a)(1)),

(II) is attributable to the temporary investment of new capital, and

(III) is received or accrued during the 1-year period beginning on the date on which the real estate investment trust receives such capital.

(ii) NEW CAPITAL.—The term ''new capital'' means any amount received by the real estate investment trust—

(I) in exchange for stock (or certificates of beneficial interests) in such trust (other than amounts received pursuant to a dividend reinvestment plan), or

(II) in a public offering of debt obligations of such trust which have maturities of at least 5 years.

(E) A regular or residual interest in a REMIC shall be treated as a real estate asset, and any amount includible in gross income with respect to such an interest shall be treated as interest on an obligation secured by a mortgage on real property; except that, if less than 95 percent of the assets of such REMIC are real estate assets (determined as if the real estate investment trust held such assets), such real estate investment trust shall be treated as holding directly (and as receiving directly) its proportionate share of the assets and income of the REMIC. For purposes of determining whether any interest in a REMIC qualifies under the preceding sentence, any interest held by such REMIC in another REMIC shall be treated as a real estate asset under principles similar to the principles of the preceding sentence, except that, if such REMIC's are part of a tiered structure, they shall be treated as one REMIC for purposes of this subparagraph.

(F) All other terms shall have the same meaning as when used in the Investment Company Act of 1940, as amended (15 U.S.C. 80a–1 and following).

(G) TREATMENT OF CERTAIN HEDGING INSTRUMENTS.—Except to the extent as determined by the Secretary—

(i) any income of a real estate investment trust from a hedging transaction (as defined in clause (ii) or (iii) of section 1221(b)(2)(A)), including gain from the sale or disposition of such a transaction, shall not constitute gross income under paragraphs (2) and (3) to the extent that the transaction hedges any indebtedness incurred or to be incurred by the trust to acquire or carry real estate assets,

(ii) any income of a real estate investment trust from a transaction entered into by the trust primarily to manage risk of currency fluctuations with respect to any item of income or gain described in paragraph (2) or (3) (or any property which generates such income or gain), including gain from the termination of such a transaction, shall not constitute gross income under paragraphs (2) and (3),

(iii) if—

(I) a real estate investment trust enters into one or more positions described in clause (i) with respect to indebtedness described in clause (i) or one or more positions described in clause (ii) with respect to property which generates income or gain described in paragraph (2) or (3),

(II) any portion of such indebtedness is extinguished or any portion of such property is disposed of, and

(III) in connection with such extinguishment or disposition, such trust enters into one or more transactions which would be hedging transactions described in clause (ii) or (iii) of section 1221(b)(2)(A) with respect to any position referred to in subclause (I) if such position were ordinary property,

any income of such trust from any position referred to in subclause (I) and from any transaction referred to in subclause (III) (including gain from the termination of any such position or transaction) shall not constitute gross income under paragraphs (2) and (3) to the extent that such transaction hedges such position, and

(iv) clauses (i), (ii), and (iii) shall not apply with respect to any transaction unless such transaction satisfies the identification requirement described in section 1221(a)(7) (determined after taking into account any curative provisions provided under the regulations referred to therein).

(H) TREATMENT OF TIMBER GAINS.—

(i) IN GENERAL.—Gain from the sale of real property described in paragraph (2)(D) and (3)(C) shall include gain which is—

(I) recognized by an election under section 631(a) from timber owned by the real estate investment trust, the cutting of which is provided by a taxable REIT subsidiary of the real estate investment trust;

(II) recognized under section 631(b); or

(III) income which would constitute gain under subclause (I) or (II) but for the failure to meet the 1-year holding period requirement.

(ii) SPECIAL RULES.—

(I) For purposes of this subtitle, cut timber, the gain from which is recognized by a real estate investment trust pursuant to an election under section 631(a) described in clause (i)(I) or so much of clause (i)(III) as relates to clause (i)(I), shall be deemed to be sold to the taxable REIT subsidiary of the real estate investment trust on the first day of the taxable year.

(II) For purposes of this subtitle, income described in this subparagraph shall not be treated as gain from the sale of property described in section 1221(a)(1).

(iii) TERMINATION.—This subparagraph shall not apply to dispositions after the termination date.

(I) TIMBER REAL ESTATE INVESTMENT TRUST.—The term ''timber real estate investment trust'' means a real estate invest-

ment trust in which more than 50 percent in value of its total assets consists of real property held in connection with the trade or business of producing timber.

(J) SECRETARIAL AUTHORITY TO EXCLUDE OTHER ITEMS OF INCOME.—To the extent necessary to carry out the purposes of this part, the Secretary is authorized to determine, solely for purposes of this part, whether any item of income or gain which—

(i) does not otherwise qualify under paragraph (2) or (3) may be considered as not constituting gross income for purposes of paragraphs (2) or (3), or

(ii) otherwise constitutes gross income not qualifying under paragraph (2) or (3) may be considered as gross income which qualifies under paragraph (2) or (3).

(K) CASH.—If the real estate investment trust or its qualified business unit (as defined in section 989) uses any foreign currency as its functional currency (as defined in section 985(b)), the term ''cash'' includes such foreign currency but only to the extent such foreign currency—

(i) is held for use in the normal course of the activities of the trust or qualified business unit which give rise to items of income or gain described in paragraph (2) or (3) of subsection (c) or are directly related to acquiring or holding assets described in subsection (c)(4), and

(ii) is not held in connection with an activity described in subsection (n)(4).

(L) DEFINITIONS RELATED TO DEBT INSTRUMENTS OF PUBLICLY OFFERED REITS.—

(i) PUBLICLY OFFERED REIT.—The term ''publicly offered REIT'' has the meaning given such term by section 562(c)(2).

(ii) NONQUALIFIED PUBLICLY OFFERED REIT DEBT INSTRUMENT.—The term ''nonqualified publicly offered REIT debt instrument'' means any real estate asset which would cease to be a real estate asset if subparagraph (B) were applied without regard to the reference to ''debt instruments issued by publicly offered REITs''.

(6) A corporation, trust, or association which fails to meet the requirements of paragraph (2) or (3), or of both such paragraphs, for any taxable year shall nevertheless be considered to have satisfied the requirements of such paragraphs for such taxable year if—

(A) following the corporation, trust, or association's identification of the failure to meet the requirements of paragraph (2) or (3), or of both such paragraphs, for any taxable year, a description of each item of its gross income described in such paragraphs is set forth in a schedule for such taxable year filed in accordance with regulations prescribed by the Secretary, and

(B) the failure to meet the requirements of paragraph (2) or (3), or of both such paragraphs, is due to reasonable cause and not due to willful neglect.

(7) RULES OF APPLICATION FOR FAILURE TO SATISFY PARAGRAPH (4).—

(A) IN GENERAL.—A corporation, trust, or association that fails to meet the requirements of paragraph (4) (other than a failure to meet the requirements of paragraph (4)(B)(iii) which is described in subparagraph (B)(i) of this paragraph) for a particular quarter shall nevertheless be considered to have satisfied the requirements of such paragraph for such quarter if—

(i) following the corporation, trust, or association's identification of the failure to satisfy the requirements of such paragraph for a particular quarter, a description of each asset that causes the corporation, trust, or association to fail to satisfy the requirements of such paragraph at the close of such quarter of any taxable year is set forth in a schedule for such quarter filed in accordance with regulations prescribed by the Secretary,

(ii) the failure to meet the requirements of such paragraph for a particular quarter is due to reasonable cause and not due to willful neglect, and

(iii)(I) the corporation, trust, or association disposes of the assets set forth on the schedule specified in clause (i) within 6 months after the last day of the quarter in which the corporation, trust or association's identification of the failure to satisfy the requirements of such paragraph occurred or such other time period prescribed by the Secretary and in the manner prescribed by the Secretary, or

(II) the requirements of such paragraph are otherwise met within the time period specified in subclause (I).

(B) RULE FOR CERTAIN DE MINIMIS FAILURES.—A corporation, trust, or association that fails to meet the requirements of paragraph (4)(B)(iii) for a particular quarter shall nevertheless be considered to have satisfied the requirements of such paragraph for such quarter if—

(i) such failure is due to the ownership of assets the total value of which does not exceed the lesser of—

(I) 1 percent of the total value of the trust's assets at the end of the quarter for which such measurement is done, and

(II) $10,000,000, and

(ii)(I) the corporation, trust, or association, following the identification of such failure, disposes of assets in order to meet the requirements of such paragraph within 6 months after the last day of the quarter in which the corporation, trust or association's identification of the failure to satisfy the requirements of such paragraph occurred or such other time period prescribed by the Secretary and in the manner prescribed by the Secretary, or

(II) the requirements of such paragraph are otherwise met within the time period specified in subclause (I).

(C) TAX.—

(i) TAX IMPOSED.—If subparagraph (A) applies to a corporation, trust, or association for any taxable year, there is hereby imposed on such corporation, trust, or association a tax in an amount equal to the greater of—

(I) $50,000, or

(II) the amount determined (pursuant to regulations promulgated by the Secretary) by multiplying the net income generated by the assets described in the schedule specified in subparagraph (A)(i) for the period specified in clause (ii) by the highest rate of tax specified in section 11.

(ii) PERIOD.—For purposes of clause (i)(II), the period described in this clause is the period beginning on the first date that the failure to satisfy the requirements of such paragraph (4) occurs as a result of the ownership of such assets and ending on the earlier of the date on which the trust disposes of such assets or the end of the first quarter when there is no longer a failure to satisfy such paragraph (4).

(iii) ADMINISTRATIVE PROVISIONS.—For purposes of subtitle F, the taxes imposed by this subparagraph shall be treated as excise taxes with respect to which the deficiency procedures of such subtitle apply.

(8) ELECTION AFTER TAX-FREE REORGANIZATION.—If a corporation was a distributing corporation or a controlled corporation (other than a controlled corporation with respect to a distribution described in section 355(h)(2)(A)) with respect to any distribution to which section 355 (or so much of section 356 as relates to section 355) applied, such corporation (and any successor corporation) shall not be eligible to make any election under paragraph (1) for any taxable year beginning before the end of the 10-year period beginning on the date of such distribution.

(9) SPECIAL RULES FOR CERTAIN PERSONAL PROPERTY WHICH IS ANCILLARY TO REAL PROPERTY.—

(A) CERTAIN PERSONAL PROPERTY LEASED IN CONNECTION WITH REAL PROPERTY.—Personal property shall be treated as a real estate asset for purposes of paragraph (4)(A) to the extent that rents attributable to such personal property are treated as rents from real property under subsection (d)(1)(C).

(B) CERTAIN PERSONAL PROPERTY MORTGAGED IN CONNECTION WITH REAL PROPERTY.—In the case of an obligation secured by a mortgage on both real property and personal property, if the fair market value of such personal property does not exceed 15 percent of the total fair market value of all such property, such obligation shall be treated—

(i) for purposes of paragraph (3)(B), as an obligation described therein, and

(ii) for purposes of paragraph (4)(A), as a real estate asset.

For purposes of the preceding sentence, the fair market value of all such property shall be determined in the same manner as the fair market value of real property is determined for purposes of apportioning interest income between real property and personal property under paragraph (3)(B).

(10) TERMINATION DATE.—For purposes of this subsection, the term ''termination date'' means, with respect to any taxpayer, the last day of the taxpayer's first taxable year beginning after the date of the enactment of this paragraph and before the date that is 1 year after such date of enactment.

(d) Rents from real property defined

(1) Amounts included

For purposes of paragraphs (2) and (3) of subsection (c), the term ''rents from real property'' includes (subject to paragraph (2))—

(A) rents from interests in real property,

(B) charges for services customarily furnished or rendered in connection with the rental of real property, whether or not such charges are separately stated, and

(C) rent attributable to personal property which is leased under, or in connection with, a lease of real property, but only if the rent attributable to such personal property for the taxable year does not exceed 15 percent of the total rent for the taxable year attributable to both the real and personal property leased under, or in connection with, such lease.

For purposes of subparagraph (C), with respect to each lease of real property, rent attributable to personal property for the taxable year is that amount which bears the same ratio to total rent for the taxable year as the average of the fair market values of the personal property at the beginning and at the end of the taxable year bears to the average of the aggregate fair market values of both the real property and the personal property at the beginning and at the end of such taxable year.

(2) Amounts excluded

For purposes of paragraphs (2) and (3) of subsection (c), the term ''rents from real property'' does not include—

(A) except as provided in paragraphs (4) and (6), any amount received or accrued, directly or indirectly, with respect to any real or personal property, if the determination of such amount depends in whole or in part on the income or profits derived by any person from such property (except that any amount so received or accrued shall not be excluded from the term ''rents from real property'' solely by reason of being based on a fixed percentage or percentages of receipts or sales);

(B) except as provided in paragraph (8), any amount received or accrued directly or indirectly from any person if the real estate investment trust owns, directly or indirectly—

(i) in the case of any person which is a corporation, stock of such person possessing 10 percent or more of the total combined voting power of all classes of stock entitled to vote, or 10 percent or more of the total value of shares of all classes of stock of such person; or

(ii) in the case of any person which is not a corporation, an interest of 10 percent or more in the assets or net profits of such person; and

(C) any impermissible tenant service income (as defined in paragraph (7)).

(3) Independent contractor defined

For purposes of this subsection and subsection (e), the term ''independent contractor'' means any person—

(A) who does not own, directly or indirectly, more than 35 percent of the shares, or certificates of beneficial interest, in the real estate investment trust; and

(B) if such person is a corporation, not more than 35 percent of the total combined voting power of whose stock (or 35 percent of the total shares of all classes of whose stock), or, if such person is not a corporation, not more than 35 percent of the interest in whose assets or net profits is owned, directly or indirectly, by one or more persons owning 35 percent or more of the shares or certificates of beneficial interest in the trust.

In the event that any class of stock of either the real estate investment trust or such person is regularly traded on an established securities market, only persons who own, directly or indirectly, more than 5 percent of such class of stock shall be taken into account as owning any of the stock of such class for purposes of applying the 35 percent limitation set forth in subparagraph (B) (but all of the outstanding stock of such class shall be considered outstanding in order to compute the denominator for purpose of determining the applicable percentage of ownership).

(4) Special rule for certain contingent rents

Where a real estate investment trust receives or accrues, with respect to real or personal property, any amount which would be excluded from the term ''rents from real property'' solely because the tenant of the real estate investment trust receives or accrues, directly or indirectly, from subtenants any amount the determination of which depends in whole or in part on the income or profits derived by any person from such property, only a proportionate part (determined pursuant to regulations prescribed by the Secretary) of the amount received or accrued by the real estate investment trust from that tenant will be excluded from the term ''rents from real property''.

(5) Constructive ownership of stock

For purposes of this subsection, the rules prescribed by section 318(a) for determining the ownership of stock shall apply in determining the ownership of stock, assets, or net profits of any person; except that—

(A) ''10 percent'' shall be substituted for ''50 percent'' in subparagraph (C) of paragraphs (2) and (3) of section 318(a), and

(B) section 318(a)(3)(A) shall be applied in the case of a partnership by taking into account only partners who own (directly or indirectly) 25 percent or more of the capital interest, or the profits interest, in the partnership.

(6) Special rule for certain property subleased by tenant of real estate investment trusts

(A) In general

If—

(i) a real estate investment trust receives or accrues, with respect to real or personal property, amounts from a tenant which derives substantially all of its income with respect to such property from the subleasing of substantially all of such property, and

(ii) a portion of the amount such tenant receives or accrues, directly or indirectly, from subtenants consists of qualified rents,

then the amounts which the trust receives or accrues from the tenant shall not be excluded from the term ''rents from real property'' by reason of being based on the income or profits of such tenant to the extent the amounts so received or accrued are attributable to qualified rents received or accrued by such tenant.

(B) Qualified rents

For purposes of subparagraph (A), the term ''qualified rents'' means any amount which would be treated as rents from real property if received by the real estate investment trust.

(7) Impermissible tenant service income

For purposes of paragraph (2)(C)—

(A) In general

The term ''impermissible tenant service income'' means, with respect to any real or personal property, any amount received or accrued directly or indirectly by the real estate investment trust for—

(i) services furnished or rendered by the trust to the tenants of such property, or

(ii) managing or operating such property.

(B) Disqualification of all amounts where more than de minimis amount

If the amount described in subparagraph (A) with respect to a property for any taxable year exceeds 1 percent of all amounts received or accrued during such taxable year directly or indirectly by the real estate investment trust with respect to such property, the impermissible tenant service income of the trust with respect to the property shall include all such amounts.

(C) Exceptions

For purposes of subparagraph (A)—

(i) services furnished or rendered, or management or operation provided, through an independent contractor from whom the trust itself does not derive or receive any income or through a taxable REIT subsidiary of such trust shall not be treated as furnished, rendered, or provided by the trust, and

(ii) there shall not be taken into account any amount which would be excluded from unrelated business taxable income under section 512(b)(3) if received by an organization described in section 511(a)(2).

(D) Amount attributable to impermissible services

For purposes of subparagraph (A), the amount treated as received for any service

(or management or operation) shall not be less than 150 percent of the direct cost of the trust in furnishing or rendering the service (or providing the management or operation).

(E) Coordination with limitations

For purposes of paragraphs (2) and (3) of subsection (c), amounts described in subparagraph (A) shall be included in the gross income of the corporation, trust, or association.

(8) Special rule for taxable REIT subsidiaries

For purposes of this subsection, amounts paid to a real estate investment trust by a taxable REIT subsidiary of such trust shall not be excluded from rents from real property by reason of paragraph (2)(B) if the requirements of either of the following subparagraphs are met:

(A) Limited rental exception

(i) In general

The requirements of this subparagraph are met with respect to any property if at least 90 percent of the leased space of the property is rented to persons other than taxable REIT subsidiaries of such trust and other than persons described in paragraph (2)(B).

(ii) Rents must be substantially comparable

Clause (i) shall apply only to the extent that the amounts paid to the trust as rents from real property (as defined in paragraph (1) without regard to paragraph (2)(B)) from such property are substantially comparable to such rents paid by the other tenants of the trust's property for comparable space.

(iii) Times for testing rent comparability

The substantial comparability requirement of clause (ii) shall be treated as met with respect to a lease to a taxable REIT subsidiary of the trust if such requirement is met under the terms of the lease—

(I) at the time such lease is entered into,

(II) at the time of each extension of the lease, including a failure to exercise a right to terminate, and

(III) at the time of any modification of the lease between the trust and the taxable REIT subsidiary if the rent under such lease is effectively increased pursuant to such modification.

With respect to subclause (III), if the taxable REIT subsidiary of the trust is a controlled taxable REIT subsidiary of the trust, the term ''rents from real property'' shall not in any event include rent under such lease to the extent of the increase in such rent on account of such modification.

(iv) Controlled taxable REIT subsidiary

For purposes of clause (iii), the term ''controlled taxable REIT subsidiary'' means, with respect to any real estate investment trust, any taxable REIT subsidiary of such trust if such trust owns directly or indirectly—

(I) stock possessing more than 50 percent of the total voting power of the outstanding stock of such subsidiary, or

(II) stock having a value of more than 50 percent of the total value of the outstanding stock of such subsidiary.

(v) Continuing qualification based on third party actions

If the requirements of clause (i) are met at a time referred to in clause (iii), such requirements shall continue to be treated as met so long as there is no increase in the space leased to any taxable REIT subsidiary of such trust or to any person described in paragraph (2)(B).

(vi) Correction period

If there is an increase referred to in clause (v) during any calendar quarter with respect to any property, the requirements of clause (iii) shall be treated as met during the quarter and the succeeding quarter if such requirements are met at the close of such succeeding quarter.

(B) Exception for certain lodging facilities and health care property

The requirements of this subparagraph are met with respect to an interest in real property which is a qualified lodging facility (as defined in paragraph (9)(D)) or a qualified health care property (as defined in subsection (e)(6)(D)(i)) leased by the trust to a taxable REIT subsidiary of the trust if the property is operated on behalf of such subsidiary by a person who is an eligible independent contractor. For purposes of this section, a taxable REIT subsidiary is not considered to be operating or managing a qualified health care property or qualified lodging facility solely because it—

(i) directly or indirectly possesses a license, permit, or similar instrument enabling it to do so, or

(ii) employs individuals working at such facility or property located outside the United States, but only if an eligible independent contractor is responsible for the daily supervision and direction of such individuals on behalf of the taxable REIT subsidiary pursuant to a management agreement or similar service contract.

(9) Eligible independent contractor

For purposes of paragraph (8)(B)—

(A) In general

The term ''eligible independent contractor'' means, with respect to any qualified lodging facility or qualified health care property (as defined in subsection (e)(6)(D)(i)), any independent contractor if, at the time such contractor enters into a management agreement or other similar service contract with the taxable REIT subsidiary to operate such qualified lodging facility or qualified health care property, such contractor (or any related person) is actively engaged in the trade or business of operating qualified lodging facilities or qualified health care properties, respectively, for any person who is not a related person with

respect to the real estate investment trust or the taxable REIT subsidiary.

(B) Special rules

Solely for purposes of this paragraph and paragraph (8)(B), a person shall not fail to be treated as an independent contractor with respect to any qualified lodging facility or qualified health care property (as so defined) by reason of the following:

(i) The taxable REIT subsidiary bears the expenses for the operation of such qualified lodging facility or qualified health care property pursuant to the management agreement or other similar service contract.

(ii) The taxable REIT subsidiary receives the revenues from the operation of such qualified lodging facility or qualified health care property, net of expenses for such operation and fees payable to the operator pursuant to such agreement or contract.

(iii) The real estate investment trust receives income from such person with respect to another property that is attributable to a lease of such other property to such person that was in effect as of the later of—

(I) January 1, 1999, or

(II) the earliest date that any taxable REIT subsidiary of such trust entered into a management agreement or other similar service contract with such person with respect to such qualified lodging facility or qualified health care property.

(C) Renewals, etc., of existing leases

For purposes of subparagraph (B)(iii)—

(i) a lease shall be treated as in effect on January 1, 1999, without regard to its renewal after such date, so long as such renewal is pursuant to the terms of such lease as in effect on whichever of the dates under subparagraph (B)(iii) is the latest, and

(ii) a lease of a property entered into after whichever of the dates under subparagraph (B)(iii) is the latest shall be treated as in effect on such date if—

(I) on such date, a lease of such property from the trust was in effect, and

(II) under the terms of the new lease, such trust receives a substantially similar or lesser benefit in comparison to the lease referred to in subclause (I).

(D) Qualified lodging facility

For purposes of this paragraph—

(i) In general

The term ''qualified lodging facility'' means any lodging facility unless wagering activities are conducted at or in connection with such facility by any person who is engaged in the business of accepting wagers and who is legally authorized to engage in such business at or in connection with such facility.

(ii) Lodging facility

The term ''lodging facility'' means a—

(I) hotel,

(II) motel, or

(III) other establishment more than one-half of the dwelling units in which are used on a transient basis.

(iii) Customary amenities and facilities

The term ''lodging facility'' includes customary amenities and facilities operated as part of, or associated with, the lodging facility so long as such amenities and facilities are customary for other properties of a comparable size and class owned by other owners unrelated to such real estate investment trust.

(E) Operate includes manage

References in this paragraph to operating a property shall be treated as including a reference to managing the property.

(F) Related person

Persons shall be treated as related to each other if such persons are treated as a single employer under subsection (a) or (b) of section 52.

(e) Special rules for foreclosure property

(1) Foreclosure property defined

For purposes of this part, the term ''foreclosure property'' means any real property (including interests in real property), and any personal property incident to such real property, acquired by the real estate investment trust as the result of such trust having bid in such property at foreclosure, or having otherwise reduced such property to ownership or possession by agreement or process of law, after there was default (or default was imminent) on a lease of such property or on an indebtedness which such property secured. Such term does not include property acquired by the real estate investment trust as a result of indebtedness arising from the sale or other disposition of property of the trust described in section 1221(a)(1) which was not originally acquired as foreclosure property.

(2) Grace period

Except as provided in paragraph (3), property shall cease to be foreclosure property with respect to the real estate investment trust as of the close of the 3d taxable year following the taxable year in which the trust acquired such property.

(3) Extensions

If the real estate investment trust establishes to the satisfaction of the Secretary that an extension of the grace period is necessary for the orderly liquidation of the trust's interests in such property, the Secretary may grant one extension of the grace period for such property. Any such extension shall not extend the grace period beyond the close of the 3d taxable year following the last taxable year in the period under paragraph (2).

(4) Termination of grace period in certain cases

Any foreclosure property shall cease to be such on the first day (occurring on or after the day on which the real estate investment trust acquired the property) on which—

(A) a lease is entered into with respect to such property which, by its terms, will give rise to income which is not described in subsection (c)(3) (other than subparagraph (F) of such subsection), or any amount is received or accrued, directly or indirectly, pursuant to a lease entered into on or after such day which is not described in such subsection,

(B) any construction takes place on such property (other than completion of a building, or completion of any other improvement, where more than 10 percent of the construction of such building or other improvement was completed before default became imminent), or

(C) if such day is more than 90 days after the day on which such property was acquired by the real estate investment trust and the property is used in a trade or business which is conducted by the trust (other than through an independent contractor (within the meaning of section (d)(3)) from whom the trust itself does not derive or receive any income or through a taxable REIT subsidiary).

For purposes of subparagraph (C), property shall not be treated as used in a trade or business by reason of any activities of the real estate investment trust with respect to such property to the extent that such activities would not result in amounts received or accrued, directly or indirectly, with respect to such property being treated as other than rents from real property.

(5) Taxpayer must make election

Property shall be treated as foreclosure property for purposes of this part only if the real estate investment trust so elects (in the manner provided in regulations prescribed by the Secretary) on or before the due date (including any extensions of time) for filing its return of tax under this chapter for the taxable year in which such trust acquires such property. A real estate investment trust may revoke any such election for a taxable year by filing the revocation (in the manner provided by the Secretary) on or before the due date (including any extension of time) for filing its return of tax under this chapter for the taxable year. If a trust revokes an election for any property, no election may be made by the trust under this paragraph with respect to the property for any subsequent taxable year.

(6) Special rule for qualified health care properties

For purposes of this subsection—

(A) Acquisition at expiration of lease

The term ''foreclosure property'' shall include any qualified health care property acquired by a real estate investment trust as the result of the termination of a lease of such property (other than a termination by reason of a default, or the imminence of a default, on the lease).

(B) Grace period

In the case of a qualified health care property which is foreclosure property solely by reason of subparagraph (A), in lieu of applying paragraphs (2) and (3)—

(i) the qualified health care property shall cease to be foreclosure property as of the close of the second taxable year after the taxable year in which such trust acquired such property, and

(ii) if the real estate investment trust establishes to the satisfaction of the Secretary that an extension of the grace period in clause (i) is necessary to the orderly leasing or liquidation of the trust's interest in such qualified health care property, the Secretary may grant one or more extensions of the grace period for such qualified health care property.

Any such extension shall not extend the grace period beyond the close of the 6th year after the taxable year in which such trust acquired such qualified health care property.

(C) Income from independent contractors

For purposes of applying paragraph (4)(C) with respect to qualified health care property which is foreclosure property by reason of subparagraph (A) or paragraph (1), income derived or received by the trust from an independent contractor shall be disregarded to the extent such income is attributable to—

(i) any lease of property in effect on the date the real estate investment trust acquired the qualified health care property (without regard to its renewal after such date so long as such renewal is pursuant to the terms of such lease as in effect on such date), or

(ii) any lease of property entered into after such date if—

(I) on such date, a lease of such property from the trust was in effect, and

(II) under the terms of the new lease, such trust receives a substantially similar or lesser benefit in comparison to the lease referred to in subclause (I).

(D) Qualified health care property

(i) In general

The term ''qualified health care property'' means any real property (including interests therein), and any personal property incident to such real property, which—

(I) is a health care facility, or

(II) is necessary or incidental to the use of a health care facility.

(ii) Health care facility

For purposes of clause (i), the term ''health care facility'' means a hospital, nursing facility, assisted living facility, congregate care facility, qualified continuing care facility (as defined in section 7872(g)(4)), or other licensed facility which extends medical or nursing or ancillary services to patients and which, immediately before the termination, expiration, default, or breach of the lease of or mortgage secured by such facility, was operated by a provider of such services which was eligible for participation in the medicare program under title XVIII of the Social Security Act with respect to such facility.

(f) Interest

(1) In general

For purposes of paragraphs (2)(B) and (3)(B) of subsection (c), the term ''interest'' does not include any amount received or accrued, directly or indirectly, if the determination of such amount depends in whole or in part on the income or profits of any person except that—

(A) any amount so received or accrued shall not be excluded from the term ''interest'' solely by reason of being based on a fixed percentage or percentages of receipts or sales, and

(B) where a real estate investment trust receives any amount which would be excluded from the term ''interest'' solely because the debtor of the real estate investment trust receives or accrues any amount the determination of which depends in whole or in part on the income or profits of any person, only a proportionate part (determined pursuant to regulations prescribed by the Secretary) of the amount received or accrued by the real estate investment trust from the debtor will be excluded from the term ''interest''.

(2) Special rule

If—

(A) a real estate investment trust receives or accrues with respect to an obligation secured by a mortgage on real property or an interest in real property amounts from a debtor which derives substantially all of its gross income with respect to such property (not taking into account any gain on any disposition) from the leasing of substantially all of its interests in such property to tenants, and

(B) a portion of the amount which such debtor receives or accrues, directly or indirectly, from tenants consists of qualified rents (as defined in subsection (d)(6)(B)),

then the amounts which the trust receives or accrues from such debtor shall not be excluded from the term ''interest'' by reason of being based on the income or profits of such debtor to the extent the amounts so received are attributable to qualified rents received or accrued by such debtor.

(g) Termination of election

(1) Failure to qualify

An election under subsection (c)(1) made by a corporation, trust, or association shall terminate if the corporation, trust, or association is not a real estate investment trust to which the provisions of this part apply for the taxable year with respect to which the election is made, or for any succeeding taxable year unless paragraph (5) applies. Such termination shall be effective for the taxable year for which the corporation, trust, or association is not a real estate investment trust to which the provisions of this part apply, and for all succeeding taxable years.

(2) Revocation

An election under subsection (c)(1) made by a corporation, trust, or association may be revoked by it for any taxable year after the first taxable year for which the election is effective. A revocation under this paragraph shall be effective for the taxable year in which made and for all succeeding taxable years. Such revocation must be made on or before the 90th day after the first day of the first taxable year for which the revocation is to be effective. Such revocation shall be made in such manner as the Secretary shall prescribe by regulations.

(3) Election after termination or revocation

Except as provided in paragraph (4), if a corporation, trust, or association has made an election under subsection (c)(1) and such election has been terminated or revoked under paragraph (1) or paragraph (2), such corporation, trust, or association (and any successor corporation, trust, or association) shall not be eligible to make an election under subsection (c)(1) for any taxable year prior to the fifth taxable year which begins after the first taxable year for which such termination or revocation is effective.

(4) Exception

If the election of a corporation, trust, or association has been terminated under paragraph (1), paragraph (3) shall not apply if—

(A) the corporation, trust, or association does not willfully fail to file within the time prescribed by law an income tax return for the taxable year with respect to which the termination of the election under subsection (c)(1) occurs;

(B) the inclusion of any incorrect information in the return referred to in subparagraph (A) is not due to fraud with intent to evade tax; and

(C) the corporation, trust, or association establishes to the satisfaction of the Secretary that its failure to qualify as a real estate investment trust to which the provisions of this part apply is due to reasonable cause and not due to willful neglect.

(5) Entities to which paragraph applies

This paragraph applies to a corporation, trust, or association—

(A) which is not a real estate investment trust to which the provisions of this part apply for the taxable year due to one or more failures to comply with one or more of the provisions of this part (other than paragraph (2), (3), or (4) of subsection (c)),

(B) such failures are due to reasonable cause and not due to willful neglect, and

(C) if such corporation, trust, or association pays (as prescribed by the Secretary in regulations and in the same manner as tax) a penalty of $50,000 for each failure to satisfy a provision of this part due to reasonable cause and not willful neglect.

(h) Closely held determinations

(1) Section 542(a)(2) applied

(A) In general

For purposes of subsection (a)(6), a corporation, trust, or association is closely held if the stock ownership requirement of section 542(a)(2) is met.

(B) Waiver of partnership attribution, etc.

For purposes of subparagraph (A)—

(i) paragraph (2) of section 544(a) shall be applied as if such paragraph did not contain the phrase ''or by or for his partner'', and

(ii) sections 544(a)(4)(A) and 544(b)(1) shall be applied by substituting ''the entity meet the stock ownership requirement of section 542(a)(2)'' for ''the corporation a personal holding company''.

(2) Subsections (a)(5) and (6) not to apply to 1st year

Paragraphs (5) and (6) of subsection (a) shall not apply to the 1st taxable year for which an election is made under subsection (c)(1) by any corporation, trust, or association.

(3) Treatment of trusts described in section 401(a)

(A) Look-thru treatment

(i) In general

Except as provided in clause (ii), in determining whether the stock ownership requirement of section 542(a)(2) is met for purposes of paragraph (1)(A), any stock held by a qualified trust shall be treated as held directly by its beneficiaries in proportion to their actuarial interests in such trust and shall not be treated as held by such trust.

(ii) Certain related trusts not eligible

Clause (i) shall not apply to any qualified trust if one or more disqualified persons (as defined in section 4975(e)(2), without regard to subparagraphs (B) and (I) thereof) with respect to such qualified trust hold in the aggregate 5 percent or more in value of the interests in the real estate investment trust and such real estate investment trust has accumulated earnings and profits attributable to any period for which it did not qualify as a real estate investment trust.

(B) Coordination with personal holding company rules

If any entity qualifies as a real estate investment trust for any taxable year by reason of subparagraph (A), such entity shall not be treated as a personal holding company for such taxable year for purposes of part II of subchapter G of this chapter.

(C) Treatment for purposes of unrelated business tax

If any qualified trust holds more than 10 percent (by value) of the interests in any pension-held REIT at any time during a taxable year, the trust shall be treated as having for such taxable year gross income from an unrelated trade or business in an amount which bears the same ratio to the aggregate dividends paid (or treated as paid) by the REIT to the trust for the taxable year of the REIT with or within which the taxable year of the trust ends (the ''REIT year'') as—

(i) the gross income (less direct expenses related thereto) of the REIT for the REIT year from unrelated trades or businesses (determined as if the REIT were a qualified trust), bears to

(ii) the gross income (less direct expenses related thereto) of the REIT for the REIT year.

This subparagraph shall apply only if the ratio determined under the preceding sentence is at least 5 percent.

(D) Pension-held REIT

The purposes of subparagraph (C)—

(i) In general

A real estate investment trust is a pension-held REIT if such trust would not have qualified as a real estate investment trust but for the provisions of this paragraph and if such trust is predominantly held by qualified trusts.

(ii) Predominantly held

For purposes of clause (i), a real estate investment trust is predominantly held by qualified trusts if—

(I) at least 1 qualified trust holds more than 25 percent (by value) of the interests in such real estate investment trust, or

(II) 1 or more qualified trusts (each of whom own more than 10 percent by value of the interests in such real estate investment trust) hold in the aggregate more than 50 percent (by value) of the interests in such real estate investment trust.

(E) Qualified trust

For purposes of this paragraph, the term ''qualified trust'' means any trust described in section 401(a) and exempt from tax under section 501(a).

(i) Treatment of certain wholly owned subsidiaries

(1) In general

For purposes of this title—

(A) a corporation which is a qualified REIT subsidiary shall not be treated as a separate corporation, and

(B) all assets, liabilities, and items of income, deduction, and credit of a qualified REIT subsidiary shall be treated as assets, liabilities, and such items (as the case may be) of the real estate investment trust.

(2) Qualified REIT subsidiary

For purposes of this subsection, the term ''qualified REIT subsidiary'' means any corporation if 100 percent of the stock of such corporation is held by the real estate investment trust. Such term shall not include a taxable REIT subsidiary.

(3) Treatment of termination of qualified subsidiary status

For purposes of this subtitle, if any corporation which was a qualified REIT subsidiary ceases to meet the requirements of paragraph (2), such corporation shall be treated as a new corporation acquiring all of its assets (and assuming all of its liabilities) immediately before such cessation from the real estate investment trust in exchange for its stock.

(j) Treatment of shared appreciation mortgages

(1) In general

Solely for purposes of subsection (c) of this section and section 857(b)(6), any income derived from a shared appreciation provision shall be treated as gain recognized on the sale of the secured property.

(2) Treatment of income

For purposes of applying subsection (c) of this section and section 857(b)(6) to any income described in paragraph (1)—

(A) the real estate investment trust shall be treated as holding the secured property for the period during which it held the shared appreciation provision (or, if shorter, for the period during which the secured property was held by the person holding such property), and

(B) the secured property shall be treated as property described in section 1221(a)(1) if it is so described in the hands of the person holding the secured property (or it would be so described if held by the real estate investment trust).

(3) Coordination with prohibited transactions safe harbor

For purposes of section 857(b)(6)(C)—

(A) the real estate investment trust shall be treated as having sold the secured property when it recognizes any income described in paragraph (1), and

(B) any expenditures made by any holder of the secured property shall be treated as made by the real estate investment trust.

(4) Coordination with 4-year holding period

(A) In general

For purposes of section 857(b)(6)(C), if a real estate investment trust is treated as having sold secured property under paragraph (3)(A), the trust shall be treated as having held such property for at least 4 years if—

(i) the secured property is sold or otherwise disposed of pursuant to a case under title 11 of the United States Code,

(ii) the seller is under the jurisdiction of the court in such case, and

(iii) the disposition is required by the court or is pursuant to a plan approved by the court.

(B) Exception

Subparagraph (A) shall not apply if—

(i) the secured property was acquired by the seller with the intent to evict or foreclose, or

(ii) the trust knew or had reason to know that default on the obligation described in paragraph (5)(A) would occur.

(5) Definitions

For purposes of this subsection—

(A) Shared appreciation provision

The term ''shared appreciation provision'' means any provision—

(i) which is in connection with an obligation which is held by the real estate investment trust and is secured by an interest in real property, and

(ii) which entitles the real estate investment trust to receive a specified portion of any gain realized on the sale or exchange of such real property (or of any gain which would be realized if the property were sold on a specified date) or appreciation in value as of any specified date.

(B) Secured property

The term ''secured property'' means the real property referred to in subparagraph (A).

(k) Requirement that entity not be closely held treated as met in certain cases

A corporation, trust, or association—

(1) which for a taxable year meets the requirements of section 857(f)(1), and

(2) which does not know, or exercising reasonable diligence would not have known, whether the entity failed to meet the requirement of subsection (a)(6),

shall be treated as having met the requirement of subsection (a)(6) for the taxable year.

***(l)* Taxable REIT subsidiary**

For purposes of this part—

(1) In general

The term ''taxable REIT subsidiary'' means, with respect to a real estate investment trust, a corporation (other than a real estate investment trust) if—

(A) such trust directly or indirectly owns stock in such corporation, and

(B) such trust and such corporation jointly elect that such corporation shall be treated as a taxable REIT subsidiary of such trust for purposes of this part.

Such an election, once made, shall be irrevocable unless both such trust and corporation consent to its revocation. Such election, and any revocation thereof, may be made without the consent of the Secretary.

(2) Thirty-five percent ownership in another taxable REIT subsidiary

The term ''taxable REIT subsidiary'' includes, with respect to any real estate investment trust, any corporation (other than a real estate investment trust) with respect to which a taxable REIT subsidiary of such trust owns directly or indirectly—

(A) securities possessing more than 35 percent of the total voting power of the outstanding securities of such corporation, or

(B) securities having a value of more than 35 percent of the total value of the outstanding securities of such corporation.

The preceding sentence shall not apply to a qualified REIT subsidiary (as defined in subsection (i)(2)). For purposes of subparagraph (B), securities described in subsection (m)(2)(A) shall not be taken into account.

(3) Exceptions

The term ''taxable REIT subsidiary'' shall not include—

(A) any corporation which directly or indirectly operates or manages a lodging facility or a health care facility, and

(B) any corporation which directly or indirectly provides to any other person (under a

franchise, license, or otherwise) rights to any brand name under which any lodging facility or health care facility is operated.

Subparagraph (B) shall not apply to rights provided to an eligible independent contractor to operate or manage a lodging facility or a health care facility if such rights are held by such corporation as a franchisee, licensee, or in a similar capacity and such lodging facility or health care facility is either owned by such corporation or is leased to such corporation from the real estate investment trust.

(4) Definitions

For purposes of paragraph (3)—

(A) Lodging facility

The term ''lodging facility'' has the meaning given to such term by subsection (d)(9)(D)(ii).

(B) Health care facility

The term ''health care facility'' has the meaning given to such term by subsection (e)(6)(D)(ii).

(m) Safe harbor in applying subsection (c)(4)

(1) In general

In applying subclause (III) of subsection (c)(4)(B)(iii), except as otherwise determined by the Secretary in regulations, the following shall not be considered securities held by the trust:

(A) Straight debt securities of an issuer which meet the requirements of paragraph (2).

(B) Any loan to an individual or an estate.

(C) Any section 467 rental agreement (as defined in section 467(d)), other than with a person described in subsection (d)(2)(B).

(D) Any obligation to pay rents from real property (as defined in subsection (d)(1)).

(E) Any security issued by a State or any political subdivision thereof, the District of Columbia, a foreign government or any political subdivision thereof, or the Commonwealth of Puerto Rico, but only if the determination of any payment received or accrued under such security does not depend in whole or in part on the profits of any entity not described in this subparagraph or payments on any obligation issued by such an entity,

(F) Any security issued by a real estate investment trust.

(G) Any other arrangement as determined by the Secretary.

(2) Special rules relating to straight debt securities

(A) In general

For purposes of paragraph (1)(A), securities meet the requirements of this paragraph if such securities are straight debt, as defined in section 1361(c)(5) (without regard to subparagraph (B)(iii) thereof).

(B) Special rules relating to certain contingencies

For purposes of subparagraph (A), any interest or principal shall not be treated as failing to satisfy section 1361(c)(5)(B)(i) solely by reason of the fact that—

(i) the time of payment of such interest or principal is subject to a contingency, but only if—

(I) any such contingency does not have the effect of changing the effective yield to maturity, as determined under section 1272, other than a change in the annual yield to maturity which does not exceed the greater of ¼ of 1 percent or 5 percent of the annual yield to maturity, or

(II) neither the aggregate issue price nor the aggregate face amount of the issuer's debt instruments held by the trust exceeds $1,000,000 and not more than 12 months of unaccrued interest can be required to be prepaid thereunder, or

(ii) the time or amount of payment is subject to a contingency upon a default or the exercise of a prepayment right by the issuer of the debt, but only if such contingency is consistent with customary commercial practice.

(C) Special rules relating to corporate or partnership issuers

In the case of an issuer which is a corporation or a partnership, securities that otherwise would be described in paragraph (1)(A) shall be considered not to be so described if the trust holding such securities and any of its controlled taxable REIT subsidiaries (as defined in subsection (d)(8)(A)(iv)) hold any securities of the issuer which—

(i) are not described in paragraph (1) (prior to the application of this subparagraph), and

(ii) have an aggregate value greater than 1 percent of the issuer's outstanding securities determined without regard to paragraph (3)(A)(i).

(3) Look-through rule for partnership securities

(A) In general

For purposes of applying subclause (III) of subsection (c)(4)(B)(iii)—

(i) a trust's interest as a partner in a partnership (as defined in section 7701(a)(2)) shall not be considered a security, and

(ii) the trust shall be deemed to own its proportionate share of each of the assets of the partnership.

(B) Determination of trust's interest in partnership assets

For purposes of subparagraph (A), with respect to any taxable year beginning after the date of the enactment of this subparagraph—

(i) the trust's interest in the partnership assets shall be the trust's proportionate interest in any securities issued by the partnership (determined without regard to subparagraph (A)(i) and paragraph (4), but not including securities described in paragraph (1)), and

(ii) the value of any debt instrument shall be the adjusted issue price thereof, as defined in section 1272(a)(4).

(4) Certain partnership debt instruments not treated as a security

For purposes of applying subclause (III) of subsection (c)(4)(B)(iii)—

(A) any debt instrument issued by a partnership and not described in paragraph (1) shall not be considered a security to the extent of the trust's interest as a partner in the partnership, and

(B) any debt instrument issued by a partnership and not described in paragraph (1) shall not be considered a security if at least 75 percent of the partnership's gross income (excluding gross income from prohibited transactions) is derived from sources referred to in subsection (c)(3).

(5) Secretarial guidance

The Secretary is authorized to provide guidance (including through the issuance of a written determination, as defined in section 6110(b)) that an arrangement shall not be considered a security held by the trust for purposes of applying subclause (III) of subsection (c)(4)(B)(iii) notwithstanding that such arrangement otherwise could be considered a security under subparagraph (F) of subsection (c)(5).

(6) Transition rule

(A) In general

Notwithstanding paragraph (2)(C), securities held by a trust shall not be considered securities held by the trust for purposes of subsection (c)(4)(B)(iii)(III) during any period beginning on or before October 22, 2004, if such securities—

(i) are held by such trust continuously during such period, and

(ii) would not be taken into account for purposes of such subsection by reason of paragraph (7)(C) of subsection (c) (as in effect on October 22, 2004) if the amendments made by section 243 of the American Jobs Creation Act of 2004 had never been enacted.

(B) Rule not to apply to securities held after maturity date

Subparagraph (A) shall not apply with respect to any security after the later of October 22, 2004, or the latest maturity date under the contract (as in effect on October 22, 2004) taking into account any renewal or extension permitted under the contract if such renewal or extension does not significantly modify any other terms of the contract.

(C) Successors

If the successor of a trust to which this paragraph applies acquires securities in a transaction to which section 381 applies, such trusts shall be treated as a single entity for purposes of determining the holding period of such securities under subparagraph (A).

(n) Rules regarding foreign currency transactions

(1) In general

For purposes of this part—

(A) passive foreign exchange gain for any taxable year shall not constitute gross income for purposes of subsection (c)(2), and

(B) real estate foreign exchange gain for any taxable year shall not constitute gross income for purposes of subsection (c)(3).

(2) Real estate foreign exchange gain

For purposes of this subsection, the term ''real estate foreign exchange gain'' means—

(A) foreign currency gain (as defined in section 988(b)(1)) which is attributable to—

(i) any item of income or gain described in subsection (c)(3),

(ii) the acquisition or ownership of obligations secured by mortgages on real property or on interests in real property (other than foreign currency gain attributable to any item of income or gain described in clause (i)), or

(iii) becoming or being the obligor under obligations secured by mortgages on real property or on interests in real property (other than foreign currency gain attributable to any item of income or gain described in clause (i)),

(B) section 987 gain attributable to a qualified business unit (as defined by section 989) of the real estate investment trust, but only if such qualified business unit meets the requirements under—

(i) subsection (c)(3) for the taxable year, and

(ii) subsection (c)(4)(A) at the close of each quarter that the real estate investment trust has directly or indirectly held the qualified business unit, and

(C) any other foreign currency gain as determined by the Secretary.

(3) Passive foreign exchange gain

For purposes of this subsection, the term ''passive foreign exchange gain'' means—

(A) real estate foreign exchange gain,

(B) foreign currency gain (as defined in section 988(b)(1)) which is not described in subparagraph (A) and which is attributable to—

(i) any item of income or gain described in subsection (c)(2),

(ii) the acquisition or ownership of obligations (other than foreign currency gain attributable to any item of income or gain described in clause (i)), or

(iii) becoming or being the obligor under obligations (other than foreign currency gain attributable to any item of income or gain described in clause (i)), and

(C) any other foreign currency gain as determined by the Secretary.

(4) Exception for income from substantial and regular trading

Notwithstanding this subsection or any other provision of this part, any section 988 gain derived by a corporation, trust, or association from dealing, or engaging in substantial and regular trading, in securities (as defined in section 475(c)(2)) shall constitute gross income which does not qualify under paragraph (2) or (3) of subsection (c). This para-

graph shall not apply to income which does not constitute gross income by reason of subsection (c)(5)(G).

(Added Pub. L. 86–779, §10(a), Sept. 14, 1960, 74 Stat. 1004; amended Pub. L. 88–272, title II, §225(k)(4), Feb. 26, 1964, 78 Stat. 94; Pub. L. 88–554, §4(b)(4), Aug. 31, 1964, 78 Stat. 763; Pub. L. 93–625, §6(a), (b), (d)(1), Jan. 3, 1975, 88 Stat. 2112–2114; Pub. L. 94–455, title XIV, §1402(b)(1)(O), (2), title XVI, §§1602(a), 1603(a), (c)(1)–(4), 1604(a)–(c)(1), (d)–(f)(3)(A), (g), (k)(1), (2)(A), title XIX, §§1901(a)(111), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1732, 1746, 1748–1753, 1783, 1834; Pub. L. 95–600, title III, §363(a), (c), title VII, §701(t)(2), Nov. 6, 1978, 92 Stat. 2852, 2853, 2912; Pub. L. 98–369, div. A, title X, §1001(b)(12), (e), July 18, 1984, 98 Stat. 1011, 1012; Pub. L. 99–514, title VI, §§661(a), 662, 663, 671(b)(1), title IX, §901(d)(4)(E), Oct. 22, 1986, 100 Stat. 2299, 2300, 2302, 2317, 2380; Pub. L. 100–647, title I, §1006(p)(1), (3), (4)(A), (5), (q), (t)(11), Nov. 10, 1988, 102 Stat. 3416, 3417, 3422; Pub. L. 103–66, title XIII, §13149(a), Aug. 10, 1993, 107 Stat. 445; Pub. L. 104–188, title I, §§1621(b)(5), 1704(t)(35), Aug. 20, 1996, 110 Stat. 1867, 1889; Pub. L. 105–34, title XII, §§1251(b)–1253, 1255(a), (b)(1), 1257, 1258, 1261, 1262, Aug. 5, 1997, 111 Stat. 1031–1036; Pub. L. 106–170, title V, §§532(c)(2)(H)–(K), 541–542(b)(3)(A)(i), (B)(i), 543, 551(a), 561(a), Dec. 17, 1999, 113 Stat. 1930, 1940–1943, 1948, 1949; Pub. L. 106–554, §1(a)(7) [title III, §319(9), (10)], Dec. 21, 2000, 114 Stat. 2763, 2763A–646; Pub. L. 108–357, title II, §243(a), (b), (d), (f)(1)–(3), title VIII, §835(b)(4), Oct. 22, 2004, 118 Stat. 1439, 1441–1444, 1593; Pub. L. 109–135, title IV, §§403(d)(1), (2), 412(hh), Dec. 21, 2005, 119 Stat. 2620, 2622, 2639; Pub. L. 110–172, §§9(b), 11(a)(18), Dec. 29, 2007, 121 Stat. 2484, 2486; Pub. L. 110–234, title XV, §§15312(a), (b), 15313(a), (b), 15314(a), May 22, 2008, 122 Stat. 1503, 1504; Pub. L. 110–246, §4(a), title XV, §§15312(a), (b), 15313(a), (b), 15314(a), June 18, 2008, 122 Stat. 1664, 2265, 2266; Pub. L. 110–289, div. C, title II, §§3031, 3032, 3041, 3061, July 30, 2008, 122 Stat. 2897, 2899–2901; Pub. L. 114–113, div. Q, title III, §§311(b), 312(a), 317(a), (b), 318(a), 319(a), (b), 321(a)(3), Dec. 18, 2015, 129 Stat. 3090, 3091, 3094–3097.)

References in Text

The date of the enactment of this subparagraph, referred to in subsec. (c)(2)(I), is the date of enactment of Pub. L. 110–246, which was approved June 18, 2008.

The Investment Company Act of 1940, referred to in subsec. (c)(5)(F), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a–51 of Title 15 and Tables.

The date of the enactment of this paragraph and such date of enactment, referred to in subsec. (c)(10), is the date of enactment of Pub. L. 110–246, which was approved June 18, 2008.

The Social Security Act, referred to in subsec. (e)(6)(D)(ii), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Act is classified generally to subchapter XVIII (§1395 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The date of the enactment of this subparagraph, referred to in subsec. (m)(3)(B), is the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

Section 243 of the American Jobs Creation Act of 2004, referred to in subsec. (m)(6)(A)(ii), is section 243 of Pub. L. 108–357, which amended this section and sections 857 and 860 of this title and enacted provisions set out as a note under this section.

Codification

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

Amendments

2015—Subsec. (c)(3)(H). Pub. L. 114–113, §317(a)(2), inserted ''(other than a nonqualified publicly offered REIT debt instrument)'' after ''real estate asset''.

Subsec. (c)(4)(B)(ii). Pub. L. 114–113, §312(a), substituted ''20 percent'' for ''25 percent''.

Subsec. (c)(4)(B)(iii), (iv). Pub. L. 114–113, §317(a)(3), added cl. (iii) and redesignated former cl. (iii) as (iv).

Subsec. (c)(5)(B). Pub. L. 114–113, §317(a)(1), (b), inserted ''or on interests in real property'' after ''interests in mortgages on real property'', substituted '', shares'' for ''and shares'', and inserted '', and debt instruments issued by publicly offered REITs'' before period at end of first sentence.

Subsec. (c)(5)(G)(i). Pub. L. 114–113, §319(b)(2)(A), struck out ''which is clearly identified pursuant to section 1221(a)(7)'' after ''of section 1221(b)(2)(A))''.

Subsec. (c)(5)(G)(ii). Pub. L. 114–113, §319(b)(2)(B), struck out before period at end '', but only if such transaction is clearly identified as such before the close of the day on which it was acquired, originated, or entered into (or such other time as the Secretary may prescribe)''.

Subsec. (c)(5)(G)(iii). Pub. L. 114–113, §319(a), added cl. (iii).

Subsec. (c)(5)(G)(iv). Pub. L. 114–113, §319(b)(1), added cl. (iv).

Subsec. (c)(5)(L). Pub. L. 114–113, §317(a)(4), added subpar. (L).

Subsec. (c)(8). Pub. L. 114–113, §311(b), added par. (8). Former par. (8) redesignated (9).

Subsec. (c)(9). Pub. L. 114–113, §318(a), added par. (9). Former par. (9) redesignated (10).

Pub. L. 114–113, §311(b), redesignated par. (8) as (9).

Subsec. (c)(10). Pub. L. 114–113, §318(a), redesignated par. (9) as (10).

Subsec. (e)(4)(C). Pub. L. 114–113, §321(a)(3), inserted ''or through a taxable REIT subsidiary'' after ''receive any income''.

2008—Subsec. (c)(2)(I). Pub. L. 110–246, §15313(a), added subpar. (I).

Subsec. (c)(4). Pub. L. 110–289, §3032(a), inserted ''(including a discrepancy caused solely by the change in the foreign currency exchange rate used to value a foreign asset)'' after ''such requirements'' in first sentence of concluding provisions.

Subsec. (c)(4)(B)(ii). Pub. L. 110–289, §3041, substituted ''than 25 percent'' for ''than 20 percent'' and ''REIT subsidiaries,'' for ''REIT subsidiaries (in the case of a quarter which closes on or before the termination date, 25 percent in the case of a timber real estate investment trust), and''.

Pub. L. 110–246, §15314(a), inserted ''(in the case of a quarter which closes on or before the termination date, 25 percent in the case of a timber real estate investment trust)'' after ''REIT subsidiaries''.

Subsec. (c)(5)(G). Pub. L. 110–289, §3031(b), amended subpar. (G) generally. Prior to amendment, text read as follows: ''Except to the extent provided by regulations, any income of a real estate investment trust from a hedging transaction (as defined in clause (ii) or (iii) of section 1221(b)(2)(A)) which is clearly identified pursuant to section 1221(a)(7), including gain from the sale or disposition of such a transaction, shall not constitute gross income under paragraph (2) to the extent that the transaction hedges any indebtedness incurred or to be incurred by the trust to acquire or carry real estate assets.''

Subsec. (c)(5)(H). Pub. L. 110–246, §15312(a), added subpar. (H).

Subsec. (c)(5)(I). Pub. L. 110–246, §15313(b), added subpar. (I).

Subsec. (c)(5)(J). Pub. L. 110–289, §3031(c), added subpar. (J).

Subsec. (c)(5)(K). Pub. L. 110–289, §3032(b), added subpar. (K).

Subsec. (c)(8). Pub. L. 110–246, §15312(b), added par. (8).

Subsec. (d)(8)(B). Pub. L. 110–289, §3061(a), amended subpar. (B) generally. Prior to amendment, text read as follows: ''The requirements of this subparagraph are met with respect to an interest in real property which is a qualified lodging facility leased by the trust to a taxable REIT subsidiary of the trust if the property is operated on behalf of such subsidiary by a person who is an eligible independent contractor.''

Subsec. (d)(9)(A), (B). Pub. L. 110–289, §3061(b), amended subpars. (A) and (B) generally. Prior to amendment, subpar. (A) defined ''eligible independent contractor'' with respect to any qualified lodging facility and subpar. (B) set forth reasons by which a person would not fail to be treated as an independent contractor with respect to any qualified lodging facility.

Subsec. (*l*)(3). Pub. L. 110–289, §3061(c), inserted ''or a health care facility'' after ''a lodging facility'' and ''or health care facility'' after ''such lodging facility'' in concluding provisions.

Subsec. (n). Pub. L. 110–289, §3031(a), added subsec. (n).

2007—Subsec. (d)(9)(D)(ii). Pub. L. 110–172, §9(b), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The term 'lodging facility' means a hotel, motel, or other establishment more than one-half of the dwelling units in which are used on a transient basis.''

Subsec. (*l*)(2). Pub. L. 110–172, §11(a)(18), in concluding provisions, inserted last sentence and struck out former last sentence which read as follows: ''The rule of section 856(c)(7) shall apply for purposes of subparagraph (B).''

2005—Subsec. (c)(7). Pub. L. 109–135, §403(d)(1), reenacted heading without change and amended text generally. Prior to amendment, text consisted of subpars. (A) to (C) relating to rules of application for a corporation, trust, or association that fails to satisfy the requirements of paragraph (4) of this subsection.

Subsec. (g)(5)(A). Pub. L. 109–135, §412(hh), substituted ''paragraph (2), (3), or (4) of subsection (c)'' for ''subsection (c)(6) or (c)(7) of section 856''.

Subsec. (m)(6). Pub. L. 109–135, §403(d)(2), added par. (6).

2004—Subsec. (c)(5)(E). Pub. L. 108–357, §835(b)(4), struck out last sentence which read as follows: ''The principles of the preceding provisions of this subparagraph shall apply to regular interests in a FASIT.''

Subsec. (c)(5)(G). Pub. L. 108–357, §243(d), reenacted heading without change and amended text of subpar. (G) generally. Prior to amendment, subpar. (G) provided that, except to the extent provided by regulations, payment to a real estate investment trust under an interest rate swap or cap agreement, option, futures contract, forward rate agreement, or any similar financial instrument, entered into by the trust in a transaction to reduce the interest rate risks with respect to any indebtedness incurred or to be incurred by the trust to acquire or carry real estate assets, and gain from the sale or other disposition of any such investment, would be treated as income qualifying under par. (2).

Subsec. (c)(6)(A). Pub. L. 108–357, §243(f)(2), added subpar. (A) and struck out former subpar. (A) which read as follows: ''the nature and amount of each item of its gross income described in such paragraphs is set forth in a schedule attached to its income tax return for such taxable year;''.

Subsec. (c)(6)(B), (C). Pub. L. 108–357, §243(f)(2), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: ''the inclusion of any incorrect information in the schedule referred to in subparagraph (A) is not due to fraud with intent to evade tax; and''.

Subsec. (c)(7). Pub. L. 108–357, §243(f)(1), added par. (7).

Pub. L. 108–357, §243(a)(1), struck out par. (7) which provided that securities of an issuer which were straight debt would not be taken into account in applying paragraph (4)(B)(iii)(III), if the issuer was an individual, if the only securities of such issuer which were held by the trust or a taxable REIT subsidiary of the trust were straight debt, or if the issuer was a partnership and the trust held at least a 20 percent profits interest in the partnership.

Subsec. (d)(8)(A). Pub. L. 108–357, §243(b), reenacted heading without change and amended text of subpar. (A) generally. Prior to amendment, text read as follows: ''The requirements of this subparagraph are met with respect to any property if at least 90 percent of the leased space of the property is rented to persons other than taxable REIT subsidiaries of such trust and other than persons described in section 856(d)(2)(B). The preceding sentence shall apply only to the extent that the amounts paid to the trust as rents from real property (as defined in paragraph (1) without regard to paragraph (2)(B)) from such property are substantially comparable to such rents made by the other tenants of the trust's property for comparable space.''

Subsec. (g)(1). Pub. L. 108–357, §243(f)(3)(A), inserted ''unless paragraph (5) applies'' before ''. Such termination''.

Subsec. (g)(5). Pub. L. 108–357, §243(f)(3)(B), added par. (5).

Subsec. (m). Pub. L. 108–357, §243(a)(2), added subsec. (m).

2000—Subsec. (c)(7). Pub. L. 106–554, §1(a)(7) [title III, §319(9)], substituted ''paragraph (4)(B)(iii)(III)'' for ''paragraph (4)(B)(ii)(III)'' in introductory provisions.

Subsec. (*l*)(4)(A). Pub. L. 106–554, §1(a)(7) [title III, §319(10)], substituted ''subsection (d)(9)(D)(ii)'' for ''paragraph (9)(D)(ii)''.

1999—Subsec. (c)(2)(D), (3)(C). Pub. L. 106–170, §532(c)(2)(H), (I), substituted ''section 1221(a)(1)'' for ''section 1221(1)''.

Subsec. (c)(4)(B). Pub. L. 106–170, §541(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''not more than 25 percent of the value of its total assets is represented by securities (other than those includible under subparagraph (A)) for purposes of this calculation limited in respect of any one issuer to an amount not greater in value than 5 percent of the value of the total assets of the trust and to not more than 10 percent of the outstanding voting securities of such issuer.''

Subsec. (c)(7). Pub. L. 106–170, §541(b), added par. (7).

Subsec. (d)(1). Pub. L. 106–170, §542(b)(3)(A)(i), substituted ''fair market values'' for ''adjusted bases'' in two places in concluding provisions.

Subsec. (d)(2)(B). Pub. L. 106–170, §542(b)(2), inserted ''except as provided in paragraph (8),'' after ''(B)'' in introductory provisions.

Subsec. (d)(2)(B)(i). Pub. L. 106–170, §542(b)(3)(B)(i), substituted ''value'' for ''number''.

Subsec. (d)(3). Pub. L. 106–170, §561(a), inserted concluding provisions.

Subsec. (d)(7)(C)(i). Pub. L. 106–170, §542(a), inserted ''or through a taxable REIT subsidiary of such trust'' after ''income''.

Subsec. (d)(8), (9). Pub. L. 106–170, §542(b)(1), added pars. (8) and (9).

Subsec. (e)(1). Pub. L. 106–170, §532(c)(2)(J), substituted ''section 1221(a)(1)'' for ''section 1221(1)''.

Subsec. (e)(6). Pub. L. 106–170, §551(a), added par. (6).

Subsec. (i)(2). Pub. L. 106–170, §543(b), inserted at end ''Such term shall not include a taxable REIT subsidiary.''

Subsec. (j)(2)(B). Pub. L. 106–170, §532(c)(2)(K), substituted ''section 1221(a)(1)'' for ''section 1221(1)''.

Subsec. (*l*). Pub. L. 106–170, §543(a), added subsec. (*l*).

1997—Subsec. (a)(6). Pub. L. 105–34, §1251(b)(2), inserted ''subject to the provisions of subsection (k),'' before ''which is not''.

Subsec. (c)(3)(I). Pub. L. 105–34, §1255(a)(1), inserted ''and'' at end.

Subsec. (c)(4). Pub. L. 105–34, § 1255(a)(2), (3), redesignated par. (5) as (4) and struck out former par. (4) which read as follows: ''less than 30 percent of its gross income is derived from the sale or other disposition of—

''(A) stock or securities held for less than 1 year;

''(B) property in a transaction which is a prohibited transaction; and

''(C) real property (including interests in real property and interests in mortgages on real property) held for less than 4 years other than—

''(i) property compulsorily or involuntarily converted within the meaning of section 1033, and

''(ii) property which is foreclosure property within the definition of section 856(e); and''.

Subsec. (c)(5). Pub. L. 105–34, § 1255(a)(3), redesignated par. (6) as (5). Former par. (5) redesignated (4).

Subsec. (c)(5)(G). Pub. L. 105–34, § 1258, amended heading and text of subpar. (G) generally. Prior to amendment, text read as follows: ''Except to the extent provided by regulations, any—

''(i) payment to a real estate investment trust under a bona fide interest rate swap or cap agreement entered into by the real estate investment trust to hedge any variable rate indebtedness of such trust incurred or to be incurred to acquire or carry real estate assets, and

''(ii) any gain from the sale or other disposition of such agreement,

shall be treated as income qualifying under paragraph (2).''

Pub. L. 105–34, § 1255(b)(1), struck out ''and such agreement shall be treated as a security for purposes of paragraph (4)(A)'' after ''under paragraph (2)'' in concluding provisions.

Subsec. (c)(6), (7). Pub. L. 105–34, § 1255(a)(3), redesignated par. (7) as (6). Former par. (6) redesignated (5).

Subsec. (c)(8). Pub. L. 105–34, § 1255(a)(2), struck out heading and text of par. (8). Text read as follows: ''In the case of the taxable year in which a real estate investment trust is completely liquidated, there shall not be taken into account under paragraph (4) any gain from the sale, exchange, or distribution of any property after the adoption of the plan of complete liquidation.''

Subsec. (d)(2). Pub. L. 105–34, § 1252(a), added subpar. (C) and struck out former subpar. (C) and concluding provisions which read as follows:

''(C) any amount received or accrued, directly or indirectly, with respect to any real or personal property if the real estate investment trust furnishes or renders services to the tenants of such property, or manages or operates such property, other than through an independent contractor from whom the trust itself does not derive or receive any income.

Subparagraph (C) shall not apply with respect to any amount if such amount would be excluded from unrelated business taxable income under section 512(b)(3) if received by an organization described in section 511(a)(2).''

Subsec. (d)(5). Pub. L. 105–34, § 1253, substituted ''except that—'' and subpars. (A) and (B) for ''except that '10 percent' shall be substituted for '50 percent' in subparagraph (C) of section 318(a)(2) and 318(a)(3).''

Subsec. (d)(7). Pub. L. 105–34, § 1252(b), added par. (7).

Subsec. (e)(2). Pub. L. 105–34, § 1257(a)(1), which directed amendment of par. (2) by substituting ''as of the close of the 3d taxable year following the taxable year in which the trust acquired such property'' for ''on the date which is 2 years after the date the trust acquired such property'', was executed by making the substitution for ''on the date which is 2 years after the date such trust acquired such property'' to reflect the probable intent of Congress.

Subsec. (e)(3). Pub. L. 105–34, § 1257(a)(2), substituted ''grant one extension'' for ''grant one or more extensions'' and ''Any such extension shall not extend the grace period beyond the close of the 3d taxable year following the last taxable year in the period under paragraph (2).'' for ''Any such extension shall not extend the grace period beyond the date which is 6 years after the date such trust acquired such property.''

Subsec. (e)(4). Pub. L. 105–34, § 1257(c), inserted concluding provisions ''For purposes of subparagraph (C), property shall not be treated as used in a trade or business by reason of any activities of the real estate investment trust with respect to such property to the extent that such activities would not result in amounts received or accrued, directly or indirectly, with respect to such property being treated as other than rents from real property.''

Subsec. (e)(5). Pub. L. 105–34, § 1257(b), substituted ''A real estate investment trust may revoke any such election for a taxable year by filing the revocation (in the manner provided by the Secretary) on or before the due date (including any extension of time) for filing its return of tax under this chapter for the taxable year. If a trust revokes an election for any property, no election may be made by the trust under this paragraph with respect to the property for any subsequent taxable year.'' for ''Any such election shall be irrevocable.''

Subsec. (i)(2). Pub. L. 105–34, § 1262, struck out ''at all times during the period such corporation was in existence'' after ''real estate investment trust''.

Subsec. (j)(4). Pub. L. 105–34, § 1261(a), added par. (4). Former par. (4) redesignated (5).

Subsec. (j)(5). Pub. L. 105–34, § 1261(a), redesignated par. (4) as (5).

Subsec. (j)(5)(A)(ii). Pub. L. 105–34, § 1261(b), inserted before period at end ''or appreciation in value as of any specified date''.

Subsec. (k). Pub. L. 105–34, § 1251(b)(1), added subsec. (k).

1996—Subsec. (a)(4). Pub. L. 104–188, § 1704(t)(35), substituted ''section 582(c)(2)'' for ''section 582(c)(5)''.

Subsec. (c)(6)(E). Pub. L. 104–188, § 1621(b)(5), inserted at end ''The principles of the preceding provisions of this subparagraph shall apply to regular interests in a FASIT.''

1993—Subsec. (h)(3). Pub. L. 103–66 added par. (3).

1988—Subsec. (c)(6)(D). Pub. L. 100–647, § 1006(t)(11), struck out subpar. (D), as added by Pub. L. 99–514, § 671(b)(1), which read as follows: ''A regular or residual interest in a REMIC shall be treated as an interest in real property, and any amount includible in gross income with respect to such an interest shall be treated as interest; except that, if less than 95 percent of the assets of such REMIC are interests in real property (determined as if the taxpayer held such assets), such interest shall be so treated only in the proportion which the assets of the REMIC consist of such interests.''

Subsec. (c)(6)(D)(i)(I). Pub. L. 100–647, § 1006(p)(1), substituted ''debt instrument (within the meaning of section 1275(a)(1))'' for ''debt instrument''.

Subsec. (c)(6)(D)(ii)(I). Pub. L. 100–647, § 1006(p)(5), substituted ''stock (or certificates of beneficial interests) in such trust'' for ''stock in such trust''.

Subsec. (c)(6)(E), (F). Pub. L. 100–647, § 1006(t)(11), added subpar. (E) and redesignated former subpar. (E) as (F).

Subsec. (c)(6)(G). Pub. L. 100–647, § 1006(p)(4)(A), added subpar. (G).

Subsec. (c)(8). Pub. L. 100–647, § 1006(p)(3), added par. (8).

Subsec. (d)(6)(A). Pub. L. 100–647, § 1006(q)(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''If—

''(i) a real estate investment trust receives or accrues, with respect to real or personal property, amounts from a tenant which derives substantially all of its income with respect to such property from the subleasing of substantially all of such property, and

''(ii) such tenant receives or accrues, directly or indirectly, from subtenants only amounts which are qualified rents,

then the amounts that the trust receives or accrues from the tenant shall not be excluded from the term 'rents from real property' solely by reason of being based on the income or profits of such tenant.''

Subsec. (f). Pub. L. 100–647, § 1006(q)(2), amended subsec. (f) generally, making changes in content and structure.

1986—Subsec. (a)(4). Pub. L. 99–514, § 901(d)(4)(E), substituted ''referred to in section 582(c)(5)'' for ''to which section 585, 586, or 593 applies''.

Subsec. (a)(6). Pub. L. 99–514, § 661(a)(1), amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''which would not be a personal holding company (as defined in section 542) if all of its adjusted ordinary gross income (as defined in section 543(b)(2)) constituted personal holding company income (as defined in section 543); and''.

Subsec. (c)(3)(I). Pub. L. 99–514, § 662(b)(1), added subpar. (I).

Subsec. (c)(6)(B). Pub. L. 99–514, § 662(b)(2), inserted ''Such term also includes any property (not otherwise a real estate asset) attributable to the temporary investment of new capital, but only if such property is stock or a debt instrument, and only for the 1-year period beginning on the date the real estate trust receives such capital.''

Subsec. (c)(6)(D). Pub. L. 99–514, § 671(b)(1), added subpar. (D) relating to REMIC interest. Former subpar. (D) redesignated (E).

Pub. L. 99–514, § 662(b)(3), added subpar. (D) relating to qualified temporary investment income. Former subpar. (D) redesignated (E).

Subsec. (c)(6)(E). Pub. L. 99–514, §§ 662(b)(3), 671(b)(1), made identical redesignations of former subpar. (D) as (E).

Subsec. (d)(2). Pub. L. 99–514, § 663(a), (b)(3), inserted reference to par. (6) in subpar. (A) and inserted at end ''Subparagraph (C) shall not apply with respect to any amount if such amount would be excluded from unrelated business taxable income under section 512(b)(3) if received by an organization described in section 511(a)(2).''

Subsec. (d)(6). Pub. L. 99–514, § 663(b)(1), added par. (6).

Subsec. (f). Pub. L. 99–514, § 663(b)(2), amended subsec. (f) generally, restating former introductory provisions and par. (1) as introductory provisions of par. (1) and as subpar. (A), restating provisions of par. (2), adding subpar. (1)(B), and striking out former concluding provisions which read as follows: ''The provisions of this subsection shall apply only with respect to amounts received or accrued pursuant to loans made after May 27, 1976. For purposes of the preceding sentence, a loan is considered to be made before May 28, 1976, if such loan is made pursuant to a binding commitment entered into before May 28, 1976.''

Subsec. (h). Pub. L. 99–514, § 661(a)(2), added subsec. (h).

Subsec. (i). Pub. L. 99–514, § 662(a), added subsec. (i).

Subsec. (j). Pub. L. 99–514, § 662(c), added subsec. (j).

1984—Subsec. (c)(4)(A). Pub. L. 98–369 substituted ''6 months'' for ''1 year'', applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

1978—Subsec. (c)(2)(H). Pub. L. 95–600, § 363(a)(1), added subpar. (H).

Subsec. (c)(3)(D). Pub. L. 95–600, § 701(t)(2), inserted ''(other than gain from prohibited transactions)'' after ''on, and gain''.

Subsec. (c)(3)(H). Pub. L. 95–600, § 363(a)(2), added subpar. (H).

Subsec. (c)(4)(B). Pub. L. 95–600, § 363(a)(3), substituted ''property in a transaction which is a prohibited transaction'' for ''section 1221(1) property (other than foreclosure property)''.

Subsec. (e)(3). Pub. L. 95–600, § 363(c), substituted ''the Secretary may grant one or more extensions of the grace period for such property'' for ''the Secretary may extend the grace period for such property'' and ''shall not extend the grace period beyond the date which is 6 years after the date such trust acquired such property'' for ''shall be for a period of not more than one year, and not more than two extensions shall be granted with respect to any property''.

1976—Subsec. (a). Pub. L. 94–455, §§ 1603(a), 1604(f)(1), (2), in introductory provisions substituted ''this title'' for ''this subtitle'' and ''a corporation, trust, or association'' for ''an unincorporated trust or an unincorporated association'', in par. (1) inserted ''or directors'' after ''trustees'', and in par. (4) substituted reference to which is neither (A) a financial institution to which section 585, 586, or 593 applies, nor (B) an insurance company to which subchapter L applies for reference to which does not hold any property primarily for sale to customers in the ordinary course of its trade or business.

Subsec. (c). Pub. L. 94–455, § 1604(f)(3)(A), in introductory provision substituted ''A corporation, trust, or association'' for ''A trust or association''.

Subsec. (c)(1). Pub. L. 94–455, §§ 1604(k)(2)(A), 1901(a)(111)(A), struck out reference to which began after Dec. 31, 1960 and inserted reference to such election has not been terminated or revoked under subsec. (g).

Subsec. (c)(2). Pub. L. 94–455, §§ 1603(c)(2), 1604(a), (c)(1), in introductory provision substituted ''95 percent (90 percent for taxable years beginning before January 1, 1980) of its gross income (excluding gross income from prohibited transactions)'' for ''90 percent of its gross income'', in subpar. (D) inserted reference to which is not property not described in section 1221(1), and added subpar. (G).

Subsec. (c)(3). Pub. L. 94–455, §§ 1603(c)(1), (3), 1604(c)(1), in introductory provision inserted ''(excluding gross income from prohibited transactions) 75 percent of its gross income'', in subpar. (C) inserted reference to which is not property described in section 1221(1), and added subpar. (G).

Subsec. (c)(4). Pub. L. 94–455, § 1402(b)(2), provided that ''9 months'' would be changed to ''1 year''.

Pub. L. 94–455, §§ 1402(b)(1)(O), 1604(d), in subpar. (A) provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977, added subpar. (B), and redesignated former subpar. (B) as (C), and in subpar. (C) as so redesignated, substituted ''(including interest in real property and interest in mortgages on real property'' for ''(including interest in real property)'' and inserted reference to property which is foreclosure property within the definition of section 856(e).

Subsec. (c)(6)(C). Pub. L. 94–455, § 1604(e), inserted reference to options to acquire land or improvements thereon, and options to acquire leaseholds of land or improvements thereon.

Subsec. (c)(6)(D). Pub. L. 94–455, § 1901(a)(111)(B), inserted ''(15 U.S.C. 80a–1 and following)'' after '', as amended''.

Subsec. (c)(7). Pub. L. 94–455, § 1602(a), added par. (7).

Subsec. (d). Pub. L. 94–455, § 1604(b), among other changes, inserted provisions including in definition of rents from real property charges for services customarily furnished or rendered in connection with rental of real property and rent attributable to personal property which is leased under, or in connection with, a lease of real property, provisions relating to the computation of the amount of rent attributable to personal property, and provisions relating to the special rule for certain contingent rents.

Subsec. (e)(1). Pub. L. 94–455, § 1603(c)(4), inserted provision relating to the exclusion, from definition of foreclosure property, of property acquired by the real estate investment trust or other disposition of property of the trust described in section 1221(1) of this title.

Subsec. (e)(3), (5). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' each time appearing.

Subsec. (f). Pub. L. 94–455, § 1604(g), added subsec. (f).

Subsec. (g). Pub. L. 94–455, § 1604(k)(1), added subsec. (g).

1975—Subsec. (a)(4). Pub. L. 93–625, § 6(b), inserted ''(other than foreclosure property, as defined in subsection (e))'' after ''property''.

Subsec. (c)(2)(F), (3)(F). Pub. L. 93–625, § 6(d)(1), added subpar. (F) to pars. (2) and (3).

Subsec. (e). Pub. L. 93–625, § 6(a), added subsec. (e).

1964—Subsec. (a)(6). Pub. L. 88–272 substituted ''adjusted ordinary gross income (as defined in section 543(b)(2))'' for ''gross income''.

Subsec. (d). Pub. L. 88–554 inserted reference to subparagraph (C) of section 318(a)(3) of this title.

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by section 311(b) of Pub. L. 114–113 applicable to distributions on or after December 7, 2015, except distributions pursuant to transactions described in ruling requests pending before the Internal Revenue Service as of such date, see section 311(c) of Pub. L. 114–113, set out as a note under section 355 of this title.

Pub. L. 114–113, div. Q, title III, § 312(b), Dec. 18, 2015, 129 Stat. 3091, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2017.''

Pub. L. 114–113, div. Q, title III, § 317(c), Dec. 18, 2015, 129 Stat. 3094, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2015.''

Pub. L. 114–113, div. Q, title III, § 318(b), Dec. 18, 2015, 129 Stat. 3095, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2015.''

Pub. L. 114–113, div. Q, title III, § 319(c), Dec. 18, 2015, 129 Stat. 3096, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2015.''

Pub. L. 114–113, div. Q, title III, § 321(c), Dec. 18, 2015, 129 Stat. 3098, provided that: ''The amendments made by this section [amending this section and section 857 of this title] shall apply to taxable years beginning after December 31, 2015.''

EFFECTIVE DATES OF 2008 AMENDMENT

Pub. L. 110–289, div. C, title II, § 3071, July 30, 2008, 122 Stat. 2902, provided that:

''(a) IN GENERAL.—Except as otherwise provided in this section, the amendments made by this title [amending this section and section 857 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [July 30, 2008].

''(b) REIT INCOME TESTS.—

''(1) The amendments made by section 3031(a) and (c) [amending this section] shall apply to gains and items of income recognized after the date of the enactment of this Act [July 30, 2008].

''(2) The amendment made by section 3031(b) [amending this section] shall apply to transactions entered into after the date of the enactment of this Act [July 30, 2008].

''(c) CONFORMING FOREIGN CURRENCY REVISIONS.—

''(1) The amendment made by section 3033(a) [amending section 857 of this title] shall apply to gains recognized after the date of the enactment of this Act [July 30, 2008].

''(2) The amendment made by section 3033(b) [amending section 857 of this title] shall apply to gains and deductions recognized after the date of the enactment of this Act [July 30, 2008].

''(d) DEALER SALES.—The amendments made by subtitle C [subtitle C (§§ 3051, 3052) of title II of div. C of Pub. L. 110–289, amending section 857 of this title] shall apply to sales made after the date of the enactment of this Act [July 30, 2008].''

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Pub. L. 110–234, title XV, § 15312(c), May 22, 2008, 122 Stat. 1504, and Pub. L. 110–246, § 4(a), title XV, § 15312(c), June 18, 2008, 122 Stat. 1664, 2266, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to dispositions in taxable years beginning after the date of the enactment of this Act [June 18, 2008].''

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.]

Pub. L. 110–234, title XV, § 15313(c), May 22, 2008, 122 Stat. 1504, and Pub. L. 110–246, § 4(a), title XV, § 15313(c), June 18, 2008, 122 Stat. 1664, 2266, provided that: ''The amendments by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [June 18, 2008].''

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.]

Pub. L. 110–234, title XV, § 15314(b), May 22, 2008, 122 Stat. 1504, and Pub. L. 110–246, § 4(a), title XV, § 15314(b), June 18, 2008, 122 Stat. 1664, 2266, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [June 18, 2008].''

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.]

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by section 9(b) of Pub. L. 110–172 effective as if included in the provision of the Tax Relief Extension Act of 1999, Pub. L. 106–170, to which such amendment relates, see section 9(c) of Pub. L. 110–172, set out as a note under section 45 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendments by section 403(d)(1), (2) of Pub. L. 109–135 effective as if included in the provisions of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which they relate, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title II, § 243(g), Oct. 22, 2004, 118 Stat. 1445, as amended by Pub. L. 109–135, title IV, § 403(d)(4), Dec. 21, 2005, 119 Stat. 2622, provided that:

''(1) SUBSECTIONS (a) AND (b).—The amendments made by subsections (a) and (b) [amending this section] shall apply to taxable years beginning after December 31, 2000.

''(2) SUBSECTIONS (c) AND (e).—The amendments made by subsections (c) and (e) [amending section 857 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 22, 2004].

''(3) SUBSECTION (d).—The amendment made by subsection (d) [amending this section] shall apply to transactions entered into after December 31, 2004.

''(4) SUBSECTION (f).—

''(A) The amendment made by paragraph (1) of subsection (f) [amending this section] shall apply to failures with respect to which the requirements of subparagraph (A) or (B) of section 856(c)(7) of the Internal Revenue Code of 1986 (as added by such paragraph) are satisfied after the date of the enactment of this Act [Oct. 22, 2004].

''(B) The amendment made by paragraph (2) of subsection (f) [amending this section] shall apply to failures with respect to which the requirements of paragraph (6) of section 856(c) of the Internal Revenue Code of 1986 (as amended by such paragraph) are satisfied after the date of the enactment of this Act.

''(C) The amendments made by paragraph (3) of subsection (f) [amending this section] shall apply to failures with respect to which the requirements of paragraph (5) of section 856(g) of the Internal Revenue Code of 1986 (as added by such paragraph) are satisfied after the date of the enactment of this Act.

''(D) The amendment made by paragraph (4) of subsection (f) [amending section 857 of this title] shall apply to taxable years ending after the date of the enactment of this Act.

''(E) The amendments made by paragraph (5) of subsection (f) [amending section 860 of this title] shall apply to statements filed after the date of the enactment of this Act.''

Amendment by section 835(b)(4) of Pub. L. 108–357 effective Jan. 1, 2005, with exception for any FASIT in existence on Oct. 22, 2004, to the extent that regular inter-

ests issued by the FASIT before such date continue to remain outstanding in accordance with the original terms of issuance, see section 835(c) of Pub. L. 108–357, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 532(c)(2)(H)–(K) of Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

Pub. L. 106–170, title V, § 542(b)(3)(A)(ii), Dec. 17, 1999, 113 Stat. 1943, provided that: ''The amendment made by this subparagraph [amending this section] shall apply to taxable years beginning after December 31, 2000.''

Pub. L. 106–170, title V, § 542(b)(3)(B)(ii), Dec. 17, 1999, 113 Stat. 1943, provided that: ''The amendment made by this subparagraph [amending this section] shall apply to amounts received or accrued in taxable years beginning after December 31, 2000, except for amounts paid pursuant to leases in effect on July 12, 1999, or pursuant to a binding contract in effect on such date and at all times thereafter.''

Pub. L. 106–170, title V, § 546, Dec. 17, 1999, 113 Stat. 1946, provided that:

''(a) IN GENERAL.—The amendments made by this subpart [subpart A (§§ 541–547) of part II of subtitle C of title V of Pub. L. 106–170, amending this section and sections 163 and 857 of this title] shall apply to taxable years beginning after December 31, 2000.

''(b) TRANSITIONAL RULES RELATED TO SECTION 541.—

''(1) EXISTING ARRANGEMENTS.—

''(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendment made by section 541 [amending this section] shall not apply to a real estate investment trust with respect to—

''(i) securities of a corporation held directly or indirectly by such trust on July 12, 1999;

''(ii) securities of a corporation held by an entity on July 12, 1999, if such trust acquires control of such entity pursuant to a written binding contract in effect on such date and at all times thereafter before such acquisition;

''(iii) securities received by such trust (or a successor) in exchange for, or with respect to, securities described in clause (i) or (ii) in a transaction in which gain or loss is not recognized; and

''(iv) securities acquired directly or indirectly by such trust as part of a reorganization (as defined in section 368(a)(1) of the Internal Revenue Code of 1986) with respect to such trust if such securities are described in clause (i), (ii), or (iii) with respect to any other real estate investment trust.

''(B) NEW TRADE OR BUSINESS OR SUBSTANTIAL NEW ASSETS.—Subparagraph (A) shall cease to apply to securities of a corporation as of the first day after July 12, 1999, on which such corporation engages in a substantial new line of business, or acquires any substantial asset, other than—

''(i) pursuant to a binding contract in effect on such date and at all times thereafter before the acquisition of such asset;

''(ii) in a transaction in which gain or loss is not recognized by reason of section 1031 or 1033 of the Internal Revenue Code of 1986; or

''(iii) in a reorganization (as so defined) with another corporation the securities of which are described in paragraph (1)(A) of this subsection.

''(C) LIMITATION ON TRANSITION RULES.—Subparagraph (A) shall cease to apply to securities of a corporation held, acquired, or received, directly or indirectly, by a real estate investment trust as of the first day after July 12, 1999, on which such trust acquires any additional securities of such corporation other than—

''(i) pursuant to a binding contract in effect on July 12, 1999, and at all times thereafter; or

''(ii) in a reorganization (as so defined) with another corporation the securities of which are described in paragraph (1)(A) of this subsection.

''(2) TAX-FREE CONVERSION.—If—

''(A) at the time of an election for a corporation to become a taxable REIT subsidiary, the amendment made by section 541 does not apply to such corporation by reason of paragraph (1); and

''(B) such election first takes effect before January 1, 2004,

such election shall be treated as a reorganization qualifying under section 368(a)(1)(A) of such Code.''

Pub. L. 106–170, title V, § 551(b), Dec. 17, 1999, 113 Stat. 1949, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2000.''

Pub. L. 106–170, title V, § 561(b), Dec. 17, 1999, 113 Stat. 1950, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2000.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to taxable years beginning after Aug. 5, 1997, see section 1263 of Pub. L. 105–34, set out as a note under section 852 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1621(b)(5) of Pub. L. 104–188 effective Sept. 1, 1997, see section 1621(d) of Pub. L. 104–188, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, § 13149(b), Aug. 10, 1993, 107 Stat. 446, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1993.''

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, § 1006(p)(2), Nov. 10, 1988, 102 Stat. 3416, provided that: ''Notwithstanding section 669 of the Reform Act [Pub. L. 99–514, set out below], the amendment made by section 662(c) of the Reform Act [amending this section] shall apply to taxable years beginning after December 31, 1986, but only in the case of obligations acquired after October 22, 1986.''

Pub. L. 100–647, title I, § 1006(p)(4)(B), Nov. 10, 1988, 102 Stat. 3417, provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Nov. 10, 1988].''

Amendment by section 1006(p)(1), (3), (5), (q), (t)(11) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title VI, § 669, Oct. 22, 1986, 100 Stat. 2308, as amended by Pub. L. 100–647, title I, § 1018(u)(29), Nov. 10, 1988, 102 Stat. 3591, provided that:

''(a) GENERAL RULE.—Except as otherwise provided in this section, the amendments made by this subtitle [subtitle G (§§ 661–668) of title VI of Pub. L. 99–514, amending this section and sections 857 to 860, 4981, and 6697 of this title] shall apply to taxable years beginning after December 31, 1986.

''(b) SECTION 668.—The amendments made by section 668 [amending sections 857, 858, and 4981 of this title] shall apply to calendar years beginning after December 31, 1986.

''(c) RETENTION OF EXISTING TRANSITIONAL RULE.—The amendment made by section 663(b)(2) [amending this section] shall not apply with respect to amounts received or accrued pursuant to loans made before May 28, 1976. For purposes of the preceding sentence, a loan is considered to be made before May 28, 1976, if such loan is made pursuant to a binding commitment entered into before May 28, 1976.''

Amendment by section 671(b)(1) of Pub. L. 99–514 effective Jan. 1, 1987, see section 675(a) of Pub. L. 99–514,

as amended, set out as an Effective Date note under section 860A of this title.

Amendment by section 901(d)(4)(E) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 901(e) of Pub. L. 99–514, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title II, § 363(d), Nov. 6, 1978, 92 Stat. 2854, provided that: ''The amendments made by subsections (a) [amending this section] and (b) [amending section 857 of this title] shall apply to taxable years ending after the date of the enactment of this Act [Nov. 6, 1978]. The amendment made by subsection (c) [amending this section] shall apply to extensions granted after the date of the enactment of this Act with respect to periods beginning after December 31, 1977.''

Amendment by section 701(t)(2) of Pub. L. 95–600 effective Oct. 4, 1976, see section 701(t)(5) of Pub. L. 95–600, set out as a note under section 859 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XIV, § 1402(b)(1), Oct. 4, 1976, 90 Stat. 1731, provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Pub. L. 94–455, title XIV, § 1402(b)(2), Oct. 4, 1976, 90 Stat. 1732, provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

Pub. L. 94–455, title XVI, § 1608(d), Oct. 4, 1976, 90 Stat. 1758, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) Except as provided in paragraphs (2) and (3), the amendments made by sections 1603, 1604, and 1605 [enacting sections 860 and 4981 of this title and amending this section and sections 275, 857, 858, 6161, 6211 to 6214, 6344, 6512, 6601, and 7422 of this title] shall apply to taxable years of real estate investment trusts beginning after the date of the enactment of this Act [Oct. 4, 1976].

''(2) If, as a result of a determination (as defined in section 859(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]), occurring after the date of enactment of this Act [Oct. 4, 1976], with respect to the real estate investment trust, such trust does not meet the requirement of section 856(a)(4) of the Internal Revenue Code of 1986 (as in effect before the amendment of such section by this Act) for any taxable year beginning on or before the date of the enactment of this Act, such trust may elect, within 60 days after such determination in the manner provided in regulations prescribed by the Secretary of the Treasury or his delegate, to have the provisions of section 1603 (other than paragraphs (1), (2), (3), and (4) of section 1603(c)) apply with respect to such taxable year. Where the provisions of section 1603 apply to a real estate investment trust with respect to any taxable year beginning on or before the date of the enactment of this Act—

''(A) credit or refund of any overpayment of tax which results from the application of section 1603 to such taxable year shall be made as if on the date of the determination (as defined in section 859(c) of the Internal Revenue Code of 1986) 2 years remained before the expiration of the period of limitation prescribed by section 6511 of such Code on the filing of claim for refund for the taxable year to which the overpayment relates,

''(B) the running of the statute of limitations provided in section 6501 of such Code on the making of assessments, and the bringing of distraint or a proceeding in court for collection, in respect of any deficiency (as defined in section 6211 of such Code) established by such a determination, and all interest, additions to tax, additional amounts, or assessable penalties in respect thereof, shall be suspended for a period of 2 years after the date of such determination, and

''(C) the collection of any deficiency (as defined in section 6211 of such Code) established by such determination and all interest, additions to tax, additional amounts, and assessable penalties in respect thereof shall, except in cases of jeopardy, be stayed until the expiration of 60 days after the date of such determination.

No distraint or proceeding in court shall be begun for the collection of an amount the collection of which is stayed under subparagraph (C) during the period for which the collection of such amount is stayed.

''(3) Section 856(g)(3) of the Internal Revenue Code of 1986, as added by section 1604 of this Act, shall not apply with respect to a termination of an election, filed by a taxpayer under section 856(c)(1) of such Code on or before the date of the enactment of this Act [Oct. 4, 1976], unless the provisions of part II of subchapter M of chapter 1 of subtitle A of such Code apply to such taxpayer for a taxable year ending after the date of the enactment of this Act for which such election is in effect.''

EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 93–625, § 6(e), Jan. 3, 1975, 88 Stat. 2114, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [amending this section and section 857 of this title] apply to foreclosure property acquired after December 31, 1973. Notwithstanding the provisions of section 856(e)(5) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a) of this section) any taxpayer required to make an election with respect to foreclosure property sooner than 90 days after the date of enactment of this Act [Jan. 3, 1975], may make that election at any time before the 91st day after the date of enactment of this Act.''

EFFECTIVE DATE OF 1964 AMENDMENTS

Amendment by Pub. L. 88–554 effective Aug. 31, 1964, except that for purposes of sections 302 and 304 of this title, such amendments shall not apply to distributions in payment for stock acquisitions or redemptions, if such acquisitions or redemptions occurred before Aug. 31, 1964, see section 4(c) of Pub. L. 88–554, set out as a note under section 318 of this title.

Amendment by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 225(*l*) of Pub. L. 88–272, set out as a note under section 316 of this title.

EFFECTIVE DATE

Pub. L. 86–779, § 10(k), Sept. 14, 1960, 74 Stat. 1009, provided that: ''The amendments made by this section [enacting this section and sections 857 and 858 and amending sections 11, 34, 116, 243, 318, 443, 852, 855, and 1504 of this title] shall apply with respect to taxable years of real estate investment trusts beginning after December 31, 1960.''

STUDY RELATING TO TAXABLE REIT SUBSIDIARIES

Pub. L. 106–170, title V, § 547, Dec. 17, 1999, 113 Stat. 1947, provided that: ''The Secretary of the Treasury shall conduct a study to determine how many taxable REIT subsidiaries are in existence and the aggregate amount of taxes paid by such subsidiaries. The Secretary shall submit a report to the Congress describing the results of such study.''

TRUST NOT DISQUALIFIED IN CERTAIN CASES WHERE INCOME TESTS NOT MET

Pub. L. 94–455, title XVI, § 1608(b), Oct. 4, 1976, 90 Stat. 1757, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by

section 1602 [amending this section and section 857 of this title] shall apply to taxable years of real estate investment trusts beginning after the date of the enactment of this Act [Oct. 4, 1976]. In addition, the amendments made by section 1602 shall apply to a taxable year of a real estate investment trust beginning before the date of the enactment of this Act if, as the result of a determination (as defined in section 859(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) with respect to such trust occurring after the date of the enactment of this Act, such trust for such taxable years does not meet the requirements of section 856(c)(2) or section 856(c)(3), or of both such sections, of such Code as in effect for such taxable year. In any case, the amendment made by section 1602(a) requiring a schedule to be attached to the income tax return of certain real estate investment trusts shall apply only to taxable years of such trusts beginning after the date of the enactment of this Act. If the amendments made by section 1602 apply to a taxable year ending on or before the date of enactment of this Act, the reference to paragraph (2)(B) in section 857(b)(5) of such Code, as amended, shall be considered to be a reference to paragraph (2)(C) of section 857(b) of such Code, as in effect immediately before the enactment of this Act.''

§ 857. Taxation of real estate investment trusts and their beneficiaries

(a) Requirements applicable to real estate investment trusts

The provisions of this part (other than subsection (d) of this section and subsection (g) of section 856) shall not apply to a real estate investment trust for a taxable year unless—

(1) the deduction for dividends paid during the taxable year (as defined in section 561, but determined without regard to capital gains dividends) equals or exceeds—

(A) the sum of—

(i) 90 percent of the real estate investment trust taxable income for the taxable year (determined without regard to the deduction for dividends paid (as defined in section 561) and by excluding any net capital gain); and

(ii) 90 percent of the excess of the net income from foreclosure property over the tax imposed on such income by subsection (b)(4)(A); minus

(B) any excess noncash income (as determined under subsection (e)); and

(2) either—

(A) the provisions of this part apply to the real estate investment trust for all taxable years beginning after February 28, 1986, or

(B) as of the close of the taxable year, the real estate investment trust has no earnings and profits accumulated in any non-REIT year.

For purposes of the preceding sentence, the term ''non-REIT year'' means any taxable year to which the provisions of this part did not apply with respect to the entity. The Secretary may waive the requirements of paragraph (1) for any taxable year if the real estate investment trust establishes to the satisfaction of the Secretary that it was unable to meet such requirements by reason of distributions previously made to meet the requirements of section 4981.

(b) Method of taxation of real estate investment trusts and holders of shares or certificates of beneficial interest

(1) Imposition of tax on real estate investment trusts

There is hereby imposed for each taxable year on the real estate investment trust taxable income of every real estate investment trust a tax computed as provided in section 11, as though the real estate investment trust taxable income were the taxable income referred to in section 11.

(2) Real estate investment trust taxable income

For purposes of this part, the term ''real estate investment trust taxable income'' means the taxable income of the real estate investment trust, adjusted as follows:

(A) The deductions for corporations provided in part VIII (except section 248) of subchapter B (section 241 and following, relating to the deduction for dividends received, etc.) shall not be allowed.

(B) The deduction for dividends paid (as defined in section 561) shall be allowed, but shall be computed without regard to that portion of such deduction which is attributable to the amount excluded under subparagraph (D).

(C) The taxable income shall be computed without regard to section 443(b) (relating to computation of tax on change of annual accounting period).

(D) There shall be excluded an amount equal to the net income from foreclosure property.

(E) There shall be deducted an amount equal to the tax imposed by paragraphs (5) and (7) of this subsection, section 856(c)(7)(C), and section 856(g)(5) for the taxable year.

(F) There shall be excluded an amount equal to any net income derived from prohibited transactions.

(3) Capital gains

(A) Treatment of capital gain dividends by shareholders

A capital gain dividend shall be treated by the shareholders or holders of beneficial interests as a gain from the sale or exchange of a capital asset held for more than 1 year.

(B) Definition of capital gain dividend

For purposes of this part, a capital gain dividend is any dividend, or part thereof, which is designated by the real estate investment trust as a capital gain dividend in a written notice mailed to its shareholders or holders of beneficial interests at any time before the expiration of 30 days after the close of its taxable year (or mailed to its shareholders or holders of beneficial interests with its annual report for the taxable year); except that, if there is an increase in the excess described in subparagraph (A)(ii) of this paragraph for such year which results from a determination (as defined in section 860(e)), such designation may be made with respect to such increase at any time before the expiration of 120 days after the date of

such determination. If the aggregate amount so designated with respect to a taxable year of the trust (including capital gain dividends paid after the close of the taxable year described in section 858) is greater than the net capital gain of the taxable year, the portion of each distribution which shall be a capital gain dividend shall be only that proportion of the amount so designated which such net capital gain bears to the aggregate amount so designated. For purposes of this subparagraph, the amount of the net capital gain for any taxable year which is not a calendar year shall be determined without regard to any net capital loss attributable to transactions after December 31 of such year, and any such net capital loss shall be treated as arising on the 1st day of the next taxable year. To the extent provided in regulations, the preceding sentence shall apply also for purposes of computing the taxable income of the real estate investment trust.

(C) Treatment by shareholders of undistributed capital gains

(i) Every shareholder of a real estate investment trust at the close of the trust's taxable year shall include, in computing his long-term capital gains in his return for his taxable year in which the last day of the trust's taxable year falls, such amount as the trust shall designate in respect of such shares in a written notice mailed to its shareholders at any time prior to the expiration of 60 days after the close of its taxable year (or mailed to its shareholders or holders of beneficial interests with its annual report for the taxable year), but the amount so includible by any shareholder shall not exceed that part of the amount subjected to tax in paragraph (1) which he would have received if all of such amount had been distributed as capital gain dividends by the trust to the holders of such shares at the close of its taxable year.

(ii) For purposes of this title, every such shareholder shall be deemed to have paid, for his taxable year under clause (i), the tax imposed by paragraph (1) on undistributed capital gain on the amounts required by this subparagraph to be included in respect of such shares in computing his long-term capital gains for that year; and such shareholders shall be allowed credit or refund as the case may be, for the tax so deemed to have been paid by him.

(iii) The adjusted basis of such shares in the hands of the holder shall be increased with respect to the amounts required by this subparagraph to be included in computing his long-term capital gains, by the difference between the amount of such includible gains and the tax deemed paid by such shareholder in respect of such shares under clause (ii).

(iv) In the event of such designation, the tax imposed by paragraph (1) on undistributed capital gain shall be paid by the real estate investment trust within 30 days after the close of its taxable year.

(v) The earnings and profits of such real estate investment trust, and the earnings and profits of any such shareholder which is a corporation, shall be appropriately adjusted in accordance with regulations prescribed by the Secretary.

(vi) As used in this subparagraph, the terms ''shares'' and ''shareholders'' shall include beneficial interests and holders of beneficial interests, respectively.

(D) Coordination with net operating loss provisions

For purposes of section 172, if a real estate investment trust pays capital gain dividends during any taxable year, the amount of the net capital gain for such taxable year (to the extent such gain does not exceed the amount of such capital gain dividends) shall be excluded in determining—

(i) the net operating loss for the taxable year, and

(ii) the amount of the net operating loss of any prior taxable year which may be carried through such taxable year under section 172(b)(2) to a succeeding taxable year.

(E) Certain distributions

In the case of a shareholder of a real estate investment trust to whom section 897 does not apply by reason of the second sentence of section 897(h)(1) or subparagraph (A)(ii) or (C) of section 897(k)(2), the amount which would be included in computing long-term capital gains for such shareholder under subparagraph (A) or (C) (without regard to this subparagraph)—

(i) shall not be included in computing such shareholder's long-term capital gains, and

(ii) shall be included in such shareholder's gross income as a dividend from the real estate investment trust.

(F) Undistributed capital gain

For purposes of this paragraph, the term ''undistributed capital gain'' means the excess of the net capital gain over the deduction for dividends paid (as defined in section 561) determined with reference to capital gain dividends only.

(4) Income from foreclosure property

(A) Imposition of tax

A tax is hereby imposed for each taxable year on the net income from foreclosure property of every real estate investment trust. Such tax shall be computed by multiplying the net income from foreclosure property by the highest rate of tax specified in section 11(b).

(B) Net income from foreclosure property

For purposes of this part, the term ''net income from foreclosure property'' means the excess of—

(i) gain (including any foreign currency gain, as defined in section 988(b)(1)) from the sale or other disposition of foreclosure property described in section 1221(a)(1) and the gross income for the taxable year derived from foreclosure property (as defined in section 856(e)), but only to the extent

such gross income is not described in (or, in the case of foreign currency gain, not attributable to gross income described in) section 856(c)(3) other than subparagraph (F) thereof, over

(ii) the deductions allowed by this chapter which are directly connected with the production of the income referred to in clause (i).

(5) Imposition of tax in case of failure to meet certain requirements

If section 856(c)(6) applies to a real estate investment trust for any taxable year, there is hereby imposed on such trust a tax in an amount equal to the greater of—

(A) the excess of—

(i) 95 percent of the gross income (excluding gross income from prohibited transactions) of the real estate investment trust, over

(ii) the amount of such gross income which is derived from sources referred to in section 856(c)(2); or

(B) the excess of—

(i) 75 percent of the gross income (excluding gross income from prohibited transactions) of the real estate investment trust, over

(ii) the amount of such gross income which is derived from sources referred to in section 856(c)(3),

multiplied by a fraction the numerator of which is the real estate investment trust taxable income for the taxable year (determined without regard to the deductions provided in paragraphs (2)(B) and (2)(E), without regard to any net operating loss deduction, and by excluding any net capital gain) and the denominator of which is the gross income for the taxable year (excluding gross income from prohibited transactions; gross income and gain from foreclosure property (as defined in section 856(e), but only to the extent such gross income and gain is not described in subparagraph (A), (B), (C), (D), (E), or (G) of section 856(c)(3)); long-term capital gain; and short-term capital gain to the extent of any short-term capital loss).

(6) Income from prohibited transactions

(A) Imposition of tax

There is hereby imposed for each taxable year of every real estate investment trust a tax equal to 100 percent of the net income derived from prohibited transactions.

(B) Definitions

For purposes of this part—

(i) the term ''net income derived from prohibited transactions'' means the excess of the gain (including any foreign currency gain, as defined in section 988(b)(1)) from prohibited transactions over the deductions (including any foreign currency loss, as defined in section 988(b)(2)) allowed by this chapter which are directly connected with prohibited transactions;

(ii) in determining the amount of the net income derived from prohibited transactions, there shall not be taken into account any item attributable to any prohibited transaction for which there was a loss; and

(iii) the term ''prohibited transaction'' means a sale or other disposition of property described in section 1221(a)(1) which is not foreclosure property.

(C) Certain sales not to constitute prohibited transactions

For purposes of this part, the term ''prohibited transaction'' does not include a sale of property which is a real estate asset (as defined in section 856(c)(5)(B)) if—

(i) the trust has held the property for not less than 2 years;

(ii) aggregate expenditures made by the trust, or any partner of the trust, during the 2-year period preceding the date of sale which are includible in the basis of the property do not exceed 30 percent of the net selling price of the property;

(iii)(I) during the taxable year the trust does not make more than 7 sales of property (other than sales of foreclosure property or sales to which section 1033 applies), or (II) the aggregate adjusted bases (as determined for purposes of computing earnings and profits) of property (other than sales of foreclosure property or sales to which section 1033 applies) sold during the taxable year does not exceed 10 percent of the aggregate bases (as so determined) of all of the assets of the trust as of the beginning of the taxable year, or (III) the fair market value of property (other than sales of foreclosure property or sales to which section 1033 applies) sold during the taxable year does not exceed 10 percent of the fair market value of all of the assets of the trust as of the beginning of the taxable year, or (IV) the trust satisfies the requirements of subclause (II) applied by substituting ''20 percent'' for ''10 percent'' and the 3-year average adjusted bases percentage for the taxable year (as defined in subparagraph (G)) does not exceed 10 percent, or (V) the trust satisfies the requirements of subclause (III) applied by substituting ''20 percent'' for ''10 percent'' and the 3-year average fair market value percentage for the taxable year (as defined in subparagraph (H)) does not exceed 10 percent;

(iv) in the case of property, which consists of land or improvements, not acquired through foreclosure (or deed in lieu of foreclosure), or lease termination, the trust has held the property for not less than 2 years for production of rental income; and

(v) if the requirement of clause (iii)(I) is not satisfied, substantially all of the marketing and development expenditures with respect to the property were made through an independent contractor (as defined in section 856(d)(3)) from whom the trust itself does not derive or receive any income or a taxable REIT subsidiary.

(D) Certain sales not to constitute prohibited transactions

For purposes of this part, the term ''prohibited transaction'' does not include a sale

of property which is a real estate asset (as defined in section 856(c)(5)(B)) if—

(i) the trust held the property for not less than 2 years in connection with the trade or business of producing timber,

(ii) the aggregate expenditures made by the trust, or a partner of the trust, during the 2-year period preceding the date of sale which—

(I) are includible in the basis of the property (other than timberland acquisition expenditures), and

(II) are directly related to operation of the property for the production of timber or for the preservation of the property for use as timberland,

do not exceed 30 percent of the net selling price of the property,

(iii) the aggregate expenditures made by the trust, or a partner of the trust, during the 2-year period preceding the date of sale which—

(I) are includible in the basis of the property (other than timberland acquisition expenditures), and

(II) are not directly related to operation of the property for the production of timber, or for the preservation of the property for use as timberland,

do not exceed 5 percent of the net selling price of the property,

(iv)(I) during the taxable year the trust does not make more than 7 sales of property (other than sales of foreclosure property or sales to which section 1033 applies), or

(II) the aggregate adjusted bases (as determined for purposes of computing earnings and profits) of property (other than sales of foreclosure property or sales to which section 1033 applies) sold during the taxable year does not exceed 10 percent of the aggregate bases (as so determined) of all of the assets of the trust as of the beginning of the taxable year, or

(III) the fair market value of property (other than sales of foreclosure property or sales to which section 1033 applies) sold during the taxable year does not exceed 10 percent of the fair market value of all of the assets of the trust as of the beginning of the taxable year, or

(IV) the trust satisfies the requirements of subclause (II) applied by substituting ''20 percent'' for ''10 percent'' and the 3-year average adjusted bases percentage for the taxable year (as defined in subparagraph (G)) does not exceed 10 percent, or

(V) the trust satisfies the requirements of subclause (III) applied by substituting ''20 percent'' for ''10 percent'' and the 3-year average fair market value percentage for the taxable year (as defined in subparagraph (H)) does not exceed 10 percent,

(v) in the case that the requirement of clause (iv)(I) is not satisfied, substantially all of the marketing expenditures with respect to the property were made through an independent contractor (as defined in section 856(d)(3)) from whom the trust itself does not derive or receive any income, or a taxable REIT subsidiary, and

(vi) the sales price of the property sold by the trust is not based in whole or in part on income or profits, including income or profits derived from the sale or operation of such property.

(E) Special rules

In applying subparagraphs (C) and (D) the following special rules apply:

(i) The holding period of property acquired through foreclosure (or deed in lieu of foreclosure), or termination of the lease, includes the period for which the trust held the loan which such property secured, or the lease of such property.

(ii) In the case of a property acquired through foreclosure (or deed in lieu of foreclosure), or termination of a lease, expenditures made by, or for the account of, the mortgagor or lessee after default became imminent will be regarded as made by the trust.

(iii) Expenditures (including expenditures regarded as made directly by the trust, or indirectly by any partner of the trust, under clause (ii)) will not be taken into account if they relate to foreclosure property and did not cause the property to lose its status as foreclosure property.

(iv) Expenditures will not be taken into account if they are made solely to comply with standards or requirements of any government or governmental authority having relevant jurisdiction, or if they are made to restore the property as a result of losses arising from fire, storm or other casualty.

(v) The term ''expenditures'' does not include advances on a loan made by the trust.

(vi) The sale of more than one property to one buyer as part of one transaction constitutes one sale.

(vii) The term ''sale'' does not include any transaction in which the net selling price is less than $10,000.

(F) No inference with respect to treatment as inventory property

The determination of whether property is described in section 1221(a)(1) shall be made without regard to this paragraph.

(G) 3-year average adjusted bases percentage

The term ''3-year average adjusted bases percentage'' means, with respect to any taxable year, the ratio (expressed as a percentage) of—

(i) the aggregate adjusted bases (as determined for purposes of computing earnings and profits) of property (other than sales of foreclosure property or sales to which section 1033 applies) sold during the 3 taxable year period ending with such taxable year, divided by

(ii) the sum of the aggregate adjusted bases (as so determined) of all of the assets of the trust as of the beginning of each of the 3 taxable years which are part of the period referred to in clause (i).

(H) 3-year average fair market value percentage

The term ''3-year average fair market value percentage'' means, with respect to any taxable year, the ratio (expressed as a percentage) of—

(i) the fair market value of property (other than sales of foreclosure property or sales to which section 1033 applies) sold during the 3 taxable year period ending with such taxable year, divided by

(ii) the sum of the fair market value of all of the assets of the trust as of the beginning of each of the 3 taxable years which are part of the period referred to in clause (i).

(I) Sales of property that are not a prohibited transaction

In the case of a sale on or before the termination date, the sale of property which is not a prohibited transaction through the application of subparagraph (D) shall be considered property held for investment or for use in a trade or business and not property described in section 1221(a)(1) for all purposes of this subtitle. For purposes of the preceding sentence, the reference to subparagraph (D) shall be a reference to such subparagraph as in effect on the day before the enactment of the Housing Assistance Tax Act of 2008, as modified by subparagraph (G) as so in effect.

(J) Termination date

For purposes of this paragraph, the term ''termination date'' has the meaning given such term by section 856(c)(8).[1]

(7) Income from redetermined rents, redetermined deductions, and excess interest

(A) Imposition of tax

There is hereby imposed for each taxable year of the real estate investment trust a tax equal to 100 percent of redetermined rents, redetermined deductions, excess interest, and redetermined TRS service income.

(B) Redetermined rents

(i) In general

The term ''redetermined rents'' means rents from real property (as defined in section 856(d)) to the extent the amount of the rents would (but for subparagraph (F)) be reduced on distribution, apportionment, or allocation under section 482 to clearly reflect income as a result of services furnished or rendered by a taxable REIT subsidiary of the real estate investment trust to a tenant of such trust.

(ii) Exception for de minimis amounts

Clause (i) shall not apply to amounts described in section 856(d)(7)(A) with respect to a property to the extent such amounts do not exceed the one percent threshold described in section 856(d)(7)(B) with respect to such property.

(iii) Exception for comparably priced services

Clause (i) shall not apply to any service rendered by a taxable REIT subsidiary of a real estate investment trust to a tenant of such trust if—

(I) such subsidiary renders a significant amount of similar services to persons other than such trust and tenants of such trust who are unrelated (within the meaning of section 856(d)(8)(F)) to such subsidiary, trust, and tenants, but

(II) only to the extent the charge for such service so rendered is substantially comparable to the charge for the similar services rendered to persons referred to in subclause (I).

(iv) Exception for certain separately charged services

Clause (i) shall not apply to any service rendered by a taxable REIT subsidiary of a real estate investment trust to a tenant of such trust if—

(I) the rents paid to the trust by tenants (leasing at least 25 percent of the net leasable space in the trust's property) who are not receiving such service from such subsidiary are substantially comparable to the rents paid by tenants leasing comparable space who are receiving such service from such subsidiary, and

(II) the charge for such service from such subsidiary is separately stated.

(v) Exception for certain services based on subsidiary's income from the services

Clause (i) shall not apply to any service rendered by a taxable REIT subsidiary of a real estate investment trust to a tenant of such trust if the gross income of such subsidiary from such service is not less than 150 percent of such subsidiary's direct cost in furnishing or rendering the service.

(vi) Exceptions granted by Secretary

The Secretary may waive the tax otherwise imposed by subparagraph (A) if the trust establishes to the satisfaction of the Secretary that rents charged to tenants were established on an arms' length basis even though a taxable REIT subsidiary of the trust provided services to such tenants.

(C) Redetermined deductions

The term ''redetermined deductions'' means deductions (other than redetermined rents) of a taxable REIT subsidiary of a real estate investment trust to the extent the amount of such deductions would (but for subparagraph (F)) be decreased on distribution, apportionment, or allocation under section 482 to clearly reflect income as between such subsidiary and such trust.

(D) Excess interest

The term ''excess interest'' means any deductions for interest payments by a taxable REIT subsidiary of a real estate investment trust to such trust to the extent that the in-

[1] See References in Text note below.

terest payments are in excess of a rate that is commercially reasonable.

(E) Redetermined TRS service income

(i) In general

The term ''redetermined TRS service income'' means gross income of a taxable REIT subsidiary of a real estate investment trust attributable to services provided to, or on behalf of, such trust (less deductions properly allocable thereto) to the extent the amount of such income (less such deductions) would (but for subparagraph (F)) be increased on distribution, apportionment, or allocation under section 482.

(ii) Coordination with redetermined rents

Clause (i) shall not apply with respect to gross income attributable to services furnished or rendered to a tenant of the real estate investment trust (or to deductions properly allocable thereto).

(F) Coordination with section 482

The imposition of tax under subparagraph (A) shall be in lieu of any distribution, apportionment, or allocation under section 482.

(G) Regulatory authority

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph. Until the Secretary prescribes such regulations, real estate investment trusts and their taxable REIT subsidiaries may base their allocations on any reasonable method.

(8) Loss on sale or exchange of stock held 6 months or less

(A) In general

If—

(i) subparagraph (B) or (D) of paragraph (3) provides that any amount with respect to any share or beneficial interest is to be treated as a long-term capital gain, and

(ii) the taxpayer has held such share or interest for 6 months or less,

then any loss on the sale or exchange of such share or interest shall, to the extent of the amount described in clause (i), be treated as a long-term capital loss.

(B) Determination of holding periods

For purposes of this paragraph, in determining the period for which the taxpayer has held any share of stock or beneficial interest—

(i) the rules of paragraphs (3) and (4) of section 246(c) shall apply, and

(ii) there shall not be taken into account any day which is more than 6 months after the date on which such share or interest becomes ex-dividend.

(C) Exception for losses incurred under periodic liquidation plans

To the extent provided in regulations, subparagraph (A) shall not apply to any loss incurred on the sale or exchange of shares of stock of, or beneficial interest in, a real estate investment trust pursuant to a plan which provides for the periodic liquidation of such shares or interests.

(9) Time certain dividends taken into account

For purposes of this title, any dividend declared by a real estate investment trust in October, November, or December of any calendar year and payable to shareholders of record on a specified date in such a month shall be deemed—

(A) to have been received by each shareholder on December 31 of such calendar year, and

(B) to have been paid by such trust on December 31 of such calendar year (or, if earlier, as provided in section 858).

The preceding sentence shall apply only if such dividend is actually paid by the company during January of the following calendar year.

(c) Restrictions applicable to dividends received from real estate investment trusts

(1) Section 243

For purposes of section 243 (relating to deductions for dividends received by corporations), a dividend received from a real estate investment trust which meets the requirements of this part shall not be considered a dividend.

(2) Section (1)(h)(11)

(A) In general

In any case in which—

(i) a dividend is received from a real estate investment trust (other than a capital gain dividend), and

(ii) such trust meets the requirements of section 856(a) for the taxable year during which it paid such dividend,

then, in computing qualified dividend income, there shall be taken into account only that portion of such dividend designated by the real estate investment trust.

(B) Limitation

The aggregate amount which may be designated as qualified dividend income under subparagraph (A) shall not exceed the sum of—

(i) the qualified dividend income of the trust for the taxable year,

(ii) the excess of—

(I) the sum of the real estate investment trust taxable income computed under section 857(b)(2) for the preceding taxable year and the income subject to tax by reason of the application of the regulations under section 337(d) for such preceding taxable year, over

(II) the sum of the taxes imposed on the trust for such preceding taxable year under section 857(b)(1) and by reason of the application of such regulations, and

(iii) the amount of any earnings and profits which were distributed by the trust for such taxable year and accumulated in a taxable year with respect to which this part did not apply.

(C) Notice to shareholders

The amount of any distribution by a real estate investment trust which may be taken

into account as qualified dividend income shall not exceed the amount so designated by the trust in a written notice to its shareholders mailed not later than 60 days after the close of its taxable year.

(D) Qualified dividend income

For purposes of this paragraph, the term ''qualified dividend income'' has the meaning given such term by section 1(h)(11)(B).

(d) Earnings and profits

(1) In general

The earnings and profits of a real estate investment trust for any taxable year (but not its accumulated earnings) shall not be reduced by any amount which—

(A) is not allowable in computing its taxable income for such taxable year, and

(B) was not allowable in computing its taxable income for any prior taxable year.

(2) Coordination with tax on undistributed income

A real estate investment trust shall be treated as having sufficient earnings and profits to treat as a dividend any distribution (other than in a redemption to which section 302(a) applies) which is treated as a dividend by such trust. The preceding sentence shall not apply to the extent that the amount distributed during any calendar year by the trust exceeds the required distribution for such calendar year (as determined under section 4981).

(3) Distributions to meet requirements of subsection (a)(2)(B)

Any distribution which is made in order to comply with the requirements of subsection (a)(2)(B)—

(A) shall be treated for purposes of this subsection and subsection (a)(2)(B) as made from earnings and profits which, but for the distribution, would result in a failure to meet such requirements (and allocated to such earnings on a first-in, first-out basis), and

(B) to the extent treated under subparagraph (A) as made from accumulated earnings and profits, shall not be treated as a distribution for purposes of subsection (b)(2)(B) and section 858.

(4) Real estate investment trust

For purposes of this subsection, the term ''real estate investment trust'' includes a domestic corporation, trust, or association which is a real estate investment trust determined without regard to the requirements of subsection (a).

(5) Special rules for determining earnings and profits for purposes of the deduction for dividends paid

For special rules for determining the earnings and profits of a real estate investment trust for purposes of the deduction for dividends paid, see section 562(e)(1).

(e) Excess noncash income

(1) In general

For purposes of subsection (a)(1)(B), the term ''excess noncash income'' means the excess (if any) of—

(A) the amount determined under paragraph (2) for the taxable year, over

(B) 5 percent of the real estate investment trust taxable income for the taxable year determined without regard to the deduction for dividends paid (as defined in section 561) and by excluding any net capital gain.

(2) Determination of amount

The amount determined under this paragraph for the taxable year is the sum of—

(A) the amount (if any) by which—

(i) the amounts includible in gross income under section 467 (relating to certain payments for the use of property or services), exceed

(ii) the amounts which would have been includible in gross income without regard to such section,

(B) any income on the disposition of a real estate asset if—

(i) there is a determination (as defined in section 860(e)) that such income is not eligible for nonrecognition under section 1031, and

(ii) failure to meet the requirements of section 1031 was due to reasonable cause and not to willful neglect,

(C) the amount (if any) by which—

(i) the amounts includible in gross income with respect to instruments to which section 860E(a) or 1272 applies, exceed

(ii) the amount of money and the fair market value of other property received during the taxable year under such instruments, and

(D) amounts includible in income by reason of cancellation of indebtedness.

(f) Real estate investment trusts to ascertain ownership

(1) In general

Each real estate investment trust shall each taxable year comply with regulations prescribed by the Secretary for the purposes of ascertaining the actual ownership of the outstanding shares, or certificates of beneficial interest, of such trust.

(2) Failure to comply

(A) In general

If a real estate investment trust fails to comply with the requirements of paragraph (1) for a taxable year, such trust shall pay (on notice and demand by the Secretary and in the same manner as tax) a penalty of $25,000.

(B) Intentional disregard

If any failure under paragraph (1) is due to intentional disregard of the requirement under paragraph (1), the penalty under subparagraph (A) shall be $50,000.

(C) Failure to comply after notice

The Secretary may require a real estate investment trust to take such actions as the Secretary determines appropriate to ascertain actual ownership if the trust fails to meet the requirements of paragraph (1). If the trust fails to take such actions, the trust

shall pay (on notice and demand by the Secretary and in the same manner as tax) an additional penalty equal to the penalty determined under subparagraph (A) or (B), whichever is applicable.

(D) Reasonable cause

No penalty shall be imposed under this paragraph with respect to any failure if it is shown that such failure is due to reasonable cause and not to willful neglect.

(g) Limitations on designation of dividends

(1) Overall limitation

The aggregate amount of dividends designated by a real estate investment trust under subsections (b)(3)(C) and (c)(2)(A) with respect to any taxable year may not exceed the dividends paid by such trust with respect to such year. For purposes of the preceding sentence, dividends paid after the close of the taxable year described in section 858 shall be treated as paid with respect to such year.

(2) Proportionality

The Secretary may prescribe regulations or other guidance requiring the proportionality of the designation of particular types of dividends among shares or beneficial interests of a real estate investment trust.

(h) Cross reference

For provisions relating to excise tax based on certain real estate investment trust taxable income not distributed during the taxable year, see section 4981.

(Added Pub. L. 86–779, §10(a), Sept. 14, 1960, 74 Stat. 1006; amended Pub. L. 88–272, title II, §201(d)(11), Feb. 26, 1964, 78 Stat. 32; Pub. L. 91–172, title V, §511(c)(3), Dec. 30, 1969, 83 Stat. 637; Pub. L. 93–625, §6(c), (d)(2)–(4), Jan. 3, 1975, 88 Stat. 2113, 2114; Pub. L. 94–455, title XIV, §1402(b)(1)(P), (2), title XVI, §§1601(c), 1602(b), 1603(b), (c)(5), 1604(c)(2), (f)(3)(B), (j), (k)(2)(B), 1605(b)(2), 1606(a), (d), 1607(a), (b)(1)(A), (2), (3), title XIX, §§1901(a)(112), (b)(1)(V), (33)(K), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1732, 1746–1748, 1750–1757, 1783, 1792, 1801, 1834; Pub. L. 95–600, title III, §§301(b)(12), 362(d)(3), 363(b), title IV, §403(c)(3), Nov. 6, 1978, 92 Stat. 2822, 2851, 2852, 2868; Pub. L. 96–222, title I, §103(a)(1), Apr. 1, 1980, 94 Stat. 208; Pub. L. 96–223, title IV, §404(b)(8), Apr. 2, 1980, 94 Stat. 307; Pub. L. 97–34, title III, §302(c)(5), (d)(1), Aug. 13, 1981, 95 Stat. 273, 274; Pub. L. 98–369, div. A, title I, §§16(a), 55(b), title X, §1001(b)(13), (e), July 18, 1984, 98 Stat. 505, 572, 1011, 1012; Pub. L. 99–514, title VI, §§612(b)(7), 661(b), 664, 665(a), (b)(1), 666, 668(b)(1)(A), (2), (3), Oct. 22, 1986, 100 Stat. 2251, 2300, 2303–2305, 2307, 2308; Pub. L. 100–647, title I, §§1006(r), (s)(2), (4), (5), 1018(u)(28), Nov. 10, 1988, 102 Stat. 3418, 3419, 3591; Pub. L. 101–508, title XI, §11704(a)(37), Nov. 5, 1990, 104 Stat. 1388–520; Pub. L. 105–34, title XII, §§1251(a), 1254(a), (b)(1), 1255(b)(2), (3), 1256, 1259, 1260, Aug. 5, 1997, 111 Stat. 1030, 1032–1035; Pub. L. 105–206, title VI, §6012(g), July 22, 1998, 112 Stat. 819; Pub. L. 106–170, title V, §§532(c)(2)(L), (M), 545, 556(a), (b), 566(a)(2), (b), Dec. 17, 1999, 113 Stat. 1930, 1944, 1949, 1950; Pub. L. 106–554, §1(a)(7) [title III, §311(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–640; Pub. L. 107–147, title IV, §§413(a), 417(13), Mar. 9, 2002, 116 Stat. 54, 56; Pub. L. 108–27, title III, §302(d), May 28, 2003, 117 Stat. 763; Pub. L. 108–311, title IV, §402(a)(5)(E), Oct. 4, 2004, 118 Stat. 1185; Pub. L. 108–357, title II, §243(c), (e), (f)(4), title III, §321(a), title IV, §418(b), Oct. 22, 2004, 118 Stat. 1442, 1445, 1473, 1512; Pub. L. 109–135, title IV, §§403(d)(3), 412(ii), Dec. 21, 2005, 119 Stat. 2622, 2639; Pub. L. 110–172, §11(a)(17)(B), Dec. 29, 2007, 121 Stat. 2486; Pub. L. 110–234, title XV, §§15311(c), 15315(a)–(d), May 22, 2008, 122 Stat. 1503–1505; Pub. L. 110–246, §4(a), title XV, §§15311(c), 15315(a)–(d), June 18, 2008, 122 Stat. 1664, 2265–2267; Pub. L. 110–289, div. C, title II, §§3033, 3051, 3052, July 30, 2008, 122 Stat. 2900, 2901; Pub. L. 114–113, div. Q, title III, §§313(a), (b), 316(a), 320(a), 321(a)(1), (2), (b), 322(a)(2)(B), Dec. 18, 2015, 129 Stat. 3091–3093, 3096, 3097, 3101; Pub. L. 115–97, title I, §13001(b)(2)(K), Dec. 22, 2017, 131 Stat. 2096.)

REFERENCES IN TEXT

The date of enactment of the Housing Assistance Tax Act of 2008, referred to in subsec. (b)(6)(I), is the date of enactment of div. C of Pub. L. 110–289, which was approved July 30, 2008.

Section 856(c)(8), referred to in subsec. (b)(6)(J), was redesignated section 856(c)(10) of this title by Pub. L. 114–113, div. Q, §§311(b), 318(a), Dec. 18, 2015, 129 Stat. 3090, 3095.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2017—Subsec. (b)(3)(A), (B). Pub. L. 115–97, §13001(b)(2)(K)(i), redesignated subpars. (B) and (C) as (A) and (B), respectively, and struck out former subpar. (A) which related to alternative tax in case of capital gains.

Subsec. (b)(3)(C). Pub. L. 115–97, §13001(b)(2)(K)(i), redesignated subpar. (D) as (C). Former subpar. (C) redesignated (B).

Subsec. (b)(3)(C)(i), (ii), (iv). Pub. L. 115–97, §13001(b)(2)(K)(ii), substituted ''paragraph (1)'' for ''subparagraph (A)(ii)'' in cl. (i) and ''the tax imposed by paragraph (1) on undistributed capital gain'' for ''the tax imposed by subparagraph (A)(ii)'' in cls. (ii) and (iv).

Subsec. (b)(3)(D). Pub. L. 115–97, §13001(b)(2)(K)(i), redesignated subpar. (E) as (D). Former subpar. (D) redesignated (C).

Subsec. (b)(3)(E). Pub. L. 115–97, §13001(b)(2)(K)(i), (iii), redesignated subpar. (F) as (E) and substituted ''subparagraph (A) or (C)'' for ''subparagraph (B) or (D)''. Former subpar. (E) redesignated (D).

Subsec. (b)(3)(F). Pub. L. 115–97, §13001(b)(2)(K)(iv), added subpar. (F). Former subpar. (F) redesignated (E).

2015—Subsec. (b)(3)(F). Pub. L. 114–113, §322(a)(2)(B), inserted ''or subparagraph (A)(ii) or (C) of section 897(k)(2)'' after ''897(h)(1)''.

Subsec. (b)(6)(C). Pub. L. 114–113, §313(b)(1), in introductory provisions, struck out ''and which is described in section 1221(a)(1)'' after ''(as defined in section 856(c)(5)(B))''.

Subsec. (b)(6)(C)(iii)(IV), (V). Pub. L. 114–113, §313(a)(1), added subcls. (IV) and (V).

Subsec. (b)(6)(C)(v). Pub. L. 114–113, §321(a)(1), inserted ''or a taxable REIT subsidiary'' before period at end.

Subsec. (b)(6)(D). Pub. L. 114–113, §313(b)(1), in introductory provisions, struck out ''and which is described in section 1221(a)(1)'' after ''(as defined in section 856(c)(5)(B))''.

Subsec. (b)(6)(D)(iv)(IV), (V). Pub. L. 114–113, §313(a)(3), added subcls. (IV) and (V).

Subsec. (b)(6)(D)(v). Pub. L. 114–113, §321(a)(2), struck out '', in the case of a sale on or before the termination date,'' before ''a taxable REIT subsidiary''.

Subsec. (b)(6)(F). Pub. L. 114–113, §313(b)(2), amended subpar. (F) generally. Prior to amendment, text read as follows: ''In determining whether or not any sale constitutes a 'prohibited transaction' for purposes of subparagraph (A), the fact that such sale does not meet the requirements of subparagraph (C) or (D) shall not be taken into account; and such determination, in the case of a sale not meeting such requirements, shall be made as if subparagraphs (C), (D), and (E) had not been enacted.''

Subsec. (b)(6)(G) to (J). Pub. L. 114–113, §313(a)(2), added subpars. (G) and (H) and redesignated former subpars. (G) and (H) as (I) and (J), respectively.

Subsec. (b)(7)(A). Pub. L. 114–113, §321(b)(1), substituted ''excess interest, and redetermined TRS service income'' for ''and excess interest''.

Subsec. (b)(7)(B)(i), (C). Pub. L. 114–113, §321(b)(3), substituted ''subparagraph (F)'' for ''subparagraph (E)''.

Subsec. (b)(7)(E) to (G). Pub. L. 114–113, §321(b)(2), added subpar. (E) and redesignated former subpars. (E) and (F) as (F) and (G), respectively.

Subsec. (d)(1). Pub. L. 114–113, §320(a)(1), amended par. (1) generally. Prior to amendment, text read as follows: ''The earnings and profits of a real estate investment trust for any taxable year (but not its accumulated earnings) shall not be reduced by any amount which is not allowable in computing its taxable income for such taxable year. For purposes of this subsection, the term 'real estate investment trust' includes a domestic corporation, trust, or association which is a real estate investment trust determined without regard to the requirements of subsection (a).''

Subsec. (d)(4), (5). Pub. L. 114–113, §320(a)(2), added pars. (4) and (5).

Subsecs. (g), (h). Pub. L. 114–113, §316(a), added subsec. (g) and redesignated former subsec. (g) as (h).

2008—Subsec. (b)(3)(A)(ii). Pub. L. 110–246, §15311(c), substituted ''rates'' for ''rate''.

Subsec. (b)(4)(B)(i). Pub. L. 110–289, §3033(a), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''gain from the sale or other disposition of foreclosure property described in section 1221(a)(1) and the gross income for the taxable year derived from foreclosure property (as defined in section 856(e)), but only to the extent such gross income is not described in subparagraph (A), (B), (C), (D), (E), or (G) of section 856(c)(3), over''.

Subsec. (b)(6)(B)(i). Pub. L. 110–289, §3033(b), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''the term 'net income derived from prohibited transactions' means the excess of the gain from prohibited transactions over the deductions allowed by this chapter which are directly connected with prohibited transactions;''.

Subsec. (b)(6)(C). Pub. L. 110–289, §3051(a)(3), substituted ''real estate asset (as defined in section 856(c)(5)(B)) and which is described in section 1221(a)(1) if'' for ''real estate asset as defined in section 856(c)(5)(B) if'' in introductory provisions.

Subsec. (b)(6)(C)(i). Pub. L. 110–289, §3051(a)(1), substituted ''2 years'' for ''4 years''.

Subsec. (b)(6)(C)(ii). Pub. L. 110–289, §3051(a)(2), substituted ''2-year period'' for ''4-year period''.

Subsec. (b)(6)(C)(iii)(III). Pub. L. 110–289, §3052(1), added subcl. (III).

Subsec. (b)(6)(C)(iv). Pub. L. 110–289, §3051(a)(1), substituted ''2 years'' for ''4 years''.

Subsec. (b)(6)(D). Pub. L. 110–289, §3051(a)(3), substituted ''real estate asset (as defined in section 856(c)(5)(B)) and which is described in section 1221(a)(1) if'' for ''real estate asset (as defined in section 856(c)(5)(B)) if'' in introductory provisions.

Subsec. (b)(6)(D)(i). Pub. L. 110–289, §3051(a)(1), substituted ''2 years'' for ''4 years''.

Subsec. (b)(6)(D)(ii), (iii). Pub. L. 110–289, §3051(a)(2), substituted ''2-year period'' for ''4-year period'' in introductory provisions.

Subsec. (b)(6)(D)(iv)(III). Pub. L. 110–289, §3052(2), added subcl. (III).

Subsec. (b)(6)(D)(v). Pub. L. 110–246, §15315(b), inserted '', or, in the case of a sale on or before the termination date, a taxable REIT subsidiary'' after ''any income''.

Subsec. (b)(6)(G). Pub. L. 110–289, §3051(b), redesignated subpar. (H) as (G), inserted at end ''For purposes of the preceding sentence, the reference to subparagraph (D) shall be a reference to such subparagraph as in effect on the day before the enactment of the Housing Assistance Tax Act of 2008, as modified by subparagraph (G) as so in effect.'', and struck out former subpar. (G). Prior to amendment, text of subpar. (G) read as follows:

''(i) IN GENERAL.—In the case of the sale of a real estate asset (as defined in section 856(c)(5)(B)) to a qualified organization (as defined in section 170(h)(3)) exclusively for conservation purposes (within the meaning of section 170(h)(1)(C)), subparagraph (D) shall be applied—

''(I) by substituting '2 years' for '4 years' in clause (i), and

''(II) by substituting '2-year period' for '4-year period' in clauses (ii) and (iii).

''(ii) TERMINATION.—This subparagraph shall not apply to sales after the termination date.''

Pub. L. 110–246, §15315(a), added subpar. (G).

Subsec. (b)(6)(H), (I). Pub. L. 110–289, §3051(b)(1), redesignated subpar. (I) as (H). Former subpar. (H) redesignated (G).

Pub. L. 110–246, §15315(c), (d), added subpars. (H) and (I).

2007—Subsec. (b)(8)(B). Pub. L. 110–172 amended heading and text generally. Prior to amendment, text read as follows: ''For purposes of this paragraph, the rules of paragraphs (3) and (4) of section 246(c) shall apply in determining the period for which the taxpayer has held any share of stock or beneficial interest; except that '6 months' shall be substituted for the number of days specified in subparagraph (B) of section 246(c)(3).''

2005—Subsec. (b)(2)(E). Pub. L. 109–135, §403(d)(3), substituted ''section 856(c)(7)(C), and section 856(g)(5)'' for ''section 856(c)(7)(B)(iii), and section 856(g)(1).''

Subsec. (b)(6)(E). Pub. L. 109–135, §412(ii)(1), substituted ''subparagraphs (C) and (D)'' for ''subparagraph (C)'' in introductory provisions.

Subsec. (b)(6)(F). Pub. L. 109–135, §412(ii)(2), substituted ''subparagraph (C) or (D)'' for ''subparagraph (C) of this paragraph'' and ''subparagraphs (C), (D), and (E)'' for ''subparagraphs (C) and (D)''.

2004—Subsec. (b)(2)(E). Pub. L. 108–357, §243(f)(4), substituted ''(7) of this subsection, section 856(c)(7)(B)(iii), and section 856(g)(1).'' for ''(7)''.

Subsec. (b)(3)(F). Pub. L. 108–357, §418(b), added subpar. (F).

Subsec. (b)(5)(A)(i). Pub. L. 108–357, §243(e), substituted ''95 percent'' for ''90 percent''.

Subsec. (b)(6)(D) to (F). Pub. L. 108–357, §321(a), added subpar. (D) and redesignated former subpars. (D) and (E) as (E) and (F), respectively.

Subsec. (b)(7)(B)(ii) to (vii). Pub. L. 108–357, §243(c), redesignated cls. (iii) to (vii) as (ii) to (vi), respectively, and struck out former cl. (ii), which related to exception for amounts received by a REIT for services furnished or rendered by a taxable REIT subsidiary that were described in section 856(d)(1)(B) of this title, or from a taxable REIT subsidiary that were described in par. (7)(C)(ii) of such section.

Subsec. (c)(2). Pub. L. 108–311, §402(a)(5)(E), reenacted heading without change and amended text generally. Prior to amendment, text related to rules applicable to dividends received from real estate investment trusts for purposes of section 1(h)(11) of this title.

2003—Subsec. (c). Pub. L. 108–27 reenacted subsec. heading without change and amended text generally. Prior to amendment, text read as follows: ''For purposes of section 243 (relating to deductions for dividends received by corporations), a dividend received from a real estate investment trust which meets the requirements of this part shall not be considered as a dividend.''

2002—Subsec. (b)(7)(B)(i). Pub. L. 107–147, § 417(13), substituted ''section 856(d)'' for ''subsection 856(d)''.

Pub. L. 107–147, § 413(a)(1), substituted ''to the extent the amount of the rents'' for ''the amount of which''.

Subsec. (b)(7)(C). Pub. L. 107–147, § 413(a)(2), substituted ''to the extent the amount'' for ''if the amount''.

2000—Subsec. (b)(7)(B)(ii). Pub. L. 106–554 amended heading and text of cl. (ii) generally. Prior to amendment, text read as follows: ''Clause (i) shall not apply to amounts received directly or indirectly by a real estate investment trust for services described in paragraph (1)(B) or (7)(C)(i) of section 856(d).''

1999—Subsec. (a)(1)(A)(i), (ii). Pub. L. 106–170, § 556(a), substituted ''90 percent'' for ''95 percent (90 percent for taxable years beginning before January 1, 1980)''.

Subsec. (b)(2)(E). Pub. L. 106–170, § 545(b), substituted ''paragraphs (5) and (7)'' for ''paragraph (5)''.

Subsec. (b)(4)(B)(i). Pub. L. 106–170, § 532(c)(2)(L), substituted ''section 1221(a)(1)'' for ''section 1221(1)''.

Subsec. (b)(5)(A)(i). Pub. L. 106–170, § 556(b), substituted ''90 percent'' for ''95 percent (90 percent in the case of taxable years beginning before January 1, 1980)''.

Subsec. (b)(6)(B)(iii). Pub. L. 106–170, § 532(c)(2)(M), substituted ''section 1221(a)(1)'' for ''section 1221(1)''.

Subsec. (b)(7) to (9). Pub. L. 106–170, § 545(a), added par. (7) and redesignated former pars. (7) and (8) as (8) and (9), respectively.

Subsec. (d)(3)(A). Pub. L. 106–170, § 566(a)(2), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''shall be treated for purposes of this subsection and subsection (a)(2)(B) as made from the earliest earnings and profits accumulated in any taxable year to which the provisions of this part did not apply rather than the most recently accumulated earnings and profits, and''.

Subsec. (d)(3)(B). Pub. L. 106–170, § 566(b), inserted ''and section 858'' before period at end.

1998—Subsec. (d)(3)(A). Pub. L. 105–206 substituted ''earliest earnings and profits accumulated in any taxable year to which the provisions of this part did not apply'' for ''earliest accumulated earnings and profits (other than earnings and profits to which subsection (a)(2)(A) applies)''.

1997—Subsec. (a)(2), (3). Pub. L. 105–34, § 1251(a)(1), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''the real estate investment trust complies for such year with regulations prescribed by the Secretary for the purpose of ascertaining the actual ownership of the outstanding shares, or certificates of beneficial interest, of such trust, and''.

Subsec. (b)(3)(D), (E). Pub. L. 105–34, § 1254(a), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (b)(5). Pub. L. 105–34, § 1255(b)(2), substituted ''section 856(c)(6)'' for ''section 856(c)(7)'' in introductory provisions.

Subsec. (b)(6)(C). Pub. L. 105–34, § 1255(b)(3), substituted ''section 856(c)(5)(B)'' for ''section 856(c)(6)(B)'' in introductory provisions.

Subsec. (b)(6)(C)(iii). Pub. L. 105–34, § 1260, substituted ''(other than sales of foreclosure property or sales to which section 1033 applies)'' for ''(other than foreclosure property)'' in subcls. (I) and (II).

Subsec. (b)(7)(A)(i). Pub. L. 105–34, § 1254(b)(1), substituted ''subparagraph (B) or (D)'' for ''subparagraph (B)''.

Subsec. (d)(3). Pub. L. 105–34, § 1256, added par. (3).

Subsec. (e)(2)(B) to (D). Pub. L. 105–34, § 1259, redesignated subpar. (C) as (B) and substituted a comma for period at end, added subpars. (C) and (D), and struck out former subpar. (B) which read as follows: ''in the case of a real estate investment trust using the cash receipts and disbursements method of accounting, the amount (if any) by which—

''(i) the amounts includible in gross income with respect to instruments to which section 1274 (relating to certain debt instruments issued for property) applies, exceed

''(ii) the amount of money and the fair market value of other property received during the taxable year under such instruments; plus''.

Subsecs. (f), (g). Pub. L. 105–34, § 1251(a)(2), added subsec. (f) and redesignated former subsec. (f) as (g).

1990—Subsec. (b)(3)(C). Pub. L. 101–508 amended Pub. L. 100–647, § 1018(u)(28). See 1988 Amendment note below.

1988—Subsec. (a). Pub. L. 100–647, § 1006(s)(4), inserted at end ''The Secretary may waive the requirements of paragraph (1) for any taxable year if the real estate investment trust establishes to the satisfaction of the Secretary that it was unable to meet such requirements by reason of distributions previously made to meet the requirements of section 4981.''

Subsec. (b)(3)(C). Pub. L. 100–647, § 1018(u)(28), as amended by Pub. L. 101–508, substituted ''such net capital loss shall'' for ''such net capital loss such''.

Pub. L. 100–647, § 1006(s)(2), substituted ''the taxable income of the real estate investment trust'' for ''real estate investment trust taxable income''.

Subsec. (b)(8). Pub. L. 100–647, § 1006(s)(5), substituted ''in October, November, or December'' for ''in December'' and ''in such a month'' for ''in such month'' in introductory text, ''on December 31 of such calendar year'' for ''on such date'', in subpars. (A) and (B), and ''during January'' for ''before February 1'' in last sentence.

Subsec. (e)(2)(B)(i). Pub. L. 100–647, § 1006(r), substituted ''with respect to instruments'' for ''as original issue discount on instruments''.

1986—Subsec. (a). Pub. L. 99–514, § 661(b), struck out ''and'' at end of par. (1), substituted '', and'' for the period at end of par. (2), and added par. (3) and last sentence.

Subsec. (a)(1)(B). Pub. L. 99–514, § 664(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''the sum of—

''(i) the amount of any penalty imposed on the real estate investment trust by section 6697 which is paid by such trust during the taxable year; and

''(ii) the net loss derived from prohibited transactions,''.

Subsec. (b)(2)(F). Pub. L. 99–514, § 666(b)(2), struck out ''and there shall be included an amount equal to any net loss derived from prohibited transactions'' after ''prohibited transactions''.

Subsec. (b)(3)(C). Pub. L. 99–514, § 668(b)(3), inserted at end ''For purposes of this subparagraph, the amount of the net capital gain for any taxable year which is not a calendar year shall be determined without regard to any net capital loss attributable to transactions after December 31 of such year, and any such net capital loss such be treated as arising on the 1st day of the next taxable year. To the extent provided in regulations, the preceding sentence shall apply also for purposes of computing real estate investment trust taxable income.''

Pub. L. 99–514, § 665(a)(2), (b)(1), inserted ''(or mailed to its shareholders or holders of beneficial interests with its annual report for the taxable year)'', struck out last sentence which read as follows: ''For purposes of this subparagraph, the net capital gain shall be deemed not to exceed the real estate investment trust taxable income (determined without regard to the deduction for dividends paid (as defined in section 561) for the taxable year).''

Subsec. (b)(3)(D). Pub. L. 99–514, § 665(a)(1), added subpar. (D).

Subsec. (b)(6)(B)(ii). Pub. L. 99–514, § 666(b)(1), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''the term 'net loss derived from prohibited transactions' means the excess of the deductions allowed by this chapter which are directly connected with prohibited transactions over the gain from prohibited transactions; and''.

Subsec. (b)(6)(C)(ii). Pub. L. 99–514, § 666(a)(2), substituted ''30 percent'' for ''20 percent''.

Subsec. (b)(6)(C)(iii). Pub. L. 99–514, § 666(a)(1), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''during the taxable year the trust does not make more than 5 sales of property (other than foreclosure property); and''.

Subsec. (b)(6)(C)(v). Pub. L. 99–514, § 666(a)(3), added cl. (v).

Subsec. (b)(8). Pub. L. 99–514, § 668(b)(1)(A), added par. (8).

Subsec. (c). Pub. L. 99–514, § 612(b)(7), which directed that ''section 116 (relating to an exclusion for dividends received by individuals), and'' be struck out, was executed by striking out ''section 116 (relating to an exclusion for dividends received by individuals) and'' before ''section 243'' as the probable intent of Congress.

Subsec. (d). Pub. L. 99–514, § 668(b)(2), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''The earnings and profits of a real estate investment trust for any taxable year (but not its accumulated earnings and profits) shall not be reduced by any amount which is not allowable as a deduction in computing its taxable income for such taxable year. For purposes of this subsection, the term 'real estate investment trust' includes a domestic corporation, trust, or association which is a real estate investment trust determined without regard to the requirements of subsection (a).''

Subsecs. (e), (f). Pub. L. 99–514, § 664(b), added subsec. (e) and redesignated former subsec. (e) as (f).

1984—Subsec. (b)(3)(B). Pub. L. 98–369, § 1001(b)(13), (e), substituted ''6 months'' for ''1 year'', applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

Subsec. (b)(7). Pub. L. 98–369, § 55(b), substituted provisions relating to loss on sale or exchange of stock held 6 months or less for provisions which related to loss on sale or exchange of stock held 31 days or less.

Pub. L. 98–369, § 1001(b)(13), (e), substituted ''6 months'' for ''1 year'', applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

Subsec. (c). Pub. L. 98–369, § 16(a), repealed amendments made by Pub. L. 97–34, § 302(c). See 1981 Amendment note below.

1981—Subsec. (c). Pub. L. 97–34, § 302(c)(5), (d)(1), provided for general amendment of subsec. (c) so as to include provisions relating to treatment for section 128 of this title, adjustments to gross income and aggregate interest received, and notice to shareholders, applicable to taxable years beginning after Dec. 31, 1984. Section 16(a) of Pub. L. 98–369, repealed section 302(c) of Pub. L. 97–34, and provided that this title shall be applied and administered as if section 302(c), and the amendments made by section 302(c), had not been enacted.

1980—Subsec. (b)(4)(A). Pub. L. 96–222 substituted provisions computing the tax on the net income from foreclosure property of every real estate investment trust by multiplying the net income from foreclosure property by the highest rate of tax specified in section 11(b) for provisions determining the tax on the net income from foreclosure of property of every real estate investment trust by applying section 11 to such income as if such income constituted the taxable income of a corporation taxable under section 11 and struck out provisions requiring that for purposes of the preceding sentence, the surtax exemption be zero.

Subsec. (c). Pub. L. 96–223 temporarily substituted ''Limitations applicable to dividends received from real estate investment trusts'' for ''Restrictions applicable to dividends received from real estate investment trusts'' in heading, designated existing provisions as par. (1), substituted ''(1) CAPITAL GAIN DIVIDEND.—For purposes of section 116 (relating to exclusion for dividends and interest received by individuals), a capital gain dividend (as defined in subsection (b)(3)(C)) received from a real estate investment trust shall not be considered a dividend'' for ''For purposes of section 116 (relating to an exclusion for dividends received by individuals) and section 243 (relating to deductions for dividends received by corporations), a dividend received from a real estate investment trust which meets the requirements of this part shall not be considered as a dividend'' in par. (1) as so designated, and added pars. (2) to (6).

1978—Subsec. (b)(1). Pub. L. 95–600, § 301(b)(12), substituted ''a tax'' for ''a normal tax and surtax''.

Subsec. (b)(3)(A)(ii). Pub. L. 95–600, § 403(c)(3), substituted ''a tax determined at the rate provided in section 1201(a) on'' for ''a tax of 30 percent of''.

Subsec. (b)(3)(C). Pub. L. 95–600, § 362(d)(3), substituted ''section 860(e)'' for ''section 859(c)''.

Subsec. (b)(6)(C) to (E). Pub. L. 95–600, § 363(b), added subpars. (C) to (E).

1976—Subsec. (a). Pub. L. 94–455, §§ 1604(j), (k)(2)(B), 1906(b)(13)(A), substituted ''(other than subsection (d) of this section and subsection (g) of section 856)'' for ''(other than subsection (d) of this section)'' in provisions preceding par. (1), in par. (1) redesignated existing subpars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (A), added subpar. (B), in both cls. (i) and (ii) of subpar. (A) as redesignated raised the percentage to 95 percent for taxable years beginning on and after Jan. 1, 1980, and, in cl. (i) of subpar. (A) as redesignated, inserted provision for the exclusion of net capital gain, and struck out ''or his delegate'' after ''Secretary'' in par. (2).

Subsec. (b)(1). Pub. L. 94–455, § 1901(b)(1)(V), struck out provision that, for purposes of computing the normal tax under section 11, the taxable income and the dividends paid deduction of such real estate investment trust for the taxable year (computed without regard to capital gains dividends) would be reduced by the deduction provided by section 22 (relating to partially tax-exempt interest.

Subsec. (b)(2). Pub. L. 94–455, §§ 1602(b)(2), 1603(c)(5), 1606(a), (d), 1607(b)(1)(A), (2), struck out subpar. (A) which provided for the exclusion of the excess, if any, of the net long-term capital gain over the net short-term capital loss, and subpar. (E) which prohibited the allowance of the net operating loss deduction provided in section 172, redesignated subpars. (B), (C), (D), and (F) as subpars. (A), (B), (C), and (D), respectively, added subpars. (E) and (F), and in subpar. (B) as redesignated substituted ''subparagraph (D)'' for ''paragraph (F)'' and struck out ''shall be computed without regard to capital gains dividends and'' after ''shall be allowed, but''.

Subsec. (b)(3)(A). Pub. L. 94–455, § 1607(a), substituted provisions setting an alternative tax in case of capital gains under which, if for any taxable year, a real estate investment trust has a net capital gain, then, in lieu of the tax imposed by subsection (b)(1), there is imposed a tax (if such tax is less than the tax imposed by such subsection) to consist of the sum of a tax, computed as provided in subsection (b)(1), on the real estate investment trust taxable income (determined by excluding such net capital gain and by computing the deduction for dividends paid without regard to capital gain dividends), and a tax of 30 percent of the excess of the net capital gain over the deduction for dividends paid (as defined in section 561) determined with reference to capital gains dividends only, for provisions posing a tax for each taxable year determined as provided in section 1201(a), on the excess, if any, of the net long-term capital gain over the sum of the net short-term capital loss and the deduction for dividends paid (as defined in section 561) determined with reference to capital gains dividends only.

Subsec. (b)(3)(B). Pub. L. 94–455, § 1402(b)(2), provided that ''9 months'' would be changed to ''1 year''.

Pub. L. 94–455, § 1402(b)(1)(P), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

Subsec. (b)(3)(C). Pub. L. 94–455, §§ 1601(c), 1607(b)(3), 1901(a)(112), (b)(33)(K), inserted ''; except that, if there is an increase in the excess described in subparagraph (A)(ii) of this paragraph for such year which results from a determination (as defined in section 859(c)), such designation may be made with respect to such increase at any time before the expiration of 120 days after the date of such determination'' after ''30 days after the close of its taxable year'', substituted ''net capital gain'' for ''excess of the net long-term capital gain over the net short-term capital loss'' in provision covering the portion of distributions which shall be capital gain dividends, inserted provision that the net capital gain

be deemed not to exceed the real estate investment trust taxable income, and struck out provision which specified the source of deductions for dividends paid in the case of taxable years beginning before Jan. 1, 1975.

Subsec. (b)(4)(B)(i). Pub. L. 94–455, § 1604(c)(2), inserted reference to subparagraph (G) of section 856(c)(3).

Subsec. (b)(5). Pub. L. 94–455, § 1602(b)(1), added par. (5). Former par. (5) redesignated (7) and amended.

Subsec. (b)(6). Pub. L. 94–455, § 1603(b), added par. (6).

Subsec. (b)(7). Pub. L. 94–455, § 1402(b)(2), provided that ''9 months'' would be changed to ''1 year''.

Pub. L. 94–455, §§ 1402(b)(1)(P), 1602(b)(1), redesignated par. (5) as (7) and provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

Subsec. (d). Pub. L. 94–455, § 1604(f)(3)(B), substituted ''a domestic corporation, trust,'' for ''a domestic unincorporated trust''.

Subsec. (e). Pub. L. 94–455, § 1605(b)(2), added subsec. (e).

1975—Subsec. (a)(1). Pub. L. 93–625, § 6(d)(2), incorporated existing par. (1) provisions in par. (1) introductory text and provisions designated as subpar. (A), substituted in subpar. (A) ''(determined without regard to the deduction for dividends paid (as defined in section 561))'' for ''(determined without regard to subsection (b)(2)(C))'', and added subpar. (B).

Subsec. (b)(2)(C). Pub. L. 93–625, § 6(d)(4), provided for computation of deduction for dividends paid without regard to that portion of such deduction which is attributable to the amount excluded under subparagraph (F).

Subsec. (b)(2)(F). Pub. L. 93–625, § 6(d)(3), added subpar. (F).

Subsec. (b)(4), (5). Pub. L. 93–625, § 6(c), added par. (4) and redesignated former par. (4) as (5).

1969—Subsec. (b)(3)(A). Pub. L. 91–172, § 511(c)(3)(A), substituted ''determined as provided in section 1201(a), on'' for ''of 25 percent of.''

Subsec. (b)(3)(C). Pub. L. 91–172, § 511(c)(3)(B), inserted provision requiring for the purposes of the deduction for capital gains dividends paid, in the case of a taxable year beginning before Jan. 1, 1975, the deduction for dividends paid shall first be made from the amount subject to tax in accordance with section 1201(a)(1)(B), to the extent thereof, and then from the amount subject to tax in accordance with section 1201(a)(1)(A).

1964—Subsec. (c). Pub. L. 88–272 struck out ''section 34(a) (relating to credit for dividends received by individuals),'' before ''section 116'' and the comma before ''and''.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–97 applicable to taxable years beginning after Dec. 31, 2017, see section 13001(c)(1) of Pub. L. 115–97, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114–113, div. Q, title III, § 313(c), Dec. 18, 2015, 129 Stat. 3092, provided that:

''(1) IN GENERAL.—The amendments made by subsection (a) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Dec. 18, 2015].

''(2) APPLICATION OF SAFE HARBORS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by subsection (b) [amending this section] shall take effect as if included in section 3051 of the Housing Assistance Tax Act of 2008 [Pub. L. 110–289].

''(B) RETROACTIVE APPLICATION OF NO INFERENCE NOT APPLICABLE TO CERTAIN TIMBER PROPERTY PREVIOUSLY TREATED AS NOT INVENTORY PROPERTY.—The amendment made by subsection (b)(2) [amending this section] shall not apply to any sale of property to which section 857(b)(6)(G) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act) applies.''

Pub. L. 114–113, div. Q, title III, § 316(b), Dec. 18, 2015, 129 Stat. 3094, provided that: ''The amendments made by this section [amending this section] shall apply to distributions in taxable years beginning after December 31, 2015.''

Amendment by section 320(a) of Pub. L. 114–113 applicable to taxable years beginning after Dec. 31, 2015, see section 320(c) of Pub. L. 114–113, set out as a note under section 562 of this title.

Amendment by section 321(a)(1), (2), (b) of Pub. L. 114–113 applicable to taxable years beginning after Dec. 31, 2015, see section 321(c) of Pub. L. 114–113, set out as a note under section 856 of this title.

Pub. L. 114–113, div. Q, title III, § 322(c)(1), Dec. 18, 2015, 129 Stat. 3102, provided that:

''(1) IN GENERAL.—The amendments made by subsection (a) [amending this section and section 897 of this title] shall take effect on the date of enactment [Dec. 18, 2015] and shall apply to—

''(A) any disposition on and after the date of the enactment of this Act, and

''(B) any distribution by a real estate investment trust on or after the date of the enactment of this Act which is treated as a deduction for a taxable year of such trust ending after such date.''

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by section 3033(a) of Pub. L. 110–289 applicable to gains recognized after July 30, 2008, and amendment by section 3033(b) of Pub. L. 110–289 applicable to gains and deductions recognized after July 30, 2008, see section 3071(c) of Pub. L. 110–289, set out as a note under section 856 of this title.

Amendment by sections 3051 and 3052 of Pub. L. 110–289 applicable to sales made after July 30, 2008, see section 3071(d) of Pub. L. 110–289, set out as a note under section 856 of this title.

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 15311(c) of Pub. L. 110–246 applicable to taxable years ending after June 18, 2008, see section 15311(d) of Pub. L. 110–246, set out as a note under section 55 of this title.

Pub. L. 110–234, title XV, § 15315(e), May 22, 2008, 122 Stat. 1505, and Pub. L. 110–246, § 4(a), title XV, § 15315(e), June 18, 2008, 122 Stat. 1664, 2267, provided that: ''The amendments made by this section [amending this section] shall apply to dispositions in taxable years beginning after the date of the enactment of this Act [June 18, 2008].''

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.]

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 403(d)(3) of Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENTS

Amendment by section 243(c), (e) of Pub. L. 108–357 applicable to taxable years beginning after Oct. 22, 2004, and amendment by section 243(f)(4) of Pub. L. 108–357 applicable to taxable years ending after Oct. 22, 2004, see section 243(g)(2), (4)(D) of Pub. L. 108–357, set out as a note under section 856 of this title.

Pub. L. 108–357, title III, § 321(b), Oct. 22, 2004, 118 Stat. 1474, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 22, 2004].''

Pub. L. 108–357, title IV, § 418(c), Oct. 22, 2004, 118 Stat. 1513, as amended by Pub. L. 109–135, title IV, § 403(p)(2),

Dec. 21, 2005, 119 Stat. 2626, provided that: ''The amendments made by this section [amending this section and section 897 of this title] shall apply to—

''(1) any distribution by a real estate investment trust which is treated as a deduction for a taxable year of such trust beginning after the date of the enactment of this Act [Oct. 22, 2004], and

''(2) any distribution by a real estate investment trust made after such date which is treated as a deduction under section 860 [probably means section 860 of the Internal Revenue Code of 1986] for a taxable year of such trust beginning on or before such date.''

Amendment by Pub. L. 108–311 effective as if included in section 302 of the Jobs and Growth Tax Relief Reconciliation Act of 2003, Pub. L. 108–27, see section 402(b) of Pub. L. 108–311, set out a note under section 1 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–27 applicable, except as otherwise provided, to taxable years beginning after Dec. 31, 2002, see section 302(f) of Pub. L. 108–27, set out as an Effective and Termination Dates of 2003 Amendment note under section 1 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title IV, §413(b), Mar. 9, 2002, 116 Stat. 54, provided that: ''The amendments made by this section [amending this section] shall take effect as if included in section 545 of the Tax Relief Extension Act of 1999 [Pub. L. 106–170].''

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 effective as if included in the provisions of the Ticket to Work and Work Incentives Improvement Act of 1999, Pub. L. 106–170, to which such amendment relates, see section 1(a)(7) [title III, §311(d)] of Pub. L. 106–554, set out as a note under section 30A of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 532(c)(2)(L), (M) of Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

Amendment by section 545 of Pub. L. 106–170 applicable to taxable years beginning after Dec. 31, 2000, see section 546(a) of Pub. L. 106–170, set out as a note under section 856 of this title.

Pub. L. 106–170, title V, §556(c), Dec. 17, 1999, 113 Stat. 1949, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2000.''

Amendment by section 566(a)(2), (b) of Pub. L. 106–170 applicable to distributions after Dec. 31, 2000, see section 566(d) of Pub. L. 106–170, set out as a note under section 852 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to taxable years beginning after Aug. 5, 1997, see section 1263 of Pub. L. 105–34, set out as a note under section 852 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1006(s)(5), Nov. 10, 1988, 102 Stat. 3419, provided that the amendment made by that section is effective with respect to dividends declared in 1988 and subsequent calendar years.

Amendment by sections 1006(r), (s)(2), (4) and 1018(u)(28) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 612(b)(7) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 612(c) of Pub. L. 99–514, set out as a note under section 301 of this title.

Amendments by sections 661(b), 664, 665(a), (b)(1), and 666 of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 669(a) of Pub. L. 99–514, set out as a note under section 856 of this title.

Amendment by section 668(b)(1)(A), (2), (3) of Pub. L. 99–514 applicable to calendar years beginning after Dec. 31, 1986, see section 669(b) of Pub. L. 99–514, set out as a note under section 856 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 16(a) of Pub. L. 98–369 applicable to taxable years ending after Dec. 31, 1983, see section 18(a) of Pub. L. 98–369, set out as a note under section 48 of this title.

Amendment by section 55(b) of Pub. L. 98–369 applicable to losses incurred with respect to shares of stock and beneficial interest with respect to which the taxpayer's holding period begins after July 18, 1984, see section 55(c) of Pub. L. 98–369, set out as a note under section 852 of this title.

Amendment by section 1001(b)(13) of Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE AND TERMINATION DATES OF 1980 AMENDMENT

Amendment by Pub. L. 96–223 applicable with respect to taxable years beginning after Dec. 31, 1980, and before Jan. 1, 1982, see section 404(c) of Pub. L. 96–223, set out as a note under section 265 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 301(b)(12) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95–600, set out as a note under section 11 of this title.

Amendment by section 362(d)(3) of Pub. L. 95–600 applicable with respect to determinations (as defined in section 860(e) of this title) after Nov. 6, 1978, see section 362(e) of Pub. L. 95–600, set out as an Effective Date note under section 860 of this title.

Amendment by section 363(b) of Pub. L. 95–600 applicable to taxable years ending after Nov. 6, 1978, see section 363(d) of Pub. L. 95–600, set out as a note under section 856 of this title.

Amendment by section 403(c)(3) of Pub. L. 95–600 effective on Nov. 6, 1978, see section 403(d)(3) of Pub. L. 95–600, set out as a note under section 528 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XIV, §1402(b)(1), Oct. 4, 1976, 90 Stat. 1731, provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Pub. L. 94–455, title XIV, §1402(b)(2), Oct. 4, 1976, 90 Stat. 1732, provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

Pub. L. 94–455, title XVI, §1608(a), Oct. 4, 1976, 90 Stat. 1757, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by section 1601 [enacting sections 859 and 6697 of this title and amending this section and sections 316, 381, 6422, 6503, and 6515 of this title] shall apply with respect to determinations (as defined in section 859(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) occurring after the date of the enactment of this Act [Oct. 4, 1976]. If the amendments made by section 1601 apply to a taxable year ending on or before the date of enactment of this Act:

''(1) the reference to [former] section 857(b)(3)(A)(ii) in sections 857(b)(3)(C) [now 857(b)(3)(B)] and 859(b)(1)(B) of such Code as amended, shall be considered to be a reference to [former] section 857(b)(3)(A) of such Code, as in effect immediately before the enactment of this Act [Oct. 4, 1976], and

''(2) the reference to section 857(b)(2)(B) in section 859(a) of such Code, as amended, shall be considered to be a reference to section 857(b)(2)(C) of such Code, as in effect immediately before the enactment of this Act [Oct. 4, 1976].''

For effective date of amendment by section 1602(b)(1), (2) of Pub. L. 94–455, see section 1608(b) of Pub. L. 94–455, set out as a Trust Not Disqualified in Certain Cases Where Income Tests Not Met note under section 856 of this title.

For effective date of amendment by sections 1603, 1604, and 1605 of Pub. L. 94–455, see section 1608(d) of Pub. L. 94–455, set out as a note under section 856 of this title.

Pub. L. 94–455, title XVI, §1608(c), Oct. 4, 1976, 90 Stat. 1757, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by sections 1606 and 1607 [amending this section and sections 46, 172, and 443 of this title] shall apply to taxable years ending after the date of the enactment of this Act [Oct. 4, 1976]; except that in the case of a taxpayer which has a net operating loss (as defined in section 172(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) for any taxable year ending after the date of enactment of this Act [Oct. 4, 1976] for which the provisions of part II of subchapter M of chapter 1 of subtitle A of such Code apply to such taxpayer, such loss shall not be a net operating loss carryback under section 172 of such Code to any taxable year ending on or before the date of enactment of this Act [Oct. 4, 1976].''

Amendment by section 1901(a)(112), (b)(1)(V), (33)(K) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–625 applicable to foreclosure property acquired after Dec. 31, 1973, see section 6(e) of Pub. L. 93–625, set out as a note under section 856 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to taxable years beginning after Dec. 31, 1969, see section 511(d) of Pub. L. 91–172, set out as an Effective Date note under section 852 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable with respect to dividends received after Dec. 31, 1964, in taxable years ending after such date, see section 201(e) of Pub. L. 88–272, set out as a note under section 22 of this title.

EFFECTIVE DATE

Section applicable with respect to taxable years of real estate investment trusts beginning after Dec. 31, 1960, see section 10(k) of Pub. L. 86–779, set out as a note under section 856 of this title.

§ 858. Dividends paid by real estate investment trust after close of taxable year

(a) General rule

For purposes of this part, if a real estate investment trust—

(1) declares a dividend before the time prescribed by law for the filing of its return for a taxable year (including the period of any extension of time granted for filing such return), and

(2) distributes the amount of such dividend to shareholders or holders of beneficial interests in the 12-month period following the close of such taxable year and not later than the date of the first regular dividend payment made after such declaration,

the amount so declared and distributed shall, to the extent the trust elects in such return (and specifies in dollar amounts) in accordance with regulations prescribed by the Secretary, be considered as having been paid only during such taxable year, except as provided in subsections (b) and (c).

(b) Receipt by shareholder

Except as provided in section 857(b)(9), amounts to which subsection (a) applies shall be treated as received by the shareholder or holder of a beneficial interest in the taxable year in which the distribution is made.

(c) Notice to shareholders

In the case of amounts to which subsection (a) applies, any notice to shareholders or holders of beneficial interests required under this part with respect to such amounts shall be made not later than 30 days after the close of the taxable year in which the distribution is made (or mailed to its shareholders or holders of beneficial interests with its annual report for the taxable year).

(Added Pub. L. 86–779, §10(a), Sept. 14, 1960, 74 Stat. 1008; amended Pub. L. 94–455, title XVI, §§1604(h), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1752, 1834; Pub. L. 99–514, title VI, §§665(b)(2), 668(b)(1)(B), Oct. 22, 1986, 100 Stat. 2304, 2307; Pub. L. 100–647, title I, §1018(u)(27), Nov. 10, 1988, 102 Stat. 3591; Pub. L. 113–295, div. A, title II, §220(m), Dec. 19, 2014, 128 Stat. 4036.)

AMENDMENTS

2014—Subsec. (b). Pub. L. 113–295 substituted ''857(b)(9)'' for ''857(b)(8)''.

1988—Subsec. (b). Pub. L. 100–647, §1018(u)(27), made technical correction to directory language of Pub. L. 99–514, see 1986 Amendment note below.

1986—Subsec. (b). Pub. L. 99–514, §668(b)(1)(B), as amended by Pub. L. 100–647, §1018(u)(27), substituted ''Except as provided in section 857(b)(8), amounts'' for ''Amounts''.

Subsec. (c). Pub. L. 99–514, §665(b)(2), inserted ''(or mailed to its shareholders or holders of beneficial interests with its annual report for the taxable year)''.

1976—Subsec. (a). Pub. L. 94–455, §§1604(h), 1906(b)(13)(A), inserted ''(and specifies in dollar amounts)'' after ''to the extent the trust elects in such return'' and substituted ''paid only during such taxable year'' for ''paid during such taxable year'', and struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of

the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 665(b)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, and by section 668(b)(1)(B) of Pub. L. 99–514 applicable to calendar years beginning after Dec. 31, 1986, see section 669 of Pub. L. 99–514, set out as a note under section 856 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment by section 1604(h) of Pub. L. 94–455, see section 1608(d) of Pub. L. 94–455, set out as a note under section 856 of this title.

EFFECTIVE DATE

Section applicable with respect to taxable years of real estate investment trusts beginning after Dec. 31, 1960, see section 10(k) of Pub. L. 86–779, set out as a note under section 856 of this title.

§ 859. Adoption of annual accounting period

(a) General rule

For purposes of this subtitle—

(1) a real estate investment trust shall not change to any accounting period other than the calendar year, and

(2) a corporation, trust, or association may not elect to be a real estate investment trust for any taxable year beginning after October 4, 1976, unless its accounting period is the calendar year.

Paragraph (2) shall not apply to a corporation, trust, or association which was considered to be a real estate investment trust for any taxable year beginning on or before October 4, 1976.

(b) Change of accounting period without approval

Notwithstanding section 442, an entity which has not engaged in any active trade or business may change its accounting period to a calendar year without the approval of the Secretary if such change is in connection with an election under section 856(c).

(Added Pub. L. 94–455, title XVI, §1604(i)(1), Oct. 4, 1976, 90 Stat. 1752, §860; renumbered §859 and amended Pub. L. 95–600, title III, §362(d)(6), title VII, §701(t)(1), Nov. 6, 1978, 92 Stat. 2852, 2911; Pub. L. 99–514, title VI, §661(c), Oct. 22, 1986, 100 Stat. 2300.)

PRIOR PROVISIONS

A prior section 859, added Pub. L. 94–455, title XVI, §1601(a)(1), Oct. 4, 1976, 90 Stat. 1742; amended Pub. L. 95–600, title VII, §701(t)(4), Nov. 6, 1978, 92 Stat. 2912, related to a deduction for deficiency dividends, prior to repeal by Pub. L. 95–600, title III, §362(d)(6), Nov. 6, 1978, 92 Stat. 2852. See section 860 of this title.

AMENDMENTS

1986—Pub. L. 99–514 designated existing provisions as subsec. (a) and added subsec. (b).

1978—Pub. L. 95–600, §701(t)(1), designated existing provisions as par. (1), substituted ''change to any accounting period'' for ''change to or adopt any annual accounting period'', and added par. (2) and provision for nonapplicability of par. (2) to a real estate investment trust for any taxable year beginning on or before Oct. 4, 1976.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 669 of Pub. L. 99–514, set out as a note under section 856 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Repeal of prior section 859 of this title and redesignation of section 860 of this title as this section by section 362(d)(6) of Pub. L. 95–600 applicable with respect to determinations (as defined in section 860(e) of this title) after Nov. 6, 1978, see section 362(e) of Pub. L. 95–600, set out as an Effective Date note under section 860 of this title.

Pub. L. 95–600, title VII, §701(t)(5), Nov. 6, 1978, 92 Stat. 2912, provided that: ''The amendments made by this subsection [amending this section and sections 275, 856, 6212, and 6501 of this title] shall take effect on October 4, 1976.''

PART III—PROVISIONS WHICH APPLY TO BOTH REGULATED INVESTMENT COMPANIES AND REAL ESTATE INVESTMENT TRUSTS

§ 860. Deduction for deficiency dividends

(a) General rule

If a determination with respect to any qualified investment entity results in any adjustment for any taxable year, a deduction shall be allowed to such entity for the amount of deficiency dividends for purposes of determining the deduction for dividends paid (for purposes of section 852 or 857, whichever applies) for such year.

(b) Qualified investment entity defined

For purposes of this section, the term ''qualified investment entity'' means—

(1) a regulated investment company, and

(2) a real estate investment trust.

(c) Rules for application of section

(1) Interest and additions to tax determined with respect to the amount of deficiency dividend deduction allowed

For purposes of determining interest, additions to tax, and additional amounts—

(A) the tax imposed by this chapter (after taking into account the deduction allowed by subsection (a)) on the qualified investment entity for the taxable year with respect to which the determination is made shall be deemed to be increased by an amount equal to the deduction allowed by subsection (a) with respect to such taxable year,

(B) the last date prescribed for payment of such increase in tax shall be deemed to have been the last date prescribed for the payment of tax (determined in the manner provided by section 6601(b)) for the taxable year with respect to which the determination is made, and

(C) such increase in tax shall be deemed to be paid as of the date the claim for the deficiency dividend deduction is filed.

(2) Credit or refund

If the allowance of a deficiency dividend deduction results in an overpayment of tax for any taxable year, credit or refund with respect to such overpayment shall be made as if on the date of the determination 2 years re-

mained before the expiration of the period of limitations on the filing of claim for refund for the taxable year to which the overpayment relates.

(d) Adjustment

For purposes of this section—

(1) Adjustment in the case of regulated investment company

In the case of any regulated investment company, the term ''adjustment'' means—

(A) any increase in the investment company taxable income of the regulated investment company (determined without regard to the deduction for dividends paid (as defined in section 561)),

(B) any increase in the amount of the excess described in section 852(b)(3)(A) (relating to the excess of the net capital gain over the deduction for capital gain dividends paid), and

(C) any decrease in the deduction for dividends paid (as defined in section 561) determined without regard to capital gains dividends.

(2) Adjustment in the case of real estate investment trust

In the case of any real estate investment trust, the term ''adjustment'' means—

(A) any increase in the sum of—

(i) the real estate investment trust taxable income of the real estate investment trust (determined without regard to the deduction for dividends paid (as defined in section 561) and by excluding any net capital gain), and

(ii) the excess of the net income from foreclosure property (as defined in section 857(b)(4)(B)) over the tax on such income imposed by section 857(b)(4)(A),

(B) any increase in the amount of the excess described in section 857(b)(3)(A)(ii)[1] (relating to the excess of the net capital gain over the deduction for capital gains dividends paid), and

(C) any decrease in the deduction for dividends paid (as defined in section 561) determined without regard to capital gains dividends.

(e) Determination

For purposes of this section, the term ''determination'' means—

(1) a decision by the Tax Court, or a judgment, decree, or other order by any court of competent jurisdiction, which has become final;

(2) a closing agreement made under section 7121;

(3) under regulations prescribed by the Secretary, an agreement signed by the Secretary and by, or on behalf of, the qualified investment entity relating to the liability of such entity for tax; or

(4) a statement by the taxpayer attached to its amendment or supplement to a return of tax for the relevant tax year.

(f) Deficiency dividends

(1) Definition

For purposes of this section, the term ''deficiency dividends'' means a distribution of property made by the qualified investment entity on or after the date of the determination and before filing claim under subsection (g), which would have been includible in the computation of the deduction for dividends paid under section 561 for the taxable year with respect to which the liability for tax resulting from the determination exists if distributed during such taxable year. No distribution of property shall be considered as deficiency dividends for purposes of subsection (a) unless distributed within 90 days after the determination, and unless a claim for a deficiency dividend deduction with respect to such distribution is filed pursuant to subsection (g).

(2) Limitations

(A) Ordinary dividends

The amount of deficiency dividends (other than deficiency dividends qualifying as capital gain dividends) paid by a qualified investment entity for the taxable year with respect to which the liability for tax resulting from the determination exists shall not exceed the sum of—

(i) the excess of the amount of increase referred to in subparagraph (A) of paragraph (1) or (2) of subsection (d) (whichever applies) over the amount of any increase in the deduction for dividends paid (computed without regard to capital gain dividends) for such taxable year which results from such determination, and

(ii) the amount of decreased[2] referred to in subparagraph (C) of paragraph (1) or (2) of subsection (d) (whichever applies).

(B) Capital gain dividends

The amount of deficiency dividends qualifying as capital gain dividends paid by a qualified investment entity for the taxable year with respect to which the liability for tax resulting from the determination exists shall not exceed the amount by which (i) the increase referred to in subparagraph (B) of paragraph (1) or (2) of subsection (d) (whichever applies), exceeds (ii) the amount of any dividends paid during such taxable year which are designated or reported (as the case may be) as capital gain dividends after such determination.

(3) Effect on dividends paid deduction

(A) For taxable year in which paid

Deficiency dividends paid in any taxable year shall not be included in the amount of dividends paid for such year for purposes of computing the dividends paid deduction for such year.

(B) For prior taxable year

Deficiency dividends paid in any taxable year shall not be allowed for purposes of section 855(a) or 858(a) in the computation of the dividends paid deduction for the taxable

[1] See References in Text note below.

[2] So in original. Probably should be ''decrease''.

year preceding the taxable year in which paid.

(g) Claim required

No deficiency dividend deduction shall be allowed under subsection (a) unless (under regulations prescribed by the Secretary) claim therefore is filed within 120 days after the date of the determination.

(h) Suspension of statute of limitations and stay of collection

(1) Suspension of running of statute

If the qualified investment entity files a claim as provided in subsection (g), the running of the statute of limitations provided in section 6501 on the making of assessments, and the bringing of distraint or a proceeding in court for collection, in respect of the deficiency established by a determination under this section, and all interest, additions to tax, additional amounts, or assessable penalties in respect thereof, shall be suspended for a period of 2 years after the date of the determination.

(2) Stay of collection

In the case of any deficiency established by a determination under this section—

(A) the collection of the deficiency, and all interest, additions to tax, additional amounts, and assessable penalties in respect thereof, shall, except in cases of jeopardy, be stayed until the expiration of 120 days after the date of the determination, and

(B) if claim for a deficiency dividend deduction is filed under subsection (g), the collection of such part of the deficiency as is not reduced by the deduction for deficiency dividends provided in subsection (a) shall be stayed until the date the claim is disallowed (in whole or in part), and if disallowed in part collection shall be made only with respect to the part disallowed.

No distraint or proceeding in court shall be begun for the collection of an amount the collection of which is stayed under subparagraph (A) or (B) during the period for which the collection of such amount is stayed.

(i) Deduction denied in case of fraud

No deficiency dividend deduction shall be allowed under subsection (a) if the determination contains a finding that any part of any deficiency attributable to an adjustment with respect to the taxable year is due to fraud with intent to evade tax or to willfull[3] failure to file an income tax return within the time prescribed by law or prescribed by the Secretary in pursuance of law.

(Added Pub. L. 95–600, title III, §362(a), Nov. 6, 1978, 92 Stat. 2848; amended Pub. L. 96–222, title I, §103(a)(11)(B), (C), Apr. 1, 1980, 94 Stat. 213; Pub. L. 99–514, title VI, §667(b)(1), Oct. 22, 1986, 100 Stat. 2306; Pub. L. 108–357, title II, §243(f)(5), Oct. 22, 2004, 118 Stat. 1445; Pub. L. 111–325, title III, §301(a)(2), title V, §501(b), Dec. 22, 2010, 124 Stat. 3542, 3554.)

REFERENCES IN TEXT

Section 857(b)(3)(A), referred to in subsec. (d)(2)(B), relating to alternative tax in case of capital gains, was repealed by Pub. L. 115–97, title I, §13001(b)(2)(K)(i), Dec. 22, 2017, 131 Stat. 2096. Subsec. (b)(3)(B) of section 857, relating to treatment of capital gain dividends by shareholders, was redesignated subsec. (b)(3)(A) of that section.

PRIOR PROVISIONS

A prior section 860 was renumbered section 859 of this title.

AMENDMENTS

2010—Subsec. (f)(2)(B). Pub. L. 111–325, §301(a)(2), inserted ''or reported (as the case may be)'' after ''designated''.

Subsec. (j). Pub. L. 111–325, §501(b), struck out subsec. (j). Text read as follows: ''For assessable penalty with respect to liability for tax of a regulated investment company which is allowed a deduction under subsection (a), see section 6697.''

2004—Subsec. (e)(4). Pub. L. 108–357 added par. (4).

1986—Subsec. (j). Pub. L. 99–514 substituted ''regulated investment company'' for ''qualified investment entity''.

1980—Subsec. (f). Pub. L. 96–222 substituted in heading ''Deficiency'' for ''Efficiency'' and in par. (2)(A)(i) ''(computed without regard'' for ''computed without regard''.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 301(a)(2) of Pub. L. 111–325 applicable to taxable years beginning after Dec. 22, 2010, see section 301(h) of Pub. L. 111–325, set out as a note under section 852 of this title.

Pub. L. 111–325, title V, §501(c), Dec. 22, 2010, 124 Stat. 3554, provided that: ''The amendments made by this section [amending this section and repealing section 6697 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Dec. 22, 2010].''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to statements filed after Oct. 22, 2004, see section 243(g)(4)(E) of Pub. L. 108–357, set out as a note under section 856 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 669 of Pub. L. 99–514, set out as a note under section 856 of this title.

EFFECTIVE DATE

Pub. L. 95–600, title III, §362(e), Nov. 6, 1978, 92 Stat. 2852, as amended by Pub. L. 96–222, title I, §103(a)(11)(A), Apr. 1, 1980, 94 Stat. 212; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [enacting this section, amending sections 316, 381, 852, 857, 6422, 6503, 6515, and 6697 of this title, repealing section 859 of this title, and redesignating prior section 860 as 859 of this title] shall apply with respect to determinations (as defined in section 860(e) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) after the date of the enactment of this Act [Nov. 6, 1978].''

PART IV—REAL ESTATE MORTGAGE INVESTMENT CONDUITS

Sec.

[3] So in original. Probably should be ''willful''.

§ 860A. Taxation of REMIC's

(a) General rule

Except as otherwise provided in this part, a REMIC shall not be subject to taxation under this subtitle (and shall not be treated as a corporation, partnership, or trust for purposes of this subtitle).

(b) Income taxable to holders

The income of any REMIC shall be taxable to the holders of interests in such REMIC as provided in this part.

(Added Pub. L. 99–514, title VI, § 671(a), Oct. 22, 1986, 100 Stat. 2309; amended Pub. L. 100–647, title I, § 1006(t)(20), Nov. 10, 1988, 102 Stat. 3426.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–647 substituted ''this subtitle'' for ''this chapter'' in two places.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Pub. L. 99–514, title VI, § 675(a)–(c), Oct. 22, 1986, 100 Stat. 2320, as amended by Pub. L. 100–647, title I, § 1006(w)(1), Nov. 10, 1988, 102 Stat. 3427, provided that:

''(a) GENERAL RULE.—Except as otherwise provided in this section, the amendments made by this subtitle [subtitle H (§§ 671–675) of title VI of Pub. L. 99–514, enacting this part and amending sections 582, 593, 856, 1272, 6049, and 7701 of this title] shall take effect on January 1, 1987.

''(b) RULES FOR ACCRUING ORIGINAL ISSUE DISCOUNT.—The amendment made by section 672 [amending section 1272 of this title] shall apply to debt instruments issued after December 31, 1986, in taxable years ending after such date.

''(c) TREATMENT OF TAXABLE MORTGAGE POOLS.—

''(1) IN GENERAL.—The amendment made by section 673 [amending section 7701 of this title] shall take effect on January 1, 1992.

''(2) TREATMENT OF EXISTING ENTITIES.—The amendment made by section 673 shall not apply to any entity in existence on December 31, 1991. The preceding sentence shall cease to apply with respect to any entity as of the 1st day after December 31, 1991, on which there is a substantial transfer of cash or other property to such entity.

''(3) SPECIAL RULE FOR COORDINATION WITH WASH-SALE RULES.—Notwithstanding paragraphs (1) and (2), for purposes of applying section 860F(d) of the Internal Revenue Code of 1986 (as added by this part [this subtitle]), the amendment made by section 673 shall apply to taxable years beginning after December 31, 1986.''

STUDY OF AMENDMENTS BY PUB. L. 99–514

Pub. L. 99–514, title VI, § 675(d), as added by Pub. L. 100–647, title I, § 1006(w)(2), Nov. 10, 1988, 102 Stat. 3427, directed Secretary of the Treasury to conduct a study of the operation of the amendments made by this part [this subtitle] and their competitive impact on savings and loan institutions and similar financial institutions and, not later than Jan. 1, 1990, report to Congress, prior to repeal by Pub. L. 101–508, title XI, § 11832(5), Nov. 5, 1990, 104 Stat. 1388–559.

§ 860B. Taxation of holders of regular interests

(a) General rule

In determining the tax under this chapter of any holder of a regular interest in a REMIC, such interest (if not otherwise a debt instrument) shall be treated as a debt instrument.

(b) Holders must use accrual method

The amounts includible in gross income with respect to any regular interest in a REMIC shall be determined under the accrual method of accounting.

(c) Portion of gain treated as ordinary income

Gain on the disposition of a regular interest shall be treated as ordinary income to the extent such gain does not exceed the excess (if any) of—

(1) the amount which would have been includible in the gross income of the taxpayer with respect to such interest if the yield on such interest were 110 percent of the applicable Federal rate (as defined in section 1274(d) without regard to paragraph (2) thereof) as of the beginning of the taxpayer's holding period, over

(2) the amount actually includible in gross income with respect to such interest by the taxpayer.

(d) Cross reference

For special rules in determining inclusion of original issue discount on regular interests, see section 1272(a)(6).

(Added Pub. L. 99–514, title VI, § 671(a), Oct. 22, 1986, 100 Stat. 2309.)

§ 860C. Taxation of residual interests

(a) Pass-thru of income or loss

(1) In general

In determining the tax under this chapter of any holder of a residual interest in a REMIC, such holder shall take into account his daily portion of the taxable income or net loss of such REMIC for each day during the taxable year on which such holder held such interest.

(2) Daily portion

The daily portion referred to in paragraph (1) shall be determined—

(A) by allocating to each day in any calendar quarter its ratable portion of the taxable income (or net loss) for such quarter, and

(B) by allocating the amount so allocated to any day among the holders (on such day) of residual interests in proportion to their respective holdings on such day.

(b) Determination of taxable income or net loss

For purposes of this section—

(1) Taxable income

The taxable income of a REMIC shall be determined under an accrual method of accounting and, except as provided in regulations, in the same manner as in the case of an individual, except that—

(A) regular interests in such REMIC (if not otherwise debt instruments) shall be treated as indebtedness of such REMIC,

(B) market discount on any market discount bond shall be included in gross income for the taxable years to which it is attributable as determined under the rules of section 1276(b)(2) (and sections 1276(a) and 1277 shall not apply),

(C) there shall not be taken into account any item of income, gain, loss, or deduction allocable to a prohibited transaction,

(D) the deductions referred to in section 703(a)(2) (other than any deduction under section 212) shall not be allowed, and

(E) the amount of the net income from foreclosure property (if any) shall be reduced by the amount of the tax imposed by section 860G(c).

(2) Net loss

The net loss of any REMIC is the excess of—

(A) the deductions allowable in computing the taxable income of such REMIC, over

(B) its gross income.

Such amount shall be determined with the modifications set forth in paragraph (1).

(c) Distributions

Any distribution by a REMIC—

(1) shall not be included in gross income to the extent it does not exceed the adjusted basis of the interest, and

(2) to the extent it exceeds the adjusted basis of the interest, shall be treated as gain from the sale or exchange of such interest.

(d) Basis rules

(1) Increase in basis

The basis of any person's residual interest in a REMIC shall be increased by the amount of the taxable income of such REMIC taken into account under subsection (a) by such person with respect to such interest.

(2) Decreases in basis

The basis of any person's residual interest in a REMIC shall be decreased (but not below zero) by the sum of the following amounts:

(A) any distributions to such person with respect to such interest, and

(B) any net loss of such REMIC taken into account under subsection (a) by such person with respect to such interest.

(e) Special rules

(1) Amounts treated as ordinary

Any amount taken into account under subsection (a) by any holder of a residual interest in a REMIC shall be treated as ordinary income or ordinary loss, as the case may be.

(2) Limitation on losses

(A) In general

The amount of the net loss of any REMIC taken into account by a holder under subsection (a) with respect to any calendar quarter shall not exceed the adjusted basis of such holder's residual interest in such REMIC as of the close of such calendar quarter (determined without regard to the adjustment under subsection (d)(2)(B) for such calendar quarter).

(B) Indefinite carryforward

Any loss disallowed by reason of subparagraph (A) shall be treated as incurred by the REMIC in the succeeding calendar quarter with respect to such holder.

(3) Cross reference

For special treatment of income in excess of daily accruals, see section 860E.

(Added Pub. L. 99–514, title VI, §671(a), Oct. 22, 1986, 100 Stat. 2309; amended Pub. L. 100–647, title I, §1006(t)(1), (8)(C), (21), Nov. 10, 1988, 102 Stat. 3419, 3421, 3426.)

AMENDMENTS

1988—Subsec. (b)(1). Pub. L. 100–647, §1006(t)(21), substituted ''and, except as provided in regulations, in the same manner'' for ''and in the same manner'' in introductory provisions.

Subsec. (b)(1)(E). Pub. L. 100–647, §1006(t)(8)(C), added subpar. (E).

Subsec. (e)(1). Pub. L. 100–647, §1006(t)(1), substituted ''ordinary'' for ''ordinary income'' in heading and amended text generally. Prior to amendment, text read as follows: ''Any amount included in the gross income of any holder of a residual interest in a REMIC by reason of subsection (a) shall be treated as ordinary income.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

§860D. REMIC defined

(a) General rule

For purposes of this title, the terms ''real estate mortgage investment conduit'' and ''REMIC'' mean any entity—

(1) to which an election to be treated as a REMIC applies for the taxable year and all prior taxable years,

(2) all of the interests in which are regular interests or residual interests,

(3) which has 1 (and only 1) class of residual interests (and all distributions, if any, with respect to such interests are pro rata),

(4) as of the close of the 3rd month beginning after the startup day and at all times thereafter, substantially all of the assets of which consist of qualified mortgages and permitted investments,

(5) which has a taxable year which is a calendar year, and

(6) with respect to which there are reasonable arrangements designed to ensure that—

(A) residual interests in such entity are not held by disqualified organizations (as defined in section 860E(e)(5)), and

(B) information necessary for the application of section 860E(e) will be made available by the entity.

In the case of a qualified liquidation (as defined in section 860F(a)(4)(A)), paragraph (4) shall not apply during the liquidation period (as defined in section 860F(a)(4)(B)).

(b) Election

(1) In general

An entity (otherwise meeting the requirements of subsection (a)) may elect to be treated as a REMIC for its 1st taxable year. Such an election shall be made on its return for such 1st taxable year. Except as provided in paragraph (2), such an election shall apply to the taxable year for which made and all subsequent taxable years.

(2) Termination

(A) In general

If any entity ceases to be a REMIC at any time during the taxable year, such entity

shall not be treated as a REMIC for such taxable year or any succeeding taxable year.

(B) Inadvertent terminations

If—

(i) an entity ceases to be a REMIC,

(ii) the Secretary determines that such cessation was inadvertent,

(iii) no later than a reasonable time after the discovery of the event resulting in such cessation, steps are taken so that such entity is once more a REMIC, and

(iv) such entity, and each person holding an interest in such entity at any time during the period specified pursuant to this subsection, agrees to make such adjustments (consistent with the treatment of such entity as a REMIC or a C corporation) as may be required by the Secretary with respect to such period,

then, notwithstanding such terminating event, such entity shall be treated as continuing to be a REMIC (or such cessation shall be disregarded for purposes of subparagraph (A)) whichever the Secretary determines to be appropriate.

(Added Pub. L. 99–514, title VI, § 671(a), Oct. 22, 1986, 100 Stat. 2311; amended Pub. L. 100–647, title I, § 1006(t)(2)(A), (16)(A), (19), Nov. 10, 1988, 102 Stat. 3419, 3423, 3426; Pub. L. 101–508, title XI, § 11704(a)(8), Nov. 5, 1990, 104 Stat. 1388–518.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–508 inserted closing parenthesis before period at end.

1988—Subsec. (a). Pub. L. 100–647, § 1006(t)(19), inserted at end ''In the case of a qualified liquidation (as defined in section 860F(a)(4)(A)), paragraph (4) shall not apply during the liquidation period (as defined in section 860F(a)(4)(B).''

Subsec. (a)(4). Pub. L. 100–647, § 1006(t)(2)(A)(i), substituted ''3rd month beginning after'' for ''4th month ending after''.

Pub. L. 100–647, § 1006(t)(2)(A)(ii), substituted ''and at all times thereafter'' for ''and each quarter ending thereafter''.

Subsec. (a)(6). Pub. L. 100–647, § 1006(t)(16)(A), added par. (6).

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, § 1006(t)(2)(B), Nov. 10, 1988, 102 Stat. 3419, provided that: ''The amendment made by subparagraph (A)(ii) [amending this section] shall take effect on January 1, 1988.''

Pub. L. 100–647, title I, § 1006(t)(16)(D)(i), Nov. 10, 1988, 102 Stat. 3425, provided that: ''The amendments made by subparagraph (A) [amending this section] shall apply in the case of any REMIC where the start-up day (as defined in section 860G(a)(9) of the 1986 Code, as in effect on the day before the date of the enactment of this Act [Nov. 10, 1988]) is after March 31, 1988; except that such amendments shall not apply in the case of a REMIC formed pursuant to a binding written contract in effect on such date.''

Amendment by section 1006(t)(2)(A)(i), (19) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

§ 860E. Treatment of income in excess of daily accruals on residual interests

(a) Excess inclusions may not be offset by net operating losses

(1) In general

The taxable income of any holder of a residual interest in a REMIC for any taxable year shall in no event be less than the excess inclusion for such taxable year.

(2) Special rule for affiliated groups

All members of an affiliated group filing a consolidated return shall be treated as 1 taxpayer for purposes of this subsection.

(3) Coordination with section 172

Any excess inclusion for any taxable year shall not be taken into account—

(A) in determining under section 172 the amount of any net operating loss for such taxable year, and

(B) in determining taxable income for such taxable year for purposes of the 2nd sentence of section 172(b)(2).

(4) Coordination with minimum tax

For purposes of part VI of subchapter A of this chapter—

(A) the reference in section 55(b)(2) to taxable income shall be treated as a reference to taxable income determined without regard to this subsection,

(B) the alternative minimum taxable income of any holder of a residual interest in a REMIC for any taxable year shall in no event be less than the excess inclusion for such taxable year, and

(C) any excess inclusion shall be disregarded for purposes of computing the alternative tax net operating loss deduction.

(b) Organizations subject to unrelated business tax

If the holder of any residual interest in a REMIC is an organization subject to the tax imposed by section 511, the excess inclusion of such holder for any taxable year shall be treated as unrelated business taxable income of such holder for purposes of section 511.

(c) Excess inclusion

For purposes of this section—

(1) In general

The term ''excess inclusion'' means, with respect to any residual interest in a REMIC for any calendar quarter, the excess (if any) of—

(A) the amount taken into account with respect to such interest by the holder under section 860C(a), over

(B) the sum of the daily accruals with respect to such interest for days during such calendar quarter while held by such holder.

To the extent provided in regulations, if residual interests in a REMIC do not have significant value, the excess inclusions with respect to such interests shall be the amount determined under subparagraph (A) without regard to subparagraph (B).

(2) Determination of daily accruals

(A) In general

For purposes of this subsection, the daily accrual with respect to any residual interest

for any day in any calendar quarter shall be determined by allocating to each day in such quarter its ratable portion of the product of—

(i) the adjusted issue price of such interest at the beginning of such quarter, and

(ii) 120 percent of the long-term Federal rate (determined on the basis of compounding at the close of each calendar quarter and properly adjusted for the length of such quarter).

(B) Adjusted issue price

For purposes of this paragraph, the adjusted issue price of any residual interest at the beginning of any calendar quarter is the issue price of the residual interest (adjusted for contributions)—

(i) increased by the amount of daily accruals for prior quarters, and

(ii) decreased (but not below zero) by any distribution made with respect to such interest before the beginning of such quarter.

(C) Federal long-term rate

For purposes of this paragraph, the term ''Federal long-term rate'' means the Federal long-term rate which would have applied to the residual interest under section 1274(d) (determined without regard to paragraph (2) thereof) if it were a debt instrument.

(d) Treatment of residual interests held by real estate investment trusts

If a residual interest in a REMIC is held by a real estate investment trust, under regulations prescribed by the Secretary—

(1) any excess of—

(A) the aggregate excess inclusions determined with respect to such interests, over

(B) the real estate investment trust taxable income (within the meaning of section 857(b)(2), excluding any net capital gain),

shall be allocated among the shareholders of such trust in proportion to the dividends received by such shareholders from such trust, and

(2) any amount allocated to a shareholder under paragraph (1) shall be treated as an excess inclusion with respect to a residual interest held by such shareholder.

Rules similar to the rules of the preceding sentence shall apply also in the case of regulated investment companies, common trust funds, and organizations to which part I of subchapter T applies.

(e) Tax on transfers of residual interests to certain organizations, etc.

(1) In general

A tax is hereby imposed on any transfer of a residual interest in a REMIC to a disqualified organization.

(2) Amount of tax

The amount of the tax imposed by paragraph (1) on any transfer of a residual interest shall be equal to the product of—

(A) the amount (determined under regulations) equal to the present value of the total anticipated excess inclusions with respect to such interest for periods after such transfer, multiplied by

(B) the highest rate of tax specified in section 11(b).

(3) Liability

The tax imposed by paragraph (1) on any transfer shall be paid by the transferor; except that, where such transfer is through an agent for a disqualified organization, such tax shall be paid by such agent.

(4) Transferee furnishes affidavit

The person (otherwise liable for any tax imposed by paragraph (1)) shall be relieved of liability for the tax imposed by paragraph (1) with respect to any transfer if—

(A) the transferee furnishes to such person an affidavit that the transferee is not a disqualified organization, and

(B) as of the time of the transfer, such person does not have actual knowledge that such affidavit is false.

(5) Disqualified organization

For purposes of this section, the term ''disqualified organization'' means—

(A) the United States, any State or political subdivision thereof, any foreign government, any international organization, or any agency or instrumentality of any of the foregoing,

(B) any organization (other than a cooperative described in section 521) which is exempt from tax imposed by this chapter unless such organization is subject to the tax imposed by section 511, and

(C) any organization described in section 1381(a)(2)(C).

For purposes of subparagraph (A), the rules of section 168(h)(2)(D) (relating to treatment of certain taxable instrumentalities) shall apply; except that, in the case of the Federal Home Loan Mortgage Corporation, clause (ii) of such section shall not apply.

(6) Treatment of pass-thru entities

(A) Imposition of tax

If, at any time during any taxable year of a pass-thru entity, a disqualified organization is the record holder of an interest in such entity, there is hereby imposed on such entity for such taxable year a tax equal to the product of—

(i) the amount of excess inclusions for such taxable year allocable to the interest held by such disqualified organization, multiplied by

(ii) the highest rate of tax specified in section 11(b).

(B) Pass-thru entity

For purposes of this paragraph, the term ''pass-thru entity'' means—

(i) any regulated investment company, real estate investment trust, or common trust fund,

(ii) any partnership, trust, or estate, and

(iii) any organization to which part I of subchapter T applies.

Except as provided in regulations, a person holding an interest in a pass-thru entity as

a nominee for another person shall, with respect to such interest, be treated as a pass-thru entity.

(C) Tax to be deductible

Any tax imposed by this paragraph with respect to any excess inclusion of any pass-thru entity for any taxable year shall, for purposes of this title (other than this subsection), be applied against (and operate to reduce) the amount included in gross income with respect to the residual interest involved.

(D) Exception where holder furnishes affidavit

No tax shall be imposed by subparagraph (A) with respect to any interest in a pass-thru entity for any period if—

(i) the record holder of such interest furnishes to such pass-thru entity an affidavit that such record holder is not a disqualified organization, and

(ii) during such period, the pass-thru entity does not have actual knowledge that such affidavit is false.

(7) Waiver

The Secretary may waive the tax imposed by paragraph (1) on any transfer if—

(A) within a reasonable time after discovery that the transfer was subject to tax under paragraph (1), steps are taken so that the interest is no longer held by the disqualified organization, and

(B) there is paid to the Secretary such amounts as the Secretary may require.

(8) Administrative provisions

For purposes of subtitle F, the taxes imposed by this subsection shall be treated as excise taxes with respect to which the deficiency procedures of such subtitle apply.

(f) Treatment of variable insurance contracts

Except as provided in regulations, with respect to any variable contract (as defined in section 817), there shall be no adjustment in the reserve to the extent of any excess inclusion.

(Added Pub. L. 99–514, title VI, § 671(a), Oct. 22, 1986, 100 Stat. 2311; amended Pub. L. 100–647, title I, § 1006(t)(13), (15), (16)(B), (17), (23), (26), (27), Nov. 10, 1988, 102 Stat. 3423, 3426, 3427; Pub. L. 104–188, title I, §§ 1616(b)(10), 1704(h)(1), Aug. 20, 1996, 110 Stat. 1857, 1881; Pub. L. 115–97, title I, § 13001(b)(1)(B), Dec. 22, 2017, 131 Stat. 2096.)

AMENDMENTS

2017—Subsec. (e)(2)(B), (6)(A)(ii). Pub. L. 115–97 substituted ''section 11(b)'' for ''section 11(b)(1)''.

1996—Subsec. (a)(1). Pub. L. 104–188, § 1616(b)(10)(A), substituted ''The'' for ''Except as provided in paragraph (2), the''.

Subsec. (a)(2). Pub. L. 104–188, § 1616(b)(10)(B), (C), redesignated par. (3) as (2), struck out '', except that paragraph (2) shall be applied separately with respect to each corporation which is a member of such group and to which section 593 applies'' after ''of this subsection'', and struck out former par. (2) which read as follows: ''EXCEPTION FOR CERTAIN FINANCIAL INSTITUTIONS.—Paragraph (1) shall not apply to any organization to which section 593 applies. The Secretary may by regulations provide that the preceding sentence shall not apply where necessary or appropriate to prevent avoidance of tax imposed by this chapter.''

Subsec. (a)(3). Pub. L. 104–188, § 1616(b)(10)(B), redesignated par. (5) as (3). Former par. (3) redesignated (2).

Subsec. (a)(4). Pub. L. 104–188, § 1616(b)(10)(B), (D), redesignated par. (6) as (4), struck out at end ''The preceding sentence shall not apply to any organization to which section 593 applies, except to the extent provided in regulations prescribed by the Secretary under paragraph (2).'', and struck out former par. (4) which related to certain subsidiaries being treated as single corporations to which section 593 applied.

Subsec. (a)(5). Pub. L. 104–188, § 1616(b)(10)(B), redesignated par. (5) as (3).

Subsec. (a)(6). Pub. L. 104–188, § 1616(b)(10)(B), redesignated par. (6) as (4).

Pub. L. 104–188, § 1704(h)(1), added par. (6).

1988—Subsec. (a)(3), (4). Pub. L. 100–647, § 1006(t)(15), added pars. (3) and (4).

Subsec. (a)(5). Pub. L. 100–647, § 1006(t)(27), added par. (5).

Subsec. (c)(2)(B). Pub. L. 100–647, § 1006(t)(13), (17), substituted ''issue price of the residual interest (adjusted for contributions)'' for ''issue price of residual interest'' in introductory text, and in cl. (ii) inserted ''(but not below zero)'' after ''decreased''.

Subsec. (d). Pub. L. 100–647, § 1006(t)(23), inserted at end ''Rules similar to the rules of the preceding sentence shall apply also in the case of regulated investment companies, common trust funds, and organizations to which part I of subchapter T applies.''

Subsec. (e). Pub. L. 100–647, § 1006(t)(16)(B), added subsec. (e).

Subsec. (f). Pub. L. 100–647, § 1006(t)(26), added subsec. (f).

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–97 applicable to taxable years beginning after Dec. 31, 2017, see section 13001(c)(1) of Pub. L. 115–97, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1616(b)(10) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1995, but not applicable to any residual interest held by a taxpayer if such interest has been held by such taxpayer at all times since Oct. 31, 1995, see section 1616(c)(1), (4) of Pub. L. 104–188, set out as a note under section 593 of this title.

Pub. L. 104–188, title I, § 1704(h)(2), Aug. 20, 1996, 110 Stat. 1881, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if included in the amendments made by section 671 of the Tax Reform Act of 1986 [Pub. L. 99–514] unless the taxpayer elects to apply such amendment only to taxable years beginning after the date of the enactment of this Act [Aug. 20, 1996].''

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, § 1006(t)(16)(D)(ii)–(iv), Nov. 10, 1988, 102 Stat. 3425, provided that:

''(ii) The amendments made by subparagraphs (B) and (C) [amending this section and section 26 of this title] (except to the extent they relate to paragraph (6) of section 860E(e) of the 1986 Code as added by such amendments) shall apply to transfers after March 31, 1988; except that such amendments shall not apply to any transfer pursuant to a binding written contract in effect on such date.

''(iii) Except as provided in clause (iv), the amendments made by subparagraphs (B) and (C) (to the extent they relate to paragraph (6) of section 860E(e) of the 1986 Code as so added) shall apply to excess inclusions for periods after March 31, 1988 but only to the extent such inclusions are—

''(I) allocable to an interest in a pass-thru entity acquired after March 31, 1988, or

''(II) allocable to an interest in a pass-thru entity acquired on or before March 31, 1988, but attributable to a residual interest acquired by the pass-thru entity after March 31, 1988.

For purposes of the preceding sentence, any interest in a pass-thru entity (or residual interest) acquired after March 31, 1988, pursuant to a binding written contract in effect on such date shall be treated as acquired before such date.

''(iv) In the case of any real estate investment trust, regulated investment company, common trust fund, or publicly traded partnership, no tax shall be imposed under section 860E(e)(6) of the 1986 Code (as added by the amendment made by subparagraph (B)) for any taxable year beginning before January 1, 1989.''

Amendment by section 1006(t)(13), (15), (17), (23), (26), (27) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

§ 860F. Other rules

(a) 100 percent tax on prohibited transactions

(1) Tax imposed

There is hereby imposed for each taxable year of a REMIC a tax equal to 100 percent of the net income derived from prohibited transactions.

(2) Prohibited transaction

For purposes of this part, the term ''prohibited transaction'' means—

(A) Disposition of qualified mortgage

The disposition of any qualified mortgage transferred to the REMIC other than a disposition pursuant to—

(i) the substitution of a qualified replacement mortgage for a qualified mortgage (or the repurchase in lieu of substitution of a defective obligation),

(ii) a disposition incident to the foreclosure, default, or imminent default of the mortgage,

(iii) the bankruptcy or insolvency of the REMIC, or

(iv) a qualified liquidation.

(B) Income from nonpermitted assets

The receipt of any income attributable to any asset which is neither a qualified mortgage nor a permitted investment.

(C) Compensation for services

The receipt by the REMIC of any amount representing a fee or other compensation for services.

(D) Gain from disposition of cash flow investments

Gain from the disposition of any cash flow investment other than pursuant to any qualified liquidation.

(3) Determination of net income

For purposes of paragraph (1), the term ''net income derived from prohibited transactions'' means the excess of the gross income from prohibited transactions over the deductions allowed by this chapter which are directly connected with such transactions; except that there shall not be taken into account any item attributable to any prohibited transaction for which there was a loss.

(4) Qualified liquidation

For purposes of this part—

(A) In general

The term ''qualified liquidation'' means a transaction in which—

(i) the REMIC adopts a plan of complete liquidation,

(ii) such REMIC sells all its assets (other than cash) within the liquidation period, and

(iii) all proceeds of the liquidation (plus the cash), less assets retained to meet claims, are credited or distributed to holders of regular or residual interests on or before the last day of the liquidation period.

(B) Liquidation period

The term ''liquidation period'' means the period—

(i) beginning on the date of the adoption of the plan of liquidation, and

(ii) ending at the close of the 90th day after such date.

(5) Exceptions

Notwithstanding subparagraphs (A) and (D) of paragraph (2), the term ''prohibited transaction'' shall not include any disposition—

(A) required to prevent default on a regular interest where the threatened default resulted from a default on 1 or more qualified mortgages, or

(B) to facilitate a clean-up call (as defined in regulations).

(b) Treatment of transfers to the REMIC

(1) Treatment of transferor

(A) Nonrecognition gain or loss

No gain or loss shall be recognized to the transferor on the transfer of any property to a REMIC in exchange for regular or residual interests in such REMIC.

(B) Adjusted bases of interests

The adjusted bases of the regular and residual interests received in a transfer described in subparagraph (A) shall be equal to the aggregate adjusted bases of the property transferred in such transfer. Such amount shall be allocated among such interests in proportion to their respective fair market values.

(C) Treatment of nonrecognized gain

If the issue price of any regular or residual interest exceeds its adjusted basis as determined under subparagraph (B), for periods during which such interest is held by the transferor (or by any other person whose basis is determined in whole or in part by reference to the basis of such interest in the hand of the transferor)—

(i) in the case of a regular interest, such excess shall be included in gross income (as determined under rules similar to rules of section 1276(b)), and

(ii) in the case of a residual interest, such excess shall be included in gross income ratably over the anticipated period during which the REMIC will be in existence.

(D) Treatment of nonrecognized loss

If the adjusted basis of any regular or residual interest received in a transfer de-

scribed in subparagraph (A) exceeds its issue price, for periods during which such interest is held by the transferor (or by any other person whose basis is determined in whole or in part by reference to the basis of such interest in the hand of the transferor)—

(i) in the case of a regular interest, such excess shall be allowable as a deduction under rules similar to the rules of section 171, and

(ii) in the case of a residual interest, such excess shall be allowable as a deduction ratably over the anticipated period during which the REMIC will be in existence.

(2) Basis to REMIC

The basis of any property received by a REMIC in a transfer described in paragraph (1)(A) shall be its fair market value immediately after such transfer.

(c) Distributions of property

If a REMIC makes a distribution of property with respect to any regular or residual interest—

(1) notwithstanding any other provision of this subtitle, gain shall be recognized to such REMIC on the distribution in the same manner as if it had sold such property to the distributee at its fair market value, and

(2) the basis of the distributee in such property shall be its fair market value.

(d) Coordination with wash sale rules

For purposes of section 1091—

(1) any residual interest in a REMIC shall be treated as a security, and

(2) in applying such section to any loss claimed to have been sustained on the sale or other disposition of a residual interest in a REMIC—

(A) except as provided in regulations, any residual interest in any REMIC and any interest in a taxable mortgage pool (as defined in section 7701(i)) comparable to a residual interest in a REMIC shall be treated as substantially identical stock or securities, and

(B) subsections (a) and (e) of such section shall be applied by substituting ''6 months'' for ''30 days'' each place it appears.

(e) Treatment under subtitle F

For purposes of subtitle F, a REMIC shall be treated as a partnership (and holders of residual interests in such REMIC shall be treated as partners). Any return required by reason of the preceding sentence shall include the amount of the daily accruals determined under section 860E(c). Such return shall be filed by the REMIC. The determination of who may sign such return shall be made without regard to the first sentence of this subsection.

(Added Pub. L. 99–514, title VI, § 671(a), Oct. 22, 1986, 100 Stat. 2313; amended Pub. L. 100–647, title I, § 1006(t)(3), (4), (14), (18)(A), (22)(B)–(E), Nov. 10, 1988, 102 Stat. 3419, 3420, 3423, 3426; Pub. L. 104–188, title I, § 1704(t)(74), Aug. 20, 1996, 110 Stat. 1891.)

AMENDMENTS

1996—Subsec. (a)(5). Pub. L. 104–188 substituted ''paragraph (2)'' for ''paragraph (1)'' in introductory provisions.

1988—Subsec. (a)(2)(A). Pub. L. 100–647, § 1006(t)(3)(B)(i), struck out at end ''Notwithstanding the preceding sentence, the term 'prohibited transaction' shall not include any disposition required to prevent default on a regular interest where the threatened default resulted from a default on 1 or more qualified mortgages.''

Subsec. (a)(2)(A)(i). Pub. L. 100–647, § 1006(t)(3)(A), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''the substitution of a qualified replacement mortgage for a qualified mortgage,''.

Subsec. (a)(2)(A)(iii), (C). Pub. L. 100–647, § 1006(t)(22)(B), (C), substituted ''REMIC'' for ''real estate mortgage pool''.

Subsec. (a)(2)(D). Pub. L. 100–647, § 1006(t)(3)(C), struck out ''described in subsection (b)'' before period at end.

Subsec. (a)(5). Pub. L. 100–647, § 1006(t)(3)(B)(ii), added par. (5).

Subsec. (b)(1)(A). Pub. L. 100–647, § 1006(t)(4), substituted ''the transfer of any property to a REMIC in exchange for regular or residual interests in such REMIC'' for ''the transfer of any property to a REMIC''.

Subsec. (b)(1)(C)(ii). Pub. L. 100–647, § 1006(t)(22)(D), substituted ''REMIC'' for ''real estate mortgage pool''.

Subsec. (b)(1)(D)(ii). Pub. L. 100–647, § 1006(t)(14), (22)(E), amended cl. (ii) identically, substituting ''REMIC'' for ''real estate mortgage pool''.

Subsec. (e). Pub. L. 100–647, § 1006(t)(18)(A), inserted at end ''Such return shall be filed by the REMIC. The determination of who may sign such return shall be made without regard to the first sentence of this subsection.''

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, § 1006(t)(18)(B), Nov. 10, 1988, 102 Stat. 3426, provided that: ''Unless the REMIC otherwise elects, the amendment made by subparagraph (A) [amending this section] shall not apply to any REMIC where the start-up day (as defined in section 860G(a)(9) of the 1986 Code as in effect on the day before the date of the enactment of this Act [Nov. 10, 1988]) is before the date of the enactment of this Act.''

Amendment by section 1006(t)(3), (4), (14), (22)(B)–(E) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

§ 860G. Other definitions and special rules

(a) Definitions

For purposes of this part—

(1) Regular interest

The term ''regular interest'' means any interest in a REMIC which is issued on the start-up day with fixed terms and which is designated as a regular interest if—

(A) such interest unconditionally entitles the holder to receive a specified principal amount (or other similar amount), and

(B) interest payments (or other similar amount), if any, with respect to such interest at or before maturity—

(i) are payable based on a fixed rate (or to the extent provided in regulations, at a variable rate), or

(ii) consist of a specified portion of the interest payments on qualified mortgages and such portion does not vary during the period such interest is outstanding.

The interest shall not fail to meet the requirements of subparagraph (A) merely because the timing (but not the amount) of the principal

payments (or other similar amounts) may be contingent on the extent of prepayments on qualified mortgages and the amount of income from permitted investments. An interest shall not fail to qualify as a regular interest solely because the specified principal amount of the regular interest (or the amount of interest accrued on the regular interest) can be reduced as a result of the nonoccurrence of 1 or more contingent payments with respect to any reverse mortgage loan held by the REMIC if, on the startup day for the REMIC, the sponsor reasonably believes that all principal and interest due under the regular interest will be paid at or prior to the liquidation of the REMIC.

(2) Residual interest

The term ''residual interest'' means an interest in a REMIC which is issued on the startup day, which is not a regular interest, and which is designated as a residual interest.

(3) Qualified mortgage

The term ''qualified mortgage'' means—

(A) any obligation (including any participation or certificate of beneficial ownership therein) which is principally secured by an interest in real property and which—

(i) is transferred to the REMIC on the startup day in exchange for regular or residual interests in the REMIC,

(ii) is purchased by the REMIC within the 3-month period beginning on the startup day if, except as provided in regulations, such purchase is pursuant to a fixed-price contract in effect on the startup day, or

(iii) represents an increase in the principal amount under the original terms of an obligation described in clause (i) or (ii) if such increase—

(I) is attributable to an advance made to the obligor pursuant to the original terms of a reverse mortgage loan or other obligation,

(II) occurs after the startup day, and

(III) is purchased by the REMIC pursuant to a fixed price contract in effect on the startup day.[1]

(B) any qualified replacement mortgage, and

(C) any regular interest in another REMIC transferred to the REMIC on the startup day in exchange for regular or residual interests in the REMIC.

For purposes of subparagraph (A), any obligation secured by stock held by a person as a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as so defined) shall be treated as secured by an interest in real property. For purposes of subparagraph (A), any obligation originated by the United States or any State (or any political subdivision, agency, or instrumentality of the United States or any State) shall be treated as principally secured by an interest in real property if more than 50 percent of such obligations which are transferred to, or purchased by, the REMIC are principally secured by an interest in real property (determined without regard to this sentence).

(4) Qualified replacement mortgage

The term ''qualified replacement mortgage'' means any obligation—

(A) which would be a qualified mortgage if transferred on the startup day in exchange for regular or residual interests in the REMIC, and

(B) which is received for—

(i) another obligation within the 3-month period beginning on the startup day, or

(ii) a defective obligation within the 2-year period beginning on the startup day.

(5) Permitted investments

The term ''permitted investments'' means any—

(A) cash flow investment,

(B) qualified reserve asset, or

(C) foreclosure property.

(6) Cash flow investment

The term ''cash flow investment'' means any investment of amounts received under qualified mortgages for a temporary period before distribution to holders of interests in the REMIC.

(7) Qualified reserve asset

(A) In general

The term ''qualified reserve asset'' means any intangible property which is held for investment and as part of a qualified reserve fund.

(B) Qualified reserve fund

For purposes of subparagraph (A), the term ''qualified reserve fund'' means any reasonably required reserve to—

(i) provide for full payment of expenses of the REMIC or amounts due on regular interests in the event of defaults on qualified mortgages or lower than expected returns on cash flow investments, or

(ii) provide a source of funds for the purchase of obligations described in clause (ii) or (iii) of paragraph (3)(A).

The aggregate fair market value of the assets held in any such reserve shall not exceed 50 percent of the aggregate fair market value of all of the assets of the REMIC on the startup day, and the amount of any such reserve shall be promptly and appropriately reduced to the extent the amount held in such reserve is no longer reasonably required for purposes specified in clause (i) or (ii) of this subparagraph.

(C) Special rule

A reserve shall not be treated as a qualified reserve for any taxable year (and all subsequent taxable years) if more than 30 percent of the gross income from the assets in such fund for the taxable year is derived from the sale or other disposition of property held for less than 3 months. For purposes of the preceding sentence, gain on the disposition of a qualified reserve asset shall

[1] So in original. The period probably should be a comma.

not be taken into account if the disposition giving rise to such gain is required to prevent default on a regular interest where the threatened default resulted from a default on 1 or more qualified mortgages.

(8) Foreclosure property

The term ''foreclosure property'' means property—

(A) which would be foreclosure property under section 856(e) (without regard to paragraph (5) thereof) if acquired by a real estate investment trust, and

(B) which is acquired in connection with the default or imminent default of a qualified mortgage held by the REMIC.

Solely for purposes of section 860D(a), the determination of whether any property is foreclosure property shall be made without regard to section 856(e)(4).

(9) Startup day

The term ''startup day'' means the day on which the REMIC issues all of its regular and residual interests. To the extent provided in regulations, all interests issued (and all transfers to the REMIC) during any period (not exceeding 10 days) permitted in such regulations shall be treated as occurring on the day during such period selected by the REMIC for purposes of this paragraph.

(10) Issue price

The issue price of any regular or residual interest in a REMIC shall be determined under section 1273(b) in the same manner as if such interest were a debt instrument; except that if the interest is issued for property, paragraph (3) of section 1273(b) shall apply whether or not the requirements of such paragraph are met.

(b) Treatment of nonresident aliens and foreign corporations

If the holder of a residual interest in a REMIC is a nonresident alien individual or a foreign corporation, for purposes of sections 871(a), 881, 1441, and 1442—

(1) amounts includible in the gross income of such holder under this part shall be taken into account when paid or distributed (or when the interest is disposed of), and

(2) no exemption from the taxes imposed by such sections (and no reduction in the rates of such taxes) shall apply to any excess inclusion.

The Secretary may by regulations provide that such amounts shall be taken into account earlier than as provided in paragraph (1) where necessary or appropriate to prevent the avoidance of tax imposed by this chapter.

(c) Tax on income from foreclosure property

(1) In general

A tax is hereby imposed for each taxable year on the net income from foreclosure property of each REMIC. Such tax shall be computed by multiplying the net income from foreclosure property by the highest rate of tax specified in section 11(b).

(2) Net income from foreclosure property

For purposes of this part, the term ''net income from foreclosure property'' means the amount which would be the REMIC's net income from foreclosure property under section 857(b)(4)(B) if the REMIC were a real estate investment trust.

(d) Tax on contributions after startup date

(1) In general

Except as provided in paragraph (2), if any amount is contributed to a REMIC after the startup day, there is hereby imposed a tax for the taxable year of the REMIC in which the contribution is received equal to 100 percent of the amount of such contribution.

(2) Exceptions

Paragraph (1) shall not apply to any contribution which is made in cash and is described in any of the following subparagraphs:

(A) Any contribution to facilitate a clean-up call (as defined in regulations) or a qualified liquidation.

(B) Any payment in the nature of a guarantee.

(C) Any contribution during the 3-month period beginning on the startup day.

(D) Any contribution to a qualified reserve fund by any holder of a residual interest in the REMIC.

(E) Any other contribution permitted in regulations.

(e) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this part, including regulations—

(1) to prevent unreasonable accumulations of assets in a REMIC,

(2) permitting determinations of the fair market value of property transferred to a REMIC and issue price of interests in a REMIC to be made earlier than otherwise provided,

(3) requiring reporting to holders of residual interests of such information as frequently as is necessary or appropriate to permit such holders to compute their taxable income accurately,

(4) providing appropriate rules for treatment of transfers of qualified replacement mortgages to the REMIC where the transferor holds any interest in the REMIC, and

(5) providing that a mortgage will be treated as a qualified replacement mortgage only if it is part of a bona fide replacement (and not part of a swap of mortgages).

(Added Pub. L. 99–514, title VI, § 671(a), Oct. 22, 1986, 100 Stat. 2315; amended Pub. L. 100–647, title I, § 1006(t)(5)(A)–(E), (6)–(8)(B), (9)(A), (10), Nov. 10, 1988, 102 Stat. 3420–3422; Pub. L. 101–239, title VII, § 7811(c)(9), Dec. 19, 1989, 103 Stat. 2408; Pub. L. 101–508, title XI, § 11704(a)(9), Nov. 5, 1990, 104 Stat. 1388–518; Pub. L. 104–188, title I, § 1621(b)(6), Aug. 20, 1996, 110 Stat. 1867; Pub. L. 108–357, title VIII, § 835(b)(5)–(8), Oct. 22, 2004, 118 Stat. 1593; Pub. L. 109–135, title IV, § 403(cc), Dec. 21, 2005, 119 Stat. 2630.)

AMENDMENTS

2005—Subsec. (a)(3). Pub. L. 109–135, § 403(cc)(2), inserted concluding provisions and struck out former concluding provisions which read as follows: ''For purposes of subparagraph (A), any obligation secured by

stock held by a person as a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as so defined) shall be treated as secured by an interest in real property, and any reverse mortgage loan (and each balance increase on such loan meeting the requirements of subparagraph (A)(iii)) shall be treated as an obligation secured by an interest in real property. For purposes of subparagraph (A), if more than 50 percent of the obligations transferred to, or purchased by, the REMIC are originated by the United States or any State (or any political subdivision, agency, or instrumentality of the United States or any State) and are principally secured by an interest in real property, then each obligation transferred to, or purchased by, the REMIC shall be treated as secured by an interest in real property.''

Subsec. (a)(3)(A)(iii)(I). Pub. L. 109–135, §403(cc)(1), substituted ''a reverse mortgage loan or other obligation'' for ''the obligation''.

2004—Subsec. (a)(1). Pub. L. 108–357, §835(b)(5)(A), inserted at end of concluding provisions ''An interest shall not fail to qualify as a regular interest solely because the specified principal amount of the regular interest (or the amount of interest accrued on the regular interest) can be reduced as a result of the nonoccurrence of 1 or more contingent payments with respect to any reverse mortgage loan held by the REMIC if, on the startup day for the REMIC, the sponsor reasonably believes that all principal and interest due under the regular interest will be paid at or prior to the liquidation of the REMIC.''

Subsec. (a)(3). Pub. L. 108–357, §835(b)(7), inserted at end of concluding provisions ''For purposes of subparagraph (A), if more than 50 percent of the obligations transferred to, or purchased by, the REMIC are originated by the United States or any State (or any political subdivision, agency, or instrumentality of the United States or any State) and are principally secured by an interest in real property, then each obligation transferred to, or purchased by, the REMIC shall be treated as secured by an interest in real property.''

Pub. L. 108–357, §835(b)(5)(B), inserted before period at end of concluding provisions '', and any reverse mortgage loan (and each balance increase on such loan meeting the requirements of subparagraph (A)(iii)) shall be treated as an obligation secured by an interest in real property''.

Subsec. (a)(3)(A)(iii). Pub. L. 108–357, §835(b)(8)(A), added cl. (iii).

Subsec. (a)(3)(B) to (D). Pub. L. 108–357, §835(b)(6), inserted ''and'' at end of subpar. (B), substituted period for '', and'' at end of subpar. (C), and struck out subpar. (D) which read as follows: ''any regular interest in a FASIT which is transferred to, or purchased by, the REMIC as described in clauses (i) and (ii) of subparagraph (A) but only if 95 percent or more of the value of the assets of such FASIT is at all times attributable to obligations described in subparagraph (A) (without regard to such clauses).''

Subsec. (a)(7)(B). Pub. L. 108–357, §835(b)(8)(B), reenacted heading without change and amended text of subpar. (B) generally. Prior to amendment, text read as follows: ''For purposes of subparagraph (A), the term 'qualified reserve fund' means any reasonably required reserve to provide for full payment of expenses of the REMIC or amounts due on regular interests in the event of defaults on qualified mortgages or lower than expected returns on cash flow investments. The amount of any such reserve shall be promptly and appropriately reduced as payments of qualified mortgages are received.''

1996—Subsec. (a)(3)(D). Pub. L. 104–188 added subpar. (D).

1990—Subsec. (a)(3)(A). Pub. L. 101–508 struck out comma after ''secured'' in introductory provisions.

1989—Subsec. (a)(3). Pub. L. 101–239 substituted ''subparagraph (A)'' for ''this subparagraph'' in last sentence.

1988—Subsec. (a)(1). Pub. L. 100–647, §1006(t)(5)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The term 'regular interest' means an interest in a REMIC the terms of which are fixed on the startup day, and which—

''(A) unconditionally entitles the holder to receive a specified principal amount (or other similar amount), and

''(B) provides that interest payments (or other similar amounts), if any, at or before maturity are payable based on a fixed rate (or to the extent provided in regulations, at a variable rate).

An interest shall not fail to meet the requirements of subparagraph (A) merely because the timing (but not the amount) of the principal payments (or other similar amounts) may be contingent on the extent of prepayments on qualified mortgages and the amount of income from permitted investments.''

Subsec. (a)(2). Pub. L. 100–647, §1006(t)(5)(B), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The term 'residual interest' means an interest in a REMIC which is not a regular interest and is designated as a residual interest.''

Subsec. (a)(3). Pub. L. 100–647, §1006(t)(6)(B), inserted at end ''For purposes of this subparagraph, any obligation secured by stock held by a person as a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as so defined) shall be treated as secured by an interest in real property.''

Subsec. (a)(3)(A). Pub. L. 100–647, §1006(t)(6)(A), struck out ''directly or indirectly,''.

Subsec. (a)(3)(A)(i). Pub. L. 100–647, §1006(t)(5)(C)(i), substituted ''on the startup day in exchange for regular or residual interests in the REMIC'' for ''on or before the startup day''.

Subsec. (a)(3)(A)(ii). Pub. L. 100–647, §1006(t)(5)(C)(ii), inserted before comma at end ''if, except as provided in regulations, such purchase is pursuant to a fixed-price contract in effect on the startup day''.

Subsec. (a)(3)(C). Pub. L. 100–647, §1006(t)(5)(C)(iii), substituted ''on the startup day in exchange for regular or residual interests in the REMIC'' for ''on or before the startup day''.

Subsec. (a)(4)(A). Pub. L. 100–647, §1006(t)(5)(D), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''which would be described in paragraph (3)(A) if it were transferred to the REMIC on or before the startup day, and''.

Subsec. (a)(7)(B). Pub. L. 100–647, §1006(t)(7), inserted before period at end of first sentence ''or lower than expected returns on cash flow investments''.

Subsec. (a)(8). Pub. L. 100–647, §1006(t)(8)(A), substituted ''section 856(e) (without regard to paragraph (5) thereof)'' for ''section 856(e)'' in subpar. (A) and amended last sentence generally. Prior to amendment, last sentence read as follows: ''Property shall cease to be foreclosure property with respect to the REMIC on the date which is 1 year after the date such real estate mortgage pool acquired such property.''

Subsec. (a)(9). Pub. L. 100–647, §1006(t)(5)(E), amended par. (9) generally. Prior to amendment, par. (9) read as follows: ''The term 'startup day' means any day selected by a REMIC which is on or before the 1st day on which interests in such REMIC are issued.''

Subsec. (c). Pub. L. 100–647, §1006(t)(8)(B), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 100–647, §1006(t)(9)(A), added subsec. (d). Former subsec. (d) redesignated (e).

Pub. L. 100–647, §1006(t)(8)(B), redesignated former subsec. (c) as (d).

Subsec. (e). Pub. L. 100–647, §1006(t)(9)(A), redesignated former subsec. (d) as (e).

Subsec. (e)(4), (5). Pub. L. 100–647, §1006(t)(10), added pars. (4) and (5).

EFFECTIVE DATE OF 2005 AMENDMENT

Amendments by Pub. L. 109–135 effective as if included in the provisions of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which they relate, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 effective Jan. 1, 2005, with exception for any FASIT in existence on Oct. 22, 2004, to the extent that regular interests issued by the FASIT before such date continue to remain outstanding in accordance with the original terms of issuance, see section 835(c) of Pub. L. 108–357, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective Sept. 1, 1997, see section 1621(d) of Pub. L. 104–188, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1006(t)(5)(F), Nov. 10, 1988, 102 Stat. 3421, provided that: ''The amendments made by this paragraph [amending this section] shall not apply to any REMIC where the startup day (as defined in section 860G(a)(9) of the 1986 Code as in effect on the day before the date of the enactment of this Act [Nov. 10, 1988]) is before July 1, 1987.''

Pub. L. 100–647, title I, §1006(t)(9)(B), Nov. 10, 1988, 102 Stat. 3422, provided that: ''The amendment made by subparagraph (A) [amending this section] shall not apply to any REMIC where the startup day (as defined in section 860G(a)(9) of the 1986 Code as in effect on the day before the date of the enactment of this Act [Nov. 10, 1988]) is before July 1, 1987.''

Amendment by section 1006(t)(6)–(8)(B), (10) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

[PART V—REPEALED]

[§§ 860H to 860L. Repealed. Pub. L. 108–357, title VIII, § 835(a), Oct. 22, 2004, 118 Stat. 1593]

Section 860H, added Pub. L. 104–188, title I, §1621(a), Aug. 20, 1996, 110 Stat. 1858, set forth general rules relating to taxation of a FASIT.

Section 860I, added Pub. L. 104–188, title I, §1621(a), Aug. 20, 1996, 110 Stat. 1859, related to gain recognition on contributions to a FASIT and in other cases.

Section 860J, added Pub. L. 104–188, title I, §1621(a), Aug. 20, 1996, 110 Stat. 1860, prohibited offset of certain FASIT inclusions by non-FASIT losses.

Section 860K, added Pub. L. 104–188, title I, §1621(a), Aug. 20, 1996, 110 Stat. 1861, related to treatment of transfers of high-yield interests to disqualified holders.

Section 860L, added Pub. L. 104–188, title I, §1621(a), Aug. 20, 1996, 110 Stat. 1862; amended Pub. L. 105–34, title XVI, §1601(f)(6), Aug. 5, 1997, 111 Stat. 1091, defined terms and set forth special rules relating to FASITs.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2005, with exception for any FASIT in existence on Oct. 22, 2004, to the extent that regular interests issued by the FASIT before such date continue to remain outstanding in accordance with the original terms of issuance, see section 835(c) of Pub. L. 108–357, set out as an Effective Date of 2004 Amendments note under section 56 of this title.

Subchapter N—Tax Based on Income From Sources Within or Without the United States

AMENDMENTS

1988—Pub. L. 100–647, title I, §1012(h)(2)(D), Nov. 10, 1988, 102 Stat. 3503, substituted ''Source rules and other general rules relating to foreign income'' for ''Determination of sources of income'' in item for part I.

1976—Pub. L. 94–455, title X, §1064(b), Oct. 4, 1976, 90 Stat. 1653, added item V.

PART I—SOURCE RULES AND OTHER GENERAL RULES RELATING TO FOREIGN INCOME

AMENDMENTS

1988—Pub. L. 100–647, title I, §§1012(e)(3)(B), (h)(2)(C), 1018(u)(37), Nov. 10, 1988, 102 Stat. 3500, 3502, 3592, substituted ''SOURCE RULES AND OTHER GENERAL RULES RELATING TO FOREIGN INCOME'' for ''DETERMINATION OF SOURCES OF INCOME'' as part I heading, substituted ''Special rules for determining source'' for ''Items not specified in section 861 or 862'' in item 863, and added item 865.

1986—Pub. L. 99–514, title XII, §1215(b)(2), Oct. 22, 1986, 100 Stat. 2545, substituted ''Definitions and special rules'' for ''Definitions'' in item 864.

§ 861. Income from sources within the United States

(a) Gross income from sources within United States

The following items of gross income shall be treated as income from sources within the United States:

(1) Interest

Interest from the United States or the District of Columbia, and interest on bonds, notes, or other interest-bearing obligations of noncorporate residents or domestic corporations not including—

(A) interest—

(i) on deposits with a foreign branch of a domestic corporation or a domestic partnership if such branch is engaged in the commercial banking business, and

(ii) on amounts satisfying the requirements of subparagraph (B) of section 871(i)(3) which are paid by a foreign branch of a domestic corporation or a domestic partnership, and

(B) in the case of a foreign partnership, which is predominantly engaged in the active conduct of a trade or business outside the United States, any interest not paid by a trade or business engaged in by the partnership in the United States and not alloca-

[1] Editorially supplied. Part IV added by Pub. L. 92–178 without corresponding amendment of subchapter analysis.

ble to income which is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States.

(2) Dividends

The amount received as dividends—

(A) from a domestic corporation other than a corporation which has an election in effect under section 936, or

(B) from a foreign corporation unless less than 25 percent of the gross income from all sources of such foreign corporation for the 3-year period ending with the close of its taxable year preceding the declaration of such dividends (or for such part of such period as the corporation has been in existence) was effectively connected (or treated as effectively connected other than income described in section 884(d)(2)) with the conduct of a trade or business within the United States; but only in an amount which bears the same ratio to such dividends as the gross income of the corporation for such period which was effectively connected (or treated as effectively connected other than income described in section 884(d)(2)) with the conduct of a trade or business within the United States bears to its gross income from all sources; but dividends (other than dividends for which a deduction is allowable under section 245(b)) from a foreign corporation shall, for purposes of subpart A of part III (relating to foreign tax credit), be treated as income from sources without the United States to the extent (and only to the extent) exceeding the amount which is 100/50th of the amount of the deduction allowable under section 245 in respect of such dividends, or

(C) from a foreign corporation to the extent that such amount is required by section 243(e) (relating to certain dividends from foreign corporations) to be treated as dividends from a domestic corporation which is subject to taxation under this chapter, and to such extent subparagraph (B) shall not apply to such amount, or

(D) from a DISC or former DISC (as defined in section 992(a)) except to the extent attributable (as determined under regulations prescribed by the Secretary) to qualified export receipts described in section 993(a)(1) (other than interest and gains described in section 995(b)(1)).

In the case of any dividend from a 20-percent owned corporation (as defined in section 243(c)(2)), subparagraph (B) shall be applied by substituting ''100/65th'' for ''100/50th''.

(3) Personal services

Compensation for labor or personal services performed in the United States; except that compensation for labor or services performed in the United States shall not be deemed to be income from sources within the United States if—

(A) the labor or services are performed by a nonresident alien individual temporarily present in the United States for a period or periods not exceeding a total of 90 days during the taxable year,

(B) such compensation does not exceed $3,000 in the aggregate, and

(C) the compensation is for labor or services performed as an employee of or under a contract with—

(i) a nonresident alien, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, or

(ii) an individual who is a citizen or resident of the United States, a domestic partnership, or a domestic corporation, if such labor or services are performed for an office or place of business maintained in a foreign country or in a possession of the United States by such individual, partnership, or corporation.

In addition, compensation for labor or services performed in the United States shall not be deemed to be income from sources within the United States if the labor or services are performed by a nonresident alien individual in connection with the individual's temporary presence in the United States as a regular member of the crew of a foreign vessel engaged in transportation between the United States and a foreign country or a possession of the United States.

(4) Rentals and royalties

Rentals or royalties from property located in the United States or from any interest in such property, including rentals or royalties for the use of or for the privilege of using in the United States patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other like property.

(5) Disposition of United States real property interest

Gains, profits, and income from the disposition of a United States real property interest (as defined in section 897(c)).

(6) Sale or exchange of inventory property

Gains, profits, and income derived from the purchase of inventory property (within the meaning of section 865(i)(1)) without the United States (other than within a possession of the United States) and its sale or exchange within the United States.

(7) Amounts received as underwriting income (as defined in section 832(b)(3)) derived from the issuing (or reinsuring) of any insurance or annuity contract—

(A) in connection with property in, liability arising out of an activity in, or in connection with the lives or health of residents of, the United States, or

(B) in connection with risks not described in subparagraph (A) as a result of any arrangement whereby another corporation receives a substantially equal amount of premiums or other consideration in respect to issuing (or reinsuring) any insurance or annuity contract in connection with property in, liability arising out of activity in, or in connection with the lives or health of residents of, the United States.

(8) Social security benefits

Any social security benefit (as defined in section 86(d)).

(9) Guarantees

Amounts received, directly or indirectly, from—

(A) a noncorporate resident or domestic corporation for the provision of a guarantee of any indebtedness of such resident or corporation, or

(B) any foreign person for the provision of a guarantee of any indebtedness of such person, if such amount is connected with income which is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States.

(b) Taxable income from sources within United States

From the items of gross income specified in subsection (a) as being income from sources within the United States there shall be deducted the expenses, losses, and other deductions properly apportioned or allocated thereto and a ratable part of any expenses, losses, or other deductions which cannot definitely be allocated to some item or class of gross income. The remainder, if any, shall be included in full as taxable income from sources within the United States. In the case of an individual who does not itemize deductions, an amount equal to the standard deduction shall be considered a deduction which cannot definitely be allocated to some item or class of gross income.

(c) Special rule for application of subsection (a)(2)(B)

For purposes of subsection (a)(2)(B), if the foreign corporation has no gross income from any source for the 3-year period (or part thereof) specified, the requirements of such subsection shall be applied with respect to the taxable year of such corporation in which the payment of the dividend is made.

(d) Income from certain railroad rolling stock treated as income from sources within the United States

(1) General rule

For purposes of subsection (a) and section 862(a), if—

(A) a taxpayer leases railroad rolling stock which is section 1245 property (as defined in section 1245(a)(3)) to a domestic common carrier by railroad or a corporation which is controlled, directly or indirectly, by one or more such common carriers, and

(B) the use under such lease is expected to be use within the United States,

all amounts includible in gross income by the taxpayer with respect to such railroad rolling stock (including gain from sale or other disposition of such railroad rolling stock) shall be treated as income from sources within the United States. The requirements of subparagraph (B) of the preceding sentence shall be treated as satisfied if the only expected use outside the United States is use by a person (whether or not a United States person) in Canada or Mexico on a temporary basis which is not expected to exceed a total of 90 days in any taxable year.

(2) Paragraph (1) not to apply where lessor is a member of controlled group which includes a railroad

Paragraph (1) shall not apply to a lease between two members of the same controlled group of corporations (as defined in section 1563) if any member of such group is a domestic common carrier by railroad or a switching or terminal company all of whose stock is owned by one or more domestic common carriers by railroad.

(3) Denial of foreign tax credit

No credit shall be allowed under section 901 for any payments to foreign countries with respect to any amount received by the taxpayer with respect to railroad rolling stock which is subject to paragraph (1).

(e) Cross reference

For treatment of interest paid by the branch of a foreign corporation, see section 884(f).

(Aug. 16, 1954, ch. 736, 68A Stat. 275; Pub. L. 86–779, § 3(b), Sept. 14, 1960, 74 Stat. 998; Pub. L. 87–834, § 9(c), Oct. 16, 1962, 76 Stat. 1001; Pub. L. 89–809, title I, § 102(a)(1)–(3), (b), (c), Nov. 13, 1966, 80 Stat. 1541–1543; Pub. L. 91–172, title IV, § 435(a), Dec. 30, 1969, 83 Stat. 625; Pub. L. 92–9, § 3(a)(2), Apr. 1, 1971, 85 Stat. 15; Pub. L. 92–178, title III, § 314(a), title V, § 503, Dec. 10, 1971, 85 Stat. 528, 550; Pub. L. 93–625, §§ 8, 9(a), Jan. 3, 1975, 88 Stat. 2116; Pub. L. 94–455, title X, §§ 1036(a), 1041, 1051(h)(3), title XIX, §§ 1901(b)(26)(A), (B), (c)(7), 1904(b)(10)(B), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1633, 1634, 1647, 1798, 1803, 1817, 1834; Pub. L. 95–30, title I, § 102(b)(9), May 23, 1977, 91 Stat. 138; Pub. L. 95–600, title III, § 370(a), title V, § 540(a), Nov. 6, 1978, 92 Stat. 2858, 2887; Pub. L. 96–499, title XI, § 1124, Dec. 5, 1980, 94 Stat. 2690; Pub. L. 96–605, title I, § 104(a), Dec. 28, 1980, 94 Stat. 3523; Pub. L. 98–21, title I, § 121(d), Apr. 20, 1983, 97 Stat. 83; Pub. L. 99–514, title I, § 104(b)(11), title XII, §§ 1211(b)(1)(B), 1212(d), 1214(a), (b), (c)(5), 1241(b), Oct. 22, 1986, 100 Stat. 2105, 2536, 2539, 2541–2543, 2579; Pub. L. 100–203, title X, § 10221(d)(4), Dec. 22, 1987, 101 Stat. 1330–409; Pub. L. 100–647, title I, §§ 1012(g)(3), (i)(10), (14)(B), (q)(7), (9), (15), 1018(u)(39), Nov. 10, 1988, 102 Stat. 3501, 3509, 3510, 3524, 3525, 3592; Pub. L. 101–239, title VII, §§ 7811(i)(2), 7841(d)(9), Dec. 19, 1989, 103 Stat. 2409, 2428; Pub. L. 101–508, title XI, §§ 11801(a)(29), (c)(6)(C), (14), 11813(b)(17), Nov. 5, 1990, 104 Stat. 1388–521, 1388–524, 1388–527, 1388–555; Pub. L. 104–188, title I, § 1702(h)(9), Aug. 20, 1996, 110 Stat. 1874; Pub. L. 105–34, title XI, § 1174(a)(1), Aug. 5, 1997, 111 Stat. 989; Pub. L. 107–16, title VI, § 621(a), June 7, 2001, 115 Stat. 111; Pub. L. 108–357, title IV, § 410(a), Oct. 22, 2004, 118 Stat. 1500; Pub. L. 111–226, title II, § 217(a), (c)(1), Aug. 10, 2010, 124 Stat. 2400, 2402; Pub. L. 111–240, title II, § 2122(a), Sept. 27, 2010, 124 Stat. 2567; Pub. L. 115–97, title I, § 13002(e), Dec. 22, 2017, 131 Stat. 2100.)

AMENDMENTS

2017—Subsec. (a)(2). Pub. L. 115–97, § 13002(e)(2), substituted ''100/65th'' for ''100/80th'' and ''100/50th'' for ''100/70th'' in concluding provisions.

Subsec. (a)(2)(B). Pub. L. 115–97, §13002(e)(1), substituted ''100/50th'' for ''100/70th''.

2010—Subsec. (a)(1). Pub. L. 111–226, §217(a), redesignated subpars. (B) and (C) as (A) and (B), respectively, and struck out former subpar. (A) which read as follows: ''interest from a resident alien individual or domestic corporation, if such individual or corporation meets the 80-percent foreign business requirements of subsection (c)(1),''.

Subsec. (a)(9). Pub. L. 111–240 added par. (9).

Subsecs. (c) to (f). Pub. L. 111–226, §217(c)(1), redesignated subsecs. (d) to (f) as (c) to (e), respectively, and struck out former subsec. (c) which related to foreign business requirements.

2004—Subsec. (a)(1)(C). Pub. L. 108–357 added subpar. (C).

2001—Subsec. (a)(3). Pub. L. 107–16 struck out ''except for purposes of sections 79 and 105 and subchapter D,'' after ''In addition,'' in concluding provisions.

1997—Subsec. (a)(3). Pub. L. 105–34 inserted concluding provisions ''In addition, except for purposes of sections 79 and 105 and subchapter D, compensation for labor or services performed in the United States shall not be deemed to be income from sources within the United States if the labor or services are performed by a nonresident alien individual in connection with the individual's temporary presence in the United States as a regular member of the crew of a foreign vessel engaged in transportation between the United States and a foreign country or a possession of the United States.''

1996—Subsec. (e)(1)(A). Pub. L. 104–188 provided that the amendment made by section 11813(b)(17) of Pub. L. 101–508 shall be applied as if the material stricken by such amendment included the closing parenthesis after ''section 48(a)(5)''. See 1990 Amendment note below.

1990—Subsec. (a)(1)(A), (B). Pub. L. 101–508, §11801(a)(29), (c)(14), inserted ''and'' at end of subpar. (A), substituted a period for a comma at end of subpar. (B), and struck out subpars. (C) and (D) which read as follows:

''(C) interest on a debt obligation which was part of an issue with respect to which an election has been made under subsection (c) of section 4912 (as in effect before July 1, 1974) and which, when issued (or treated as issued under subsection (c)(2) of such section), had a maturity not exceeding 15 years and, when issued, was purchased by one or more underwriters with a view to distribution through resale, but only with respect to interest attributable to periods after the date of such election, and

''(D) interest on a debt obligation which was part of an issue which—

''(i) was part of an issue outstanding on April 1, 1971,

''(ii) was guaranteed by a United States person,

''(iii) was treated under chapter 41 as a debt obligation of a foreign obligor,

''(iv) as of June 30, 1974, had a maturity of not more than 15 years, and

''(v) when issued, was purchased by one or more underwriters for the purpose of distribution through resale.''

Subsec. (e)(1)(A). Pub. L. 101–508, §11813(b)(17), which directed the substitution of ''which is section 1245 property (as defined in section 1245(a)(3))'' for ''which is section 38 property (or would be section 38 property but for section 48(a)(5)'', was executed by making the substitution for ''which is section 38 property (or would be section 38 property but for section 48(a)(5))''. See 1996 Amendment note above.

Subsec. (e)(2). Pub. L. 101–508, §11801(c)(6)(C), substituted ''all of whose stock is owned by one or more domestic common carriers by railroad'' for ''referred to in subparagraph (B) of section 184(d)(1)''.

1989—Subsec. (a)(6). Pub. L. 101–239, §7811(i)(2), substituted ''865(i)(1)'' for ''865(h)(1)''.

Subsec. (e)(1). Pub. L. 101–239, §7841(d)(9), substituted ''section 862(a)'' for ''section 826(a)'' in introductory provisions.

1988—Subsec. (a)(2)(B). Pub. L. 100–647, §1012(q)(7), substituted ''other than income described in section 884(d)(2)'' for ''other than under section 884(d)(2)'' in two places.

Subsec. (a)(2)(C). Pub. L. 100–647, §1012(q)(15), substituted ''section 243(e)'' for ''section 243(d)''.

Subsec. (a)(6). Pub. L. 100–647, §1018(u)(39), substituted ''inventory property'' for ''personal property'' in heading.

Subsec. (a)(7). Pub. L. 100–647, §1012(i)(10), amended par. (7) generally. Prior to amendment, par. (7) read as follows: ''Amounts received as underwriting income (as defined in section 832(b)(3)) derived from the insurance of United States risks (as defined in section 953(a)).''

Subsec. (c)(1)(B). Pub. L. 100–647, §1012(g)(3), inserted ''or, in the case of a corporation, is attributable to income so derived by a subsidiary of such corporation'' after parenthetical in cl. (i), struck out ''or chain of subsidiaries of such corporation'' after ''by a subsidiary'' in cl. (ii), and inserted sentence at end defining ''subsidiary''.

Subsec. (c)(2)(B)(ii). Pub. L. 100–647, §1012(i)(14)(B), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''such section shall be applied by substituting '10 percent' for '50 percent' each place it appears.''

Subsec. (f). Pub. L. 100–647, §1012(g)(9), added subsec. (f).

1987—Subsec. (a)(2). Pub. L. 100–203, §10221(d)(4)(B), inserted at end ''In the case of any dividend from a 20-percent owned corporation (as defined in section 243(c)(2)), subparagraph (B) shall be applied by substituting '100/80th' for '100/70th'.''

Subsec. (a)(2)(B). Pub. L. 100–203, §10221(d)(4)(A), which directed that subpar. (B) be amended by substituting ''100/70th'' for ''100/85th'', was executed by substituting ''100/70th'' for ''100/85ths'' to reflect the probable intent of Congress.

1986—Subsec. (a)(1). Pub. L. 99–514, §1241(b)(1)(A), substituted ''noncorporate residents or domestic corporations'' for ''residents, corporate or otherwise,'' in introductory text.

Subsec. (a)(1)(A). Pub. L. 99–514, §1214(a)(1), (c)(5)(A), amended subpar. (B) generally and redesignated it as (A). Prior to amendment and redesignation, former subpar. (B) read as follows: ''interest received from a resident alien individual or a domestic corporation, when it is shown to the satisfaction of the Secretary that less than 20 percent of the gross income from all sources of such individual or such corporation has been derived from sources within the United States, as determined under the provisions of this part, for the 3-year period ending with the close of the taxable year of such individual or such corporation preceding the payment of such interest, or for such part of such period as may be applicable,''. Former subpar. (A), which read ''interest on amounts described in subsection (c) received by a nonresident alien individual or a foreign corporation, if such interest is not effectively connected with the conduct of a trade or business within the United States,'', was struck out.

Subsec. (a)(1)(B). Pub. L. 99–514, §1241(b)(1)(B), redesignated subpar. (D), as previously redesignated and amended by §1214(c)(5)(A), (B) of Pub. L. 99–514, as (B) and struck out former subpar. (B) [previously (C)] which read as follows: ''interest received from a foreign corporation (other than interest paid or credited by a domestic branch of a foreign corporation, if such branch is engaged in the commercial banking business), when it is shown to the satisfaction of the Secretary that less than 50 percent of the gross income from all sources of such foreign corporation for the 3-year period ending with the close of its taxable year preceding the payment of such interest (or for such part of such period as the corporation has been in existence) was effectively connected with the conduct of a trade or business within the United States,''.

Pub. L. 99–514, §1214(c)(5)(A), (B), redesignated former subpar. (F) as (D), substituted in cl. (ii), ''subparagraph (B) of section 871(i)(3)'' for ''paragraph (2) of subsection (c)'', and redesignated former subpar. (C) as (B). Former subpar. (B) redesignated (A).

Subsec. (a)(1)(C). Pub. L. 99–514, § 1241(b)(1)(B), redesignated subpar. (E), as previously redesignated by § 1214(c)(5)(A) of Pub. L. 99–514, as (C) and struck out former subpar. (C) [previously (D)] which read as follows: ''in the case of interest received from a foreign corporation (other than interest paid or credited by a domestic branch of a foreign corporation, if such branch is engaged in the commercial banking business), 50 percent or more of the gross income of which from all sources for the 3-year period ending with the close of its taxable year preceding the payment of such interest (or for such part of such period as the corporation has been in existence) was effectively connected with the conduct of a trade or business within the United States, an amount of such interest which bears the same ratio to such interest as the gross income of such foreign corporation for such period which was not effectively connected with the conduct of a trade or business within the United States bears to its gross income from all sources,''.

Pub. L. 99–514, § 1214(c)(5)(A), redesignated subpar. (D) as (C). Former subpar. (C) redesignated (B).

Subsec. (a)(1)(D). Pub. L. 99–514, § 1214(c)(5)(A), redesignated subpar. (H) as (F). Pub. L. 99–514, § 1241(b)(1)(B), then redesignated such subpar. (F) as (D). The original subpar. (D) was redesignated (C) and struck out, and the original subpar. (F) was redesignated (D), then (B).

Subsec. (a)(1)(E). Pub. L. 99–514, § 1241(b)(1)(B), redesignated subpar. (E), as previously redesignated by § 1214(c)(5)(A) of Pub. L. 99–514, as (C).

Pub. L. 99–514, § 1214(c)(5)(A), redesignated subpar. (G) as (E) and struck out former subpar. (E) which read as follows: ''income derived by a foreign central bank of issue from bankers' acceptances,''.

Subsec. (a)(1)(F). Pub. L. 99–514, §§ 1214(c)(5)(A), 1241(b)(1)(B), redesignated successively former subpar. (F) as (D) and (B), respectively.

Subsec. (a)(1)(G). Pub. L. 99–514, §§ 1214(c)(5)(A), 1241(b)(1)(B), redesignated successively former subpar. (G) as (E) and (C), respectively.

Subsec. (a)(1)(H). Pub. L. 99–514, §§ 1214(c)(5)(A), 1241(b)(1)(B), redesignated successively former subpar. (H) as (F) and (D), respectively.

Subsec. (a)(2)(A). Pub. L. 99–514, § 1214(b), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''from a domestic corporation other than a corporation which has an election in effect under section 936, and other than a corporation less than 20 percent of whose gross income is shown to the satisfaction of the Secretary to have been derived from sources within the United States, as determined under the provisions of this part, for the 3-year period ending with the close of the taxable year of such corporation preceding the declaration of such dividends (or for such part of such period as the corporation has been in existence), or''.

Subsec. (a)(2)(B). Pub. L. 99–514, § 1241(b)(2), substituted ''25 percent'' for ''50 percent'' and inserted ''(or treated as effectively connected other than under section 884(d)(2))'' in two places.

Subsec. (a)(6). Pub. L. 99–514, § 1211(b)(1)(B), substituted ''inventory property (within the meaning of section 865(h)(1))'' for ''personal property''.

Subsec. (b). Pub. L. 99–514, § 104(b)(11), substituted ''the standard deduction'' for ''the zero bracket amount''.

Subsec. (c). Pub. L. 99–514, § 1214(a)(2), amended subsec. (c) generally, substituting provisions relating to foreign business requirements for provisions relating to interest on deposits.

Subsec. (d). Pub. L. 99–514, § 1214(c)(5)(C), amended subsec. (d) generally, substituting provision for special rule for application of subsec. (a)(2)(B) for former provision for special rules for application of subsec. (a), pars. (1)(B) to (1)(D) and (2)(B), pars. (1) and (2) thereof relating to new entities and transition rule provisions.

Subsecs. (e), (f). Pub. L. 99–514, § 1212(d), redesignated subsec. (f) as (e) and struck out former subsec. (e) relating to treatment of income from certain leased aircraft, vessels, and spacecraft as income from sources within the United States.

1983—Subsec. (a)(8). Pub. L. 98–21 added par. (8).

1980—Subsec. (a)(5). Pub. L. 96–499 substituted ''Disposition of United States real property interest'' for ''Sale or exchange of real property'' in heading and ''disposition of a United States real property interest (as defined in section 897(c))'' for ''sale or exchange of real property located in the United States'' in text.

Subsec. (e). Pub. L. 96–605 substituted provision directing that income from certain leased aircraft, vessels, and spacecraft be treated as income from sources within the United States for provision permitting the taxpayer to elect to treat income from certain aircraft and vessels as income from sources within the United States and prescribing the manner of revocating such an election.

1978—Subsec. (a)(1)(F). Pub. L. 95–600, § 540(a), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (f). Pub. L. 95–600, § 370(a), added subsec. (f).

1977—Subsec. (b). Pub. L. 95–30 provided that, in the case of an individual who does not itemize deductions, an amount equal to the zero bracket amount shall be considered a deduction which cannot definitely be allocated to some item or class of gross income.

1976—Subsec. (a)(1). Pub. L. 94–455, §§ 1901(c)(7), 1904(b)(10)(B), struck out '', any Territory, any political subdivision of a Territory,'' after ''United States'' in provisions preceding subpar. (A) and, in subpar. (G), substituted ''subsection (c) of section 4912 (as in effect before July 1, 1974)'' for ''section 4912(c)'' and ''subsection (c)(2) of such section'' for ''section 4912(c)(2)''.

Subsec. (a)(2)(A). Pub. L. 94–455, §§ 1051(h)(3), 1906(b)(13)(A), substituted ''other than a corporation which has an election in effect under section 936'' for ''other than a corporation entitled to the benefits of section 931'' and struck out ''or his delegate'' after ''Secretary''.

Subsec. (a)(2)(D). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (a)(5), (6). Pub. L. 94–455, § 1901(b)(26)(A), substituted ''sale or exchange'' for ''sale'' in headings and text.

Subsec. (a)(7). Pub. L. 94–455, § 1036(a), added par. (7).

Subsec. (c)(3). Pub. L. 94–455, § 1041, struck out provision that subsecs. (a)(1)(A) and (c) would cease to apply effective with respect to amounts paid or credited after Dec. 31, 1976.

Subsec. (e)(1). Pub. L. 94–455, § 1901(b)(26)(B), substituted ''sale, exchange, or other disposition'' for ''sale or other disposition''.

Subsecs. (e)(2), (3). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

1975—Subsec. (a)(1)(H). Pub. L. 93–625, § 9(a), added subpar. (H).

Subsec. (c)(3). Pub. L. 93–625, § 8, substituted ''1976'' for ''1975''.

1971—Subsec. (a)(1)(G). Pub. L. 92–9 added subpar. (G).

Subsec. (a)(2)(D). Pub. L. 92–178, § 503, added subpar. (D).

Subsec. (e). Pub. L. 92–178, § 314(a), added subsec. (e).

1969—Subsec. (a)(1)(C), (D). Pub. L. 91–172, § 435(a)(1), struck out ''after December 31, 1972,'' after ''interest paid or credited'' in parenthetical after ''interest received from a foreign corporation''.

Subsec. (c)(3). Pub. L. 91–172, § 435(a)(2), substituted ''1975'' for ''1972''.

1966—Subsec. (a)(1)(A). Pub. L. 89–809, § 102(a)(1)(A), substituted ''interest on amounts described in subsection (c) received by a nonresident alien individual or a foreign corporation, if such interest is not effectively connected with the conduct of a trade or business within the United States'' for ''interest on deposits with persons carrying on the banking business paid to persons not engaged in business within the United States''.

Subsec. (a)(1)(B). Pub. L. 89–809, § 102(a)(2), struck out interest received from a resident foreign corporation, and substituted ''gross income from all sources of such individual or such corporation'' for ''gross income of such resident payor or domestic corporation'', and ''taxable year of such individual or such corporation'' for ''taxable year of such payor''.

Subsec. (a)(1)(C) to (F). Pub. L. 89–809, §102(a)(2), added subpars. (C), (D), and (F), and redesignated former subpar. (C) as (E).

Subsec. (a)(2)(B). Pub. L. 89–809, §102(b), substituted ''50 percent of the gross income from all sources'' for ''50 percent of the gross income'', ''effectively connected with the conduct of a trade or business within the United States'' for ''derived from sources within the United States as determined from the provisions of this part'', and ''ratio to such dividends as the gross income of the corporation for such period which was effectively connected with the conduct of a trade or business within the United States bears to its gross income from all sources'' for ''ratio to such dividends as the gross income of the corporation for such period derived from sources within the United States bears to its gross income from all sources'' and inserted ''(other than dividends for which a deduction is allowable under section 245(b))'' after ''dividends'' and ''(and only to the extent)'' after ''extent''.

Subsec. (a)(3)(C)(ii). Pub. L. 89–809, §102(c), inserted ''an individual who is a citizen or resident of the United States, a domestic partnership, or'' before ''a domestic corporation'' and ''individual, partnership, or'' after ''United States by such''.

Subsecs. (c), (d). Pub. L. 89–809, §102(a)(1)(B), (3), added subsecs. (c) and (d).

1962—Subsec. (a)(2)(B). Pub. L. 87–834 substituted ''to the extent exceeding the amount which is 100/85ths of the amount of the deduction allowable under section 245 in respect of such dividends'' for ''to the extent exceeding the amount of the deduction allowable under section 245 in respect of such dividends.''

1960—Subsec. (a)(2)(C). Pub. L. 86–779 added subpar. (C).

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–97 applicable to taxable years beginning after Dec. 31, 2017, see section 13002(f) of Pub. L. 115–97, set out as a note under section 243 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–240, title II, §2122(d), Sept. 27, 2010, 124 Stat. 2568, provided that: ''The amendments made by this section [amending this section and sections 862 and 864 of this title] shall apply to guarantees issued after the date of the enactment of this Act [Sept. 27, 2010].''

Pub. L. 111–226, title II, §217(d), Aug. 10, 2010, 124 Stat. 2402, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 871, 904, and 2104 of this title] shall apply to taxable years beginning after December 31, 2010.

''(2) GRANDFATHER RULE FOR OUTSTANDING DEBT OBLIGATIONS.—

''(A) IN GENERAL.—The amendments made by this section shall not apply to payments of interest on obligations issued before the date of the enactment of this Act [Aug. 10, 2010].

''(B) EXCEPTION FOR RELATED PARTY DEBT.—Subparagraph (A) shall not apply to any interest which is payable to a related person (determined under rules similar to the rules of section 954(d)(3)).

''(C) SIGNIFICANT MODIFICATIONS TREATED AS NEW ISSUES.—For purposes of subparagraph (A), a significant modification of the terms of any obligation (including any extension of the term of such obligation) shall be treated as a new issue.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title IV, §410(b), Oct. 22, 2004, 118 Stat. 1500, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2003.''

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title VI, §621(b), June 7, 2001, 115 Stat. 111, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to remuneration for services performed in plan years beginning after December 31, 2001.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to remuneration for services performed in taxable years beginning after Dec. 31, 1997, see section 1174(c) of Pub. L. 105–34, set out as a note under section 7701 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11813(b)(17) of Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7811(i)(2) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to dividends received or accrued after Dec. 31, 1987, in taxable years ending after such date, see section 10221(e)(1) of Pub. L. 100–203, set out as a note under section 243 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(b)(11) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 1211(b)(1)(B) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, except as otherwise provided, see section 1211(c) of Pub. L. 99–514, set out as an Effective Date note under section 865 of this title.

Amendment by section 1212(d) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with special rules for certain leased property and for certain ships leased by United States Navy, see section 1212(f) of Pub. L. 99–514, set out as a note under section 863 of this title.

Pub. L. 99–514, title XII, §1214(d), Oct. 22, 1986, 100 Stat. 2543, as amended by Pub. L. 100–647, title I, §1012(g)(1)(A), (2), Nov. 10, 1988, 102 Stat. 3500, 3501, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 871, 881, 1441, and 6049 of this title] shall apply to payments made in a taxable year of the payor beginning after December 31, 1986.

''(2) TREATMENT OF CERTAIN INTEREST.—

''(A) IN GENERAL.—The amendments made by this section shall not apply to any interest paid or ac-

crued on any obligation outstanding on December 31, 1985. The preceding sentence shall not apply to any interest paid pursuant to any extension or renewal of such an obligation agreed to after December 31, 1985.

''(B) SPECIAL RULE FOR RELATED PAYEE.—If the payee of any interest to which subparagraph (A) applies is related (within the meaning of section 904(d)(2)(H) of the Internal Revenue Code of 1986) to the payor, such interest shall be treated for purposes of section 904 of such Code as if the payor were a controlled foreign corporation (within the meaning of section 957(a) of such Code).

''(3) TRANSITIONAL RULE.—

''(A) YEARS BEFORE 1988.—In applying the amendments made by this section to any payment made by a corporation in a taxable year of such corporation beginning before January 1, 1988, the requirements of clause (ii) of [former] section 861(c)(1)(B) of the Internal Revenue Code of 1986 (relating to active business requirements), as amended by this section, shall not apply to gross income of such corporation for taxable years beginning before January 1, 1987.

''(B) YEARS AFTER 1987.—In applying the amendments made by this section to any payment made by a corporation in a taxable year of such corporation beginning after December 31, 1987, the testing period for purposes of [former] section 861(c) of such Code (as so amended) shall not include any taxable year beginning before January 1, 1987.

''(4) CERTAIN DIVIDENDS.—

''(A) IN GENERAL.—The amendments made by this section shall not apply to any dividend paid before January 1, 1991, by a qualified corporation with respect to stock which was outstanding on May 31, 1985.

''(B) QUALIFIED CORPORATION.—For purposes of subparagraph (A), the term 'qualified corporation' means any business systems corporation which—

''(i) was incorporated in Delaware in February, 1979,

''(ii) is headquartered in Garden City, New York, and

''(iii) the parent corporation of which is a resident of Sweden.''

[Pub. L. 100–647, title I, §1012(g)(1)(B), Nov. 10, 1988, 102 Stat. 3500, provided that: ''A taxpayer may elect not to have the amendment made by subparagraph (A) [amending section 1214(d)(1) of Pub. L. 99–514, set out above] apply and to have section 1214(d)(1) of the Reform Act [section 1214(d)(1) of Pub. L. 99–514, set out above] apply as in effect before such amendment. Such election shall be made at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe.'']

Amendment by section 1241(b) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1241(e) of Pub. L. 99–514, set out as an Effective Date note under section 884 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable to benefits received after Dec. 31, 1983, in taxable years ending after such date, except for any portion of a lump-sum payment of social security benefits received after Dec. 31, 1983, if the generally applicable payment date for such portion was before Jan. 1, 1984, see section 121(g) of Pub. L. 98–21, set out as an Effective Date note under section 86 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–605, title I, §104(b), Dec. 28, 1980, 94 Stat. 3523, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to property first leased after the date of the enactment of this Act [Dec. 28, 1980].''

Amendment by Pub. L. 96–499 applicable to dispositions after June 18, 1980, see section 1125(a) of Pub. L. 96–499, set out as an Effective Date note under section 897 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title III, §370(b), Nov. 6, 1978, 92 Stat. 2858, provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to all railroad rolling stock placed in service with respect to the taxpayer after the date of the enactment of this Act [Nov. 6, 1978].

''(2) ELECTION TO EXTEND SECTION 861(f) [now 861(e)] TO RAILROAD ROLLING STOCK PLACED IN SERVICE BEFORE DATE OF ENACTMENT.

''(A) IN GENERAL.—At the election of the taxpayer, the amendment made by subsection (a) shall also apply, for taxable years beginning after the date of the enactment of this Act, to all railroad rolling stock placed in service with respect to the taxpayer on or before such date of enactment. Such an election may not be revoked except with the consent of the Secretary of the Treasury or his delegate.

''(B) MANNER AND TIME OF ELECTION AND REVOCATION.—An election under subparagraph (A), and any revocation of such an election, shall be made in such manner and at such time as the Secretary of the Treasury or his delegate may by regulations prescribe.''

Pub. L. 95–600, title V, §540(b), Nov. 6, 1978, 92 Stat. 2887, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Nov. 6, 1978].''

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title I, §1036(c), Oct. 4, 1976, 90 Stat. 1633, provided that: ''The amendments made by this section [amending this section and section 862 of this title] shall apply to taxable years beginning after December 31, 1976.''

For effective date of amendment by section 1051(h)(3) of Pub. L. 94–455, see section 1051(i)(1) of Pub. L. 94–455, set out as a note under section 27 of this title.

Amendment by section 1901(b)(26)(A), (B), (c)(7) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 1904(b)(10)(B) of Pub. L. 94–455 effective on first day of first month which begins more than 90 days after date of enactment of this Act [Oct. 4, 1976], see section 1904(d) of Pub. L. 94–455, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 93–625, §9(c), Jan. 3, 1975, 88 Stat. 2116, provided that: ''The amendment made by subsection (a) [amending this section] applies to interest paid after the date of enactment of this Act [Jan. 3, 1975], and the amendment made by subsection (b) [amending section 2104 of this title] applies with respect to estates of decedents dying after such date.''

EFFECTIVE DATE OF 1971 AMENDMENTS

Pub. L. 92–9, §3(a)(3), Apr. 1, 1971, 85 Stat. 15, provided that: ''The amendments made by this subsection [amending this section and section 4912 of this title] shall take effect on the date of the enactment of this Act [Apr. 1, 1971].''

Pub. L. 92–178, title III, §314(c), Dec. 10, 1971, 85 Stat. 528, provided that: ''The amendments made by this section [amending this section and section 862 of this title] shall apply to taxable years ending after August 15, 1971, but only with respect to leases entered into after such date.''

Amendment by section 503 of Pub. L. 92–178 applicable with respect to taxable years ending after Dec. 31, 1971, except that a corporation may not be a DISC for any taxable year beginning before Jan. 1, 1972, see section 507 of Pub. L. 92–178, set out as an Effective Date note under section 991 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title IV, §435(a)(1), Dec. 30, 1969, 83 Stat. 625, provided that the amendment made by that section is effective with respect to amounts paid or credited after Dec. 31, 1969.

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89–809, title I, §102(e), Nov. 13, 1966, 80 Stat. 1547, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) The amendments made by subsections (a), (c), and (d) [amending this section and sections 864 and 895 of this title] shall apply with respect to taxable years beginning after December 31, 1966; except that in applying section 864(c)(4)(B)(iii) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (d)) with respect to a binding contract entered into on or before February 24, 1966, activities in the United States on or before such date in negotiating or carrying out such contract shall not be taken into account.

''(2) The amendments made by subsection (b) [amending this section] shall apply with respect to amounts received after December 31, 1966.''

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable in respect of any distribution received by a domestic corporation after Dec. 31, 1964, and in respect of any distribution received by a domestic corporation before Jan. 1, 1965, in a taxable year of such corporation beginning after Dec. 31, 1962, but only to the extent that such distribution is made out of the accumulated profits of a foreign corporation for a taxable year (of such foreign corporation) beginning after Dec. 31, 1962, see section 9(e) of Pub. L. 87–834, set out as an Effective Date note under section 78 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–779 applicable to dividends received after Dec. 31, 1959, in taxable years ending after such date, see section 3(c) of Pub. L. 86–779, set out as a note under section 243 of this title.

SHORT TITLE OF 1971 AMENDMENT

Pub. L. 92–9, §1(a), Apr. 1, 1971, 85 Stat. 13, provided that: ''This Act [amending this section and sections 4911, 4912, 4914 to 4916, 4919 to 4921, 6651, 6680, and 6681 of this title and enacting provisions set out as notes under this section and sections 6680 and 6681 of this title] may be cited as the 'Interest Equalization Tax Extension Act of 1971'.''

SHORT TITLE OF 1966 AMENDMENT

Pub. L. 89–809, title I, §101, Nov. 13, 1966, 80 Stat. 1541, provided that: ''This title [enacting sections 877, 896, 906, 981, 2107, 2108, and 6683 of this title, amending this section and sections 1, 11, 116, 154, 245, 301, 512, 542, 543, 545, 819, 821, 822, 831, 832, 841, 842, 864, 871, 872, 873, 874, 875, 881, 882, 884, 894, 895, 901, 904, 911, 931, 932, 952, 953, 1248, 1249, 1441, 1442, 1461, 2014, 2101, 2102, 2104, 2105, 2106, 2501, 2511, 3401, 6015, 6016, 6018, 6501, 6513, and 7701 of this title, redesignating former section 877 as 878, repealing section 1493, and enacting provisions set out as notes under this section and sections 11, 871, 874, 894, 901, 904, 931, 2101, 2501, and 6501 of this title] may be cited as the 'Foreign Investors Tax Act of 1966'.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

DIVIDENDS RECEIVED OR ACCRUED DURING 1987

Subsec. (a)(2)(B) of this section to be applied by substituting ''100/80ths'' for the fraction specified therein with regard to dividends received or accrued during 1987, see section 1006(b)(1)(B) of Pub. L. 100–647 set out as a note under section 245 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

Pub. L. 100–647, title I, §1012(aa)(2)–(4), Nov. 10, 1988, 102 Stat. 3531, 3532, provided that:

''(2) CERTAIN AMENDMENTS TO APPLY NOTWITHSTANDING TREATIES.—The following amendments made by the Reform Act [Pub. L. 99–514] shall apply notwithstanding any treaty obligation of the United States in effect on the date of the enactment of the Reform Act [Oct. 22, 1986]:

''(A) The amendments made by section 1201 of the Reform Act [amending sections 864, 904, and 954 of this title].

''(B) The amendments made by title VII of the Reform Act [enacting sections 53 and 55 to 59 of this title and amending sections 5, 12, 26, 28, 29, 38, 48, 173, 174, 263, 381, 443, 703, 882, 897, 904, 936, 1016, 1363, 1366, 1561, 6154, 6425, and 6655 of this title] to the extent such amendments relate to the alternative minimum tax foreign tax credit.

''(3) CERTAIN AMENDMENTS NOT TO APPLY TO THE EXTENT INCONSISTENT WITH TREATIES.—The following amendments made by the Reform Act [Pub. L. 99–514] shall not apply to the extent the application of such amendments would be contrary to any treaty obligation of the United States in effect on the date of the enactment of the Reform Act [Oct. 22, 1986]:

''(A) The amendments made by section 1211 of the Reform Act [enacting section 865 of this title and amending this section and sections 862 to 864, 871, 881, and 904 of this title] to the extent—

''(i) such amendments apply in the case of an individual treated as a resident of a foreign country under a treaty obligation of the United States as so in effect, or

''(ii) such amendments relate to income of a nonresident from the sale or exchange of inventory property which would otherwise be sourced under section 865(e)(2) of the 1986 Code.

''(B) The amendments made by section 1212(a) of the Reform Act [amending section 863 of this title]; except for purposes of determining the amount of the foreign tax credit.

''(C) The amendments made by subsections (b) and (c) of section 1212 of the Reform Act [enacting section 887 of this title and amending sections 872 and 883 of this title].

''(D) The amendments made by section 1214 of the Reform Act [amending this section and sections 871, 881, 1441, and 6049 of this title]; except for purposes of determining the amount of the foreign tax credit.

''(E) The amendment made by section 1241(a) of the Reform Act [enacting section 884 of this title and renumbering former section 884 as 885] to the extent that, under a treaty obligation of the United States, interest described in section 884(f)(1)(A) of the 1986 Code (as added by such amendment) which is in excess of amounts deducted would be treated as other than United States source.

''(F) The amendment made by section 1241(b)(2)(A) of the Reform Act [amending this section].

''(G) The amendment made by section 1241(a) of the Reform Act [enacting section 884 of this title and renumbering former section 884 as 885] to the extent such amendment relates to section 884(f)(1)(B) of the 1986 Code.

''(H) The amendments made by section 1242 of the Reform Act [amending section 864 of this title] to the extent they relate to paragraph (7) of section 864(c) of the 1986 Code.

''(I) The amendment made by section 1247(a) of the Reform Act [amending section 892 of this title].

''(J) The amendments made by section 123 of the Reform Act [amending sections 74, 117, 1441, and 7871 of this title].

''(4) TREATMENT OF TECHNICAL CORRECTIONS.—For purposes of paragraphs (2) and (3), any amendment made by this title [see Tables for classification] shall be treated as if it had been included in the provision of the Reform Act [Pub. L. 99–514] to which such amendment relates.''

QUALIFIED RESEARCH AND EXPERIMENTAL EXPENDITURES; ALLOCATION AND APPORTIONMENT; DEFINITIONS; SPECIAL RULES; EFFECTIVE DATES

Pub. L. 100–647, title IV, § 4009, Nov. 10, 1988, 102 Stat. 3653, provided that:

''(a) GENERAL RULE.—For purposes of sections 861(b), 862(b), and 863(b) of the 1986 Code, qualified research and experimental expenditures shall be allocated and apportioned as follows:

''(1) Any qualified research and experimental expenditures expended solely to meet legal requirements imposed by a political entity with respect to the improvement or marketing of specific products or processes for purposes not reasonably expected to generate gross income (beyond de minimis amounts) outside the jurisdiction of the political entity shall be allocated only to gross income from sources within such jurisdiction.

''(2) In the case of any qualified research and experimental expenditures (not allocated under paragraph (1)) to the extent—

''(A) that such expenditures are attributable to activities conducted in the United States, 64 percent of such expenditures shall be allocated and apportioned to income from sources within the United States and deducted from such income in determining the amount of taxable income from sources within the United States, and

''(B) that such expenditures are attributable to activities conducted outside the United States, 64 percent of such expenditures shall be allocated and apportioned to income from sources outside the United States and deducted from such income in determining the amount of taxable income from sources outside the United States.

''(3) The remaining portion of qualified research and experimental expenditures (not allocated under paragraphs (1) and (2)) shall be apportioned, at the annual election of the taxpayer, on the basis of gross sales or gross income, except that, if the taxpayer elects to apportion on the basis of gross income, the amount apportioned to income from sources outside the United States shall be at least 30 percent of the amount which would be so apportioned on the basis of gross sales.

''(b) QUALIFIED RESEARCH AND EXPERIMENTAL EXPENDITURES.—For purposes of this section, the term 'qualified research and experimental expenditures' means amounts which are research and experimental expenditures within the meaning of section 174 of the 1986 Code. For purposes of this subsection, rules similar to the rules of [former] subsection (c) of section 174 of the 1986 Code shall apply.

''(c) SPECIAL RULES FOR EXPENDITURES ATTRIBUTABLE TO ACTIVITIES CONDUCTED IN SPACE, ETC.—

''(1) IN GENERAL.—Any qualified research and experimental expenditures described in paragraph (2)—

''(A) if incurred by a United States person, shall be allocated and apportioned under this section in the same manner as if they were attributable to activities conducted in the United States, and

''(B) if incurred by a person other than a United States person, shall be allocated and apportioned under this section in the same manner as if they were attributable to activities conducted outside the United States.

''(2) DESCRIPTION OF EXPENDITURES.—For purposes of paragraph (1), qualified research and experimental expenditures are described in this paragraph if such expenditures are attributable to activities conducted—

''(A) in space,

''(B) on or under water not within the jurisdiction (as recognized by the United States) of a foreign country, possession of the United States, or the United States, or

''(C) in Antarctica.

''(d) AFFILIATED GROUP.—

''(1) Except as provided in paragraph (2), the allocation and apportionment required by subsection (a) shall be determined as if all members of the affiliated group (as defined in subsection (e)(5) of section 864 of the 1986 Code) were a single corporation.

''(2) For purposes of the allocation and apportionment required by subsection (a)—

''(A) sales and gross income from products produced in whole or in part in a possession by an electing corporation (within the meaning of section 936(h)(5)(E) of the 1986 Code); and

''(B) dividends from an electing corporation,

shall not be taken into account, except that this paragraph shall not apply to sales of (and gross income and dividends attributable to sales of) products with respect to which an election under section 936(h)(5)(F) of the 1986 Code is not in effect.

''(3) The qualified research and experimental expenditures taken into account for purposes of subsection (a) shall be adjusted to reflect the amount of such expenditures included in computing the cost-sharing amount (determined under section 936(h)(5)(C)(i)(I) of the 1986 Code).

''(4) The Secretary of the Treasury or his delegate may prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations providing for the source of gross income and the allocation and apportionment of deductions to take into account the adjustments required by paragraph (3).

''(5) Paragraph (6) of section 864(e) of the 1986 Code shall not apply to qualified research and experimental expenditures.

''(e) YEARS TO WHICH SECTION APPLIES.—

''(1) IN GENERAL.—Except as provided in this subsection, this section shall apply to the taxpayer's 1st taxable year beginning after August 1, 1987.

''(2) REDUCTION IN AMOUNTS TO WHICH SECTION APPLIES.—Notwithstanding paragraph (1), this section shall only apply to that portion of the qualified research and experimental expenditures for the taxable year referred to in paragraph (1) which bears the same ratio to the total amount of such expenditures as—

''(A) the lesser of 4 months or the number of months in the taxable year, bears to

''(B) the number of months in the taxable year.''

1-YEAR MODIFICATION IN REGULATIONS PROVIDING FOR ALLOCATION OF RESEARCH AND EXPERIMENTAL EXPENDITURES

Pub. L. 99–514, title XII, § 1216, Oct. 22, 1986, 100 Stat. 2549, provided that:

''(a) GENERAL RULE.—For purposes of section 861(b), section 862(b), and section 863(b) of the Internal Revenue Code of 1954 [now 1986], notwithstanding section 864(e) of such Code—

''(1) 50 percent of all amounts allowable as a deduction for qualified research and experimental expenditures shall be apportioned to income from sources within the United States and deducted from such income in determining the amount of taxable income from sources within the United States, and

''(2) the remaining portion of such amounts shall be apportioned on the basis of gross sales or gross income.

The preceding sentence shall not apply to any expenditures described in section 1.861–8(e)(3)(i)(B) of the Income Tax Regulations.

''(b) QUALIFIED RESEARCH AND EXPERIMENTAL EXPENDITURES.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified research and experimental expenditures' means amounts—

''(A) which are research and experimental expenditures within the meaning of section 174 of such Code, and

''(B) which are attributable to activities conducted in the United States.

''(2) TREATMENT OF DEPRECIATION, ETC.—Rules similar to the rules of [former] section 174(c) of such Code shall apply.

''(c) EFFECTIVE DATE.—This section shall apply to taxable years beginning after August 1, 1986, and on or before August 1, 1987.''

ALLOCATION UNDER SECTION 861 OF RESEARCH AND EXPERIMENTAL EXPENDITURES

Pub. L. 98–369, div. A, title I, §126, July 18, 1984, 98 Stat. 648, as amended by Pub. L. 99–272, title XIII, §13211, Apr. 7, 1986, 100 Stat. 324; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) IN GENERAL.—For purposes of section 861(b), section 862(b), and section 863(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], all amounts allowable as a deduction for qualified research and experimental expenditures shall be allocated to income from sources within the United States and deducted from such income in determining the amount of taxable income from sources within the United States.

''(b) QUALIFIED RESEARCH AND EXPERIMENTAL EXPENDITURES.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified research and experimental expenditures' means amounts—

''(A) which are research and experimental expenditures within the meaning of section 174 of such Code, and

''(B) which are attributable to activities conducted in the United States.

''(2) TREATMENT OF DEPRECIATION, ETC.—Rules similar to the rules of [former] subsection (c) of section 174 of such Code shall apply.

''(c) EFFECTIVE DATES.—

''(1) IN GENERAL.—This section shall apply to taxable years beginning after August 13, 1983, and on or before August 1, 1986.

''(2) SPECIAL RULE.—If the taxpayer's 4th taxable year beginning after August 13, 1981, is not described in paragraph (1), this section shall apply also to such 4th taxable year.''

CONFORMITY OF AMENDMENTS MADE BY FOREIGN INVESTORS TAX ACT OF 1966 WITH TREATY OBLIGATIONS OF THE UNITED STATES

Pub. L. 89–809, title I, §110, Nov. 13, 1966, 80 Stat. 1575, provided that: ''No amendment made by this title [see Short Title note above] shall apply in any case where its application would be contrary to any treaty obligation of the United States. For purposes of the preceding sentence, the extension of a benefit provided by any amendment made by this title shall not be deemed to be contrary to a treaty obligation of the United States.''

§ 862. Income from sources without the United States

(a) Gross income from sources without United States

The following items of gross income shall be treated as income from sources without the United States:

(1) interest other than that derived from sources within the United States as provided in section 861(a)(1);

(2) dividends other than those derived from sources within the United States as provided in section 861(a)(2);

(3) compensation for labor or personal services performed without the United States;

(4) rentals or royalties from property located without the United States or from any interest in such property, including rentals or royalties for the use of or for the privilege of using without the United States patents, copyrights, secret processes and formulas, good will, trade-marks, trade brands, franchises, and other like properties;

(5) gains, profits, and income from the sale or exchange of real property located without the United States;

(6) gains, profits, and income derived from the purchase of inventory property (within the meaning of section 865(i)(1)) within the United States and its sale or exchange without the United States;

(7) underwriting income other than that derived from sources within the United States as provided in section 861(a)(7);

(8) gains, profits, and income from the disposition of a United States real property interest (as defined in section 897(c)) when the real property is located in the Virgin Islands; and

(9) amounts received, directly or indirectly, from a foreign person for the provision of a guarantee of indebtedness of such person other than amounts which are derived from sources within the United States as provided in section 861(a)(9).

(b) Taxable income from sources without United States

From the items of gross income specified in subsection (a) there shall be deducted the expenses, losses, and other deductions properly apportioned or allocated thereto, and a ratable part of any expenses, losses, or other deductions which cannot definitely be allocated to some item or class of gross income. The remainder, if any, shall be treated in full as taxable income from sources without the United States. In the case of an individual who does not itemize deductions, an amount equal to the standard deduction shall be considered a deduction which cannot definitely be allocated to some item or class of gross income.

(Aug. 16, 1954, ch. 736, 68A Stat. 276; Pub. L. 92–178, title III, §314(b), Dec. 10, 1971, 85 Stat. 528; Pub. L. 94–455, title X, §1036(b), title XIX, §1901(b)(26)(C), Oct. 4, 1976, 90 Stat. 1633, 1798; Pub. L. 95–30, title I, §102(b)(10), May 23, 1977, 91 Stat. 138; Pub. L. 97–34, title VIII, §831(a)(2), Aug. 13, 1981, 95 Stat. 352; Pub. L. 99–514, title I, §104(b)(12), title XII, §1211(b)(1)(C), Oct. 22, 1986, 100 Stat. 2105, 2536; Pub. L. 100–647, title I, §1012(e)(4), Nov. 10, 1988, 102 Stat. 3500; Pub. L. 101–239, title VII, §7811(i)(2), Dec. 19, 1989, 103 Stat. 2409; Pub. L. 111–240, title II, §2122(b), Sept. 27, 2010, 124 Stat. 2568.)

AMENDMENTS

2010—Subsec. (a)(9). Pub. L. 111–240 added par. (9).

1989—Subsec. (a)(6). Pub. L. 101–239 substituted ''865(i)(1)'' for ''865(h)(1)''.

1988—Subsec. (c). Pub. L. 100–647 repealed subsec. (c) which read as follows:

''(c) CROSS REFERENCE.—For source of amounts attributable to certain aircraft and vessels, see section 861(e).''

1986—Subsec. (a)(6). Pub. L. 99–514, §1211(b)(1)(C), substituted ''inventory property (within the meaning of section 865(h)(1))'' for ''personal property''.

Subsec. (b). Pub. L. 99–514, §104(b)(12), substituted ''the standard deduction'' for ''the zero bracket amount''.

1981—Subsec. (a)(8). Pub. L. 97–34 added par. (8).

1977—Subsec. (b). Pub. L. 95–30 provided that, in the case of an individual who does not itemize deductions, an amount equal to the zero bracket amount shall be considered a deduction which cannot definitely be allocated to some item or class of gross income.

1976—Subsec. (a)(5), (6). Pub. L. 94–455, § 1901(b)(26)(C), inserted ''or exchange'' after ''sale''.

Subsec. (a)(7). Pub. L. 94–455, § 1036(b), added par. (7).

1971—Subsec. (c). Pub. L. 92–178 added subsec. (c).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–240 applicable to guarantees issued after Sept. 27, 2010, see section 2122(d) of Pub. L. 111–240, set out as a note under section 861 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(b)(12) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 1211(b)(1)(C) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, except as otherwise provided, see section 1211(c) of Pub. L. 99–514, set out as an Effective Date note under section 865 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to dispositions after June 18, 1980, in taxable years ending after such date, see section 831(i) of Pub. L. 97–34, set out as a note under section 897 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1036(b) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1976, see section 1036(c) of Pub. L. 94–455, set out as a note under section 861 of this title.

Amendment by section 1901(b)(26)(C) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–178 applicable to taxable years ending after Aug. 15, 1971, but only with respect to leases entered into after such date, see section 314(c) of Pub. L. 92–178, set out as a note under section 861 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendment by section 1211(b)(1)(C) of Pub. L. 99–514 to the extent application of such amendment would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(3), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

QUALIFIED RESEARCH AND EXPERIMENTAL EXPENDITURES; ALLOCATION AND APPORTIONMENT; DEFINITIONS; SPECIAL RULES; EFFECTIVE DATES

For allocation and apportionment of qualified research and experimental expenditures for purposes of sections 861 to 863 of this title, see section 4009 of Pub. L. 100–647, set out as a note under section 861 of this title.

1-YEAR MODIFICATION IN REGULATIONS PROVIDING FOR ALLOCATION OF RESEARCH AND EXPERIMENTAL EXPENDITURES

For rule governing allocation under subsec. (b) of this section of amounts allowable as a deduction for qualified research and experimental expenditures during taxable years beginning after Aug. 1, 1986, and on or before Aug. 1, 1987, see section 1216 of Pub. L. 99–514, set out as a note under section 861 of this title.

ALLOCATION UNDER SECTION 861 OF RESEARCH AND EXPERIMENTAL EXPENDITURES

For purposes of subsec. (b) of this section, all amounts allowable as a deduction for qualified research and experimental expenditures are to be allocated to income from sources within the United States and deducted from such income in determining the amount of taxable income from sources within the United States for taxable years beginning after Aug. 13, 1983, and on or before Aug. 1, 1986, see section 126 of Pub. L. 98–369, set out as a note under section 861 of this title.

§ 863. Special rules for determining source

(a) Allocation under regulations

Items of gross income, expenses, losses, and deductions, other than those specified in sections 861(a) and 862(a), shall be allocated or apportioned to sources within or without the United States, under regulations prescribed by the Secretary. Where items of gross income are separately allocated to sources within the United States, there shall be deducted (for the purpose of computing the taxable income therefrom) the expenses, losses, and other deductions properly apportioned or allocated thereto and a ratable part of other expenses, losses, or other deductions which cannot definitely be allocated to some item or class of gross income. The remainder, if any, shall be included in full as taxable income from sources within the United States.

(b) Income partly from within and partly from without the United States

In the case of gross income derived from sources partly within and partly without the United States, the taxable income may first be computed by deducting the expenses, losses, or other deductions apportioned or allocated thereto and a ratable part of any expenses, losses, or other deductions which cannot definitely be allocated to some item or class of gross income; and the portion of such taxable income attributable to sources within the United States may be determined by processes or formulas of general apportionment prescribed by the Secretary. Gains, profits, and income—

(1) from services rendered partly within and partly without the United States,

(2) from the sale or exchange of inventory property (within the meaning of section 865(i)(1)) produced (in whole or in part) by the taxpayer within and sold or exchanged without the United States, or produced (in whole or in part) by the taxpayer without and sold or exchanged within the United States, or

(3) derived from the purchase of inventory property (within the meaning of section 865(i)(1)) within a possession of the United States and its sale or exchange within the United States,

shall be treated as derived partly from sources within and partly from sources without the United States. Gains, profits, and income from the sale or exchange of inventory property described in paragraph (2) shall be allocated and apportioned between sources within and without the United States solely on the basis of the production activities with respect to the property.

(c) Source rule for certain transportation income

(1) Transportation beginning and ending in the United States

All transportation income attributable to transportation which begins and ends in the United States shall be treated as derived from sources within the United States.

(2) Other transportation having United States connection

(A) In general

50 percent of all transportation income attributable to transportation which—

(i) is not described in paragraph (1), and

(ii) begins or ends in the United States,

shall be treated as from sources in the United States.

(B) Special rule for personal service income

Subparagraph (A) shall not apply to any transportation income which is income derived from personal services performed by the taxpayer, unless such income is attributable to transportation which—

(i) begins in the United States and ends in a possession of the United States, or

(ii) begins in a possession of the United States and ends in the United States.

In the case of transportation income derived from, or in connection with, a vessel, this subparagraph shall only apply if the taxpayer is a citizen or resident alien.

(3) Transportation income

For purposes of this subsection, the term ''transportation income'' means any income derived from, or in connection with—

(A) the use (or hiring or leasing for use) of a vessel or aircraft, or

(B) the performance of services directly related to the use of a vessel or aircraft.

For purposes of the preceding sentence, the term ''vessel or aircraft'' includes any container used in connection with a vessel or aircraft.

(d) Source rules for space and certain ocean activities

(1) In general

Except as provided in regulations, any income derived from a space or ocean activity—

(A) if derived by a United States person, shall be sourced in the United States, and

(B) if derived by a person other than a United States person, shall be sourced outside the United States.

(2) Space or ocean activity

For purposes of paragraph (1)—

(A) In general

The term ''space or ocean activity'' means—

(i) any activity conducted in space, and

(ii) any activity conducted on or under water not within the jurisdiction (as recognized by the United States) of a foreign country, possession of the United States, or the United States.

Such term includes any activity conducted in Antarctica.

(B) Exception for certain activities

The term ''space or ocean activity'' shall not include—

(i) any activity giving rise to transportation income (as defined in section 863(c)),

(ii) any activity giving rise to international communications income (as defined in subsection (e)(2)), and

(iii) any activity with respect to mines, oil and gas wells, or other natural deposits to the extent within the United States or any foreign country or possession of the United States (as defined in section 638).

For purposes of applying section 638, the jurisdiction of any foreign country shall not include any jurisdiction not recognized by the United States.

(e) International communications income

(1) Source rules

(A) United States persons

In the case of any United States person, 50 percent of any international communications income shall be sourced in the United States and 50 percent of such income shall be sourced outside the United States.

(B) Foreign persons

(i) In general

Except as provided in regulations or clause (ii), in the case of any person other than a United States person, any international communications income shall be sourced outside the United States.

(ii) Special rule for income attributable to office or fixed place of business in the United States

In the case of any person (other than a United States person) who maintains an office or other fixed place of business in the United States, any international communications income attributable to such office or other fixed place of business shall be sourced in the United States.

(2) Definition

For purposes of this section, the term ''international communications income'' includes all income derived from the transmission of communications or data from the United States to any foreign country (or possession of the United States) or from any foreign country (or possession of the United States) to the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 277; Pub. L. 94–455, title XIX, §§1901(b)(26)(C), (D), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1798, 1799, 1834; Pub. L. 98–369, div. A, title I, §124(a), July 18, 1984, 98 Stat. 646; Pub. L. 99–514, title XII, §§1211(b)(1)(A), 1212(a), (e), 1213(a), Oct. 22, 1986, 100 Stat. 2536, 2539, 2540; Pub. L. 100–647, title I, §1012(e)(3)(A), (f), Nov. 10, 1988, 102 Stat. 3500; Pub. L. 101–239, title VII, §7811(i)(2), Dec. 19, 1989, 103 Stat. 2409; Pub. L. 105–34, title XI, §1174(a)(2), Aug. 5, 1997, 111 Stat. 989; Pub. L. 115–97, title I, §14303(a), Dec. 22, 2017, 131 Stat. 2225.)

AMENDMENTS

2017—Subsec. (b). Pub. L. 115–97 inserted at end of concluding provisions ''Gains, profits, and income from the sale or exchange of inventory property described in paragraph (2) shall be allocated and apportioned between sources within and without the United States solely on the basis of the production activities with respect to the property.''

1997—Subsec. (c)(2)(B). Pub. L. 105–34 inserted concluding provisions ''In the case of transportation income derived from, or in connection with, a vessel, this subparagraph shall only apply if the taxpayer is a citizen or resident alien.''

1989—Subsec. (b)(2), (3). Pub. L. 101–239 substituted ''865(i)(1)'' for ''865(h)(1)''.

1988—Pub. L. 100–647, §1012(e)(3)(A), substituted ''Special rules for determining source'' for ''Item not specified in section 861 or 862'' in section catchline.

Subsec. (e)(2). Pub. L. 100–647, §1012(f), substituted ''foreign country (or possession of the United States)'' for ''foreign country'' in two places.

1986—Subsec. (b)(1). Pub. L. 99–514, §1212(e), substituted ''services'' for ''transportation or other services''.

Subsec. (b)(2), (3). Pub. L. 99–514, §1211(b)(1)(A), substituted ''inventory property (within the meaning of section 865(h)(1))'' for ''personal property''.

Subsec. (c)(2). Pub. L. 99–514, §1212(a), amended par. (2) generally, in subpar. (A) substituting provisions relating to other transportation having United States connections for provisions relating to transportation between United States and any possession, and in subpar. (B) substituting provisions relating to special rule for personal service income for provisions relating to special rule for certain lessors of aircraft.

Subsecs. (d), (e). Pub. L. 99–514, §1213(a), added subsecs. (d) and (e).

1984—Subsec. (c). Pub. L. 98–369 added subsec. (c).

1976—Subsec. (a). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (b). Pub. L. 94–455, §§1901(b)(26)(C), (D), 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' in introductory provisions, and inserted ''or exchange'' after ''sale'' in pars. (2) and (3), and ''or exchanged'' after ''sold'' in par. (2) wherever appearing.

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–97, title I, §14303(b), Dec. 22, 2017, 131 Stat. 2225, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2017.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to remuneration for services performed in taxable years beginning after Dec. 31, 1997, see section 1174(c) of Pub. L. 105–34, set out as a note under section 7701 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1211(b)(1)(A) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, except as otherwise provided, see section 1211(c) of Pub. L. 99–514, set out as an Effective Date note under section 865 of this title.

Pub. L. 99–514, title XII, §1212(f), Oct. 22, 1986, 100 Stat. 2539, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting section 887 of this title and amending this section and sections 861, 872, and 883 of this title] shall apply to taxable years beginning after December 31, 1986.

''(2) SPECIAL RULE FOR CERTAIN LEASED PROPERTY.—The amendments made by subsections (a) and (d) [amending this section and section 861 of this title] shall not apply to any income attributable to property held by the taxpayer on January 1, 1986, if such property was first leased by the taxpayer before January 1, 1986, in a lease to which section 863(c)(2)(B) or 861(e) of the Internal Revenue Code of 1954 [now 1986] (as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]) applied.

''(3) SPECIAL RULE FOR CERTAIN SHIPS LEASED BY THE UNITED STATES NAVY.—

''(A) IN GENERAL.—In the case of any property described in subparagraph (B), paragraph (2) shall be applied by substituting '1987' for '1986' each place it appears.

''(B) PROPERTY TO WHICH PARAGRAPH APPLIES.—Property described in this subparagraph consists of 4 ships which are to be leased by the United States Navy and which are the subject of Internal Revenue Service rulings bearing the following dates and which involved the following amount of financing, respectively:

''March 5, 1986	$176,844,000
February 5, 1986	64,567,000
April 22, 1986	64,598,000
May 22, 1986	175,300,000.''

Pub. L. 99–514, title XII, §1213(b), Oct. 22, 1986, 100 Stat. 2541, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1986.''

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §124(b), July 18, 1984, 98 Stat. 647, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to transportation beginning after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(b)(26)(C), (D) of Pub. L. 94–455 effective for taxable years beginning after Dec.

31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendments by sections 1211(b)(1)(A) and 1212(a) of Pub. L. 99–514 to the extent application of such amendments would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(3), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

QUALIFIED RESEARCH AND EXPERIMENTAL EXPENDITURES; ALLOCATION AND APPOINTMENT; DEFINITIONS; SPECIAL RULES; EFFECTIVE DATES

For allocation and apportionment of qualified research and experimental expenditures for purposes of sections 861 to 863 of this title, see section 4009 of Pub. L. 100–647, set out as a note under section 861 of this title.

1-YEAR MODIFICATION IN REGULATIONS PROVIDING FOR ALLOCATION OF RESEARCH AND EXPERIMENTAL EXPENDITURES

For rule governing allocation under subsec. (b) of this section of amounts allowable as a deduction for qualified research and experimental expenditures during taxable years beginning after Aug. 1, 1986, and on or before Aug. 1, 1987, see section 1216 of Pub. L. 99–514, set out as a note under section 861 of this title.

ALLOCATION UNDER SECTION 861 OF RESEARCH AND EXPERIMENTAL EXPENDITURES

For purposes of subsec. (b) of this section, all amounts allowable as a deduction for qualified research and experimental expenditures are to be allocated to income from sources within the United States and deducted from such income in determining the amount of taxable income from sources within the United States for taxable years beginning after Aug. 13, 1983, and on or before Aug. 1, 1986, see section 126 of Pub. L. 98–369, set out as a note under section 861 of this title.

§ 864. Definitions and special rules

(a) Produced

For purposes of this part, the term ''produced'' includes created, fabricated, manufactured, extracted, processed, cured, or aged.

(b) Trade or business within the United States

For purposes of this part, part II, and chapter 3, the term ''trade or business within the United States'' includes the performance of personal services within the United States at any time within the taxable year, but does not include—

(1) Performance of personal services for foreign employer

The performance of personal services—

(A) for a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, or

(B) for an office or place of business maintained in a foreign country or in a possession of the United States by an individual who is a citizen or resident of the United States or by a domestic partnership or a domestic corporation,

by a nonresident alien individual temporarily present in the United States for a period or periods not exceeding a total of 90 days during the taxable year and whose compensation for such services does not exceed in the aggregate $3,000.

(2) Trading in securities or commodities

(A) Stocks and securities

(i) In general

Trading in stocks or securities through a resident broker, commission agent, custodian, or other independent agent.

(ii) Trading for taxpayer's own account

Trading in stocks or securities for the taxpayer's own account, whether by the taxpayer or his employees or through a resident broker, commission agent, custodian, or other agent, and whether or not any such employee or agent has discretionary authority to make decisions in effecting the transactions. This clause shall not apply in the case of a dealer in stocks or securities.

(B) Commodities

(i) In general

Trading in commodities through a resident broker, commission agent, custodian, or other independent agent.

(ii) Trading for taxpayer's own account

Trading in commodities for the taxpayer's own account, whether by the taxpayer or his employees or through a resident broker, commission agent, custodian, or other agent, and whether or not any such employee or agent has discretionary authority to make decisions in effecting the transactions. This clause shall not apply in the case of a dealer in commodities.

(iii) Limitation

Clauses (i) and (ii) shall apply only if the commodities are of a kind customarily dealt in on an organized commodity exchange and if the transaction is of a kind customarily consummated at such place.

(C) Limitation

Subparagraphs (A)(i) and (B)(i) shall apply only if, at no time during the taxable year, the taxpayer has an office or other fixed place of business in the United States through which or by the direction of which the transactions in stocks or securities, or in commodities, as the case may be, are effected.

(c) Effectively connected income, etc.

(1) General rule

For purposes of this title—

(A) In the case of a nonresident alien individual or a foreign corporation engaged in trade or business within the United States during the taxable year, the rules set forth in paragraphs (2), (3), (4), (6), (7), and (8) shall apply in determining the income, gain, or loss which shall be treated as effectively connected with the conduct of a trade or business within the United States.

(B) Except as provided in paragraph (6)[1] (7), or (8) or in section 871(d) or sections

[1] So in original. Probably should be followed by a comma.

882(d) and (e), in the case of a nonresident alien individual or a foreign corporation not engaged in trade or business within the United States during the taxable year, no income, gain, or loss shall be treated as effectively connected with the conduct of a trade or business within the United States.

(2) Periodical, etc., income from sources within United States—factors

In determining whether income from sources within the United States of the types described in section 871(a)(1), section 871(h), section 881(a), or section 881(c), or whether gain or loss from sources within the United States from the sale or exchange of capital assets, is effectively connected with the conduct of a trade or business within the United States, the factors taken into account shall include whether—

(A) the income, gain, or loss is derived from assets used in or held for use in the conduct of such trade or business, or

(B) the activities of such trade or business were a material factor in the realization of the income, gain, or loss.

In determining whether an asset is used in or held for use in the conduct of such trade or business or whether the activities of such trade or business were a material factor in realizing an item of income, gain, or loss, due regard shall be given to whether or not such asset or such income, gain, or loss was accounted for through such trade or business.

(3) Other income from sources within United States

All income, gain, or loss from sources within the United States (other than income, gain, or loss to which paragraph (2) applies) shall be treated as effectively connected with the conduct of a trade or business within the United States.

(4) Income from sources without United States

(A) Except as provided in subparagraphs (B) and (C), no income, gain, or loss from sources without the United States shall be treated as effectively connected with the conduct of a trade or business within the United States.

(B) Income, gain, or loss from sources without the United States shall be treated as effectively connected with the conduct of a trade or business within the United States by a nonresident alien individual or a foreign corporation if such person has an office or other fixed place of business within the United States to which such income, gain, or loss is attributable and such income, gain, or loss—

(i) consists of rents or royalties for the use of or for the privilege of using intangible property described in section 862(a)(4) derived in the active conduct of such trade or business;

(ii) consists of dividends, interest, or amounts received for the provision of guarantees of indebtedness, and either is derived in the active conduct of a banking, financing, or similar business within the United States or is received by a corporation the principal business of which is trading in stocks or securities for its own account; or

(iii) is derived from the sale or exchange (outside the United States) through such office or other fixed place of business of personal property described in section 1221(a)(1), except that this clause shall not apply if the property is sold or exchanged for use, consumption, or disposition outside the United States and an office or other fixed place of business of the taxpayer in a foreign country participated materially in such sale.

Any income or gain which is equivalent to any item of income or gain described in clause (i), (ii), or (iii) shall be treated in the same manner as such item for purposes of this subparagraph.

(C) In the case of a foreign corporation taxable under part I or part II of subchapter L, any income from sources without the United States which is attributable to its United States business shall be treated as effectively connected with the conduct of a trade or business within the United States.

(D) No income from sources without the United States shall be treated as effectively connected with the conduct of a trade or business within the United States if it either—

(i) consists of dividends, interest, or royalties paid by a foreign corporation in which the taxpayer owns (within the meaning of section 958(a)), or is considered as owning (by applying the ownership rules of section 958(b)), more than 50 percent of the total combined voting power of all classes of stock entitled to vote, or

(ii) is subpart F income within the meaning of section 952(a).

(5) Rules for application of paragraph (4)(B)

For purposes of subparagraph (B) of paragraph (4)—

(A) in determining whether a nonresident alien individual or a foreign corporation has an office or other fixed place of business, an office or other fixed place of business of an agent shall be disregarded unless such agent (i) has the authority to negotiate and conclude contracts in the name of the nonresident alien individual or foreign corporation and regularly exercises that authority or has a stock of merchandise from which he regularly fills orders on behalf of such individual or foreign corporation, and (ii) is not a general commission agent, broker, or other agent of independent status acting in the ordinary course of his business,

(B) income, gain, or loss shall not be considered as attributable to an office or other fixed place of business within the United States unless such office or fixed place of business is a material factor in the production of such income, gain, or loss and such office or fixed place of business regularly carries on activities of the type from which such income, gain, or loss is derived, and

(C) the income, gain, or loss which shall be attributable to an office or other fixed place of business within the United States shall be the income, gain, or loss property allocable thereto, but, in the case of a sale or exchange described in clause (iii) of such sub-

paragraph, the income which shall be treated as attributable to an office or other fixed place of business within the United States shall not exceed the income which would be derived from sources within the United States if the sale or exchange were made in the United States.

(6) Treatment of certain deferred payments, etc.

For purposes of this title, in the case of any income or gain of a nonresident alien individual or a foreign corporation which—

(A) is taken into account for any taxable year, but

(B) is attributable to a sale or exchange of property or the performance of services (or any other transaction) in any other taxable year,

the determination of whether such income or gain is taxable under section 871(b) or 882 (as the case may be) shall be made as if such income or gain were taken into account in such other taxable year and without regard to the requirement that the taxpayer be engaged in a trade or business within the United States during the taxable year referred to in subparagraph (A).

(7) Treatment of certain property transactions

For purposes of this title, if—

(A) any property ceases to be used or held for use in connection with the conduct of a trade or business within the United States, and

(B) such property is disposed of within 10 years after such cessation,

the determination of whether any income or gain attributable to such disposition is taxable under section 871(b) or 882 (as the case may be) shall be made as if such sale or exchange occurred immediately before such cessation and without regard to the requirement that the taxpayer be engaged in a trade or business within the United States during the taxable year for which such income or gain is taken into account.

(8) Gain or loss of foreign persons from sale or exchange of certain partnership interests

(A) In general

Notwithstanding any other provision of this subtitle, if a nonresident alien individual or foreign corporation owns, directly or indirectly, an interest in a partnership which is engaged in any trade or business within the United States, gain or loss on the sale or exchange of all (or any portion of) such interest shall be treated as effectively connected with the conduct of such trade or business to the extent such gain or loss does not exceed the amount determined under subparagraph (B).

(B) Amount treated as effectively connected

The amount determined under this subparagraph with respect to any partnership interest sold or exchanged—

(i) in the case of any gain on the sale or exchange of the partnership interest, is—

(I) the portion of the partner's distributive share of the amount of gain which would have been effectively connected with the conduct of a trade or business within the United States if the partnership had sold all of its assets at their fair market value as of the date of the sale or exchange of such interest, or

(II) zero if no gain on such deemed sale would have been so effectively connected, and

(ii) in the case of any loss on the sale or exchange of the partnership interest, is—

(I) the portion of the partner's distributive share of the amount of loss on the deemed sale described in clause (i)(I) which would have been so effectively connected, or

(II) zero if no loss on such deemed sale would be have been so effectively connected.

For purposes of this subparagraph, a partner's distributive share of gain or loss on the deemed sale shall be determined in the same manner as such partner's distributive share of the non-separately stated taxable income or loss of such partnership.

(C) Coordination with United States real property interests

If a partnership described in subparagraph (A) holds any United States real property interest (as defined in section 897(c)) at the time of the sale or exchange of the partnership interest, then the gain or loss treated as effectively connected income under subparagraph (A) shall be reduced by the amount so treated with respect to such United States real property interest under section 897.

(D) Sale or exchange

For purposes of this paragraph, the term ''sale or exchange'' means any sale, exchange, or other disposition.

(E) Secretarial authority

The Secretary shall prescribe such regulations or other guidance as the Secretary determines appropriate for the application of this paragraph, including with respect to exchanges described in section 332, 351, 354, 355, 356, or 361.

(d) Treatment of related person factoring income

(1) In general

For purposes of the provisions set forth in paragraph (2), if any person acquires (directly or indirectly) a trade or service receivable from a related person, any income of such person from the trade or service receivable so acquired shall be treated as if it were interest on a loan to the obligor under the receivable.

(2) Provisions to which paragraph (1) applies

The provisions set forth in this paragraph are as follows:

(A) Section 904 (relating to limitation on foreign tax credit).

(B) Subpart F of part III of this subchapter (relating to controlled foreign corporations).

(3) Trade or service receivable

For purposes of this subsection, the term ''trade or service receivable'' means any ac-

count receivable or evidence of indebtedness arising out of—

(A) the disposition by a related person of property described in section 1221(a)(1), or

(B) the performance of services by a related person.

(4) Related person

For purposes of this subsection, the term ''related person'' means—

(A) any person who is a related person (within the meaning of section 267(b)), and

(B) any United States shareholder (as defined in section 951(b)) and any person who is a related person (within the meaning of section 267(b)) to such a shareholder.

(5) Certain provisions not to apply

(A) Certain exceptions

The following provisions shall not apply to any amount treated as interest under paragraph (1) or (6):

(i) Subparagraphs (A)(iii)(II), (B)(ii), and (C)(iii)(II) of section 904(d)(2) (relating to exceptions for export financing interest).

(ii) Subparagraph (A) of section 954(b)(3) (relating to exception where foreign base company income is less than 5 percent or $1,000,000).

(iii) Subparagraph (B) of section 954(c)(2) (relating to certain export financing).

(iv) Clause (i) of section 954(c)(3)(A) (relating to certain income received from related persons).

(B) Special rules for possessions

An amount treated as interest under paragraph (1) shall not be treated as income described in subparagraph (A) or (B) of section 936(a)(1) unless such amount is from sources within a possession of the United States (determined after the application of paragraph (1)).

(6) Special rule for certain income from loans of a controlled foreign corporation

Any income of a controlled foreign corporation (within the meaning of section 957(a)) from a loan to a person for the purpose of financing—

(A) the purchase of property described in section 1221(a)(1) of a related person, or

(B) the payment for the performance of services by a related person,

shall be treated as interest described in paragraph (1).

(7) Exception for certain related persons doing business in same foreign country

Paragraph (1) shall not apply to any trade or service receivable acquired by any person from a related person if—

(A) the person acquiring such receivable and such related person are created or organized under the laws of the same foreign country and such related person has a substantial part of its assets used in its trade or business located in such same foreign country, and

(B) such related person would not have derived any foreign base company income (as defined in section 954(a), determined without regard to section 954(b)(3)(A)), or any income effectively connected with the conduct of a trade or business within the United States, from such receivable if it had been collected by such related person.

(8) Regulations

The Secretary shall prescribe such regulations as may be necessary to prevent the avoidance of the provisions of this subsection or section 956(b)(3).[2]

(e) Rules for allocating interest, etc.

For purposes of this subchapter—

(1) Treatment of affiliated groups

The taxable income of each member of an affiliated group shall be determined by allocating and apportioning interest expense of each member as if all members of such group were a single corporation.

(2) Gross income and fair market value methods may not be used for interest

All allocations and apportionments of interest expense shall be determined using the adjusted bases of assets rather than on the basis of the fair market value of the assets or gross income.

(3) Tax-exempt assets not taken into account

For purposes of allocating and apportioning any deductible expense, any tax-exempt asset (and any income from such an asset) shall not be taken into account. A similar rule shall apply in the case of the portion of any dividend (other than a qualifying dividend as defined in section 243(b)) equal to the deduction allowable under section 243 or 245(a) with respect to such dividend and in the case of a like portion of any stock the dividends on which would be so deductible and would not be qualifying dividends (as so defined).

(4) Basis of stock in nonaffiliated 10-percent owned corporations adjusted for earnings and profits changes

(A) In general

For purposes of allocating and apportioning expenses on the basis of assets, the adjusted basis of any stock in a nonaffiliated 10-percent owned corporation shall be—

(i) increased by the amount of the earnings and profits of such corporation attributable to such stock and accumulated during the period the taxpayer held such stock, or

(ii) reduced (but not below zero) by any deficit in earnings and profits of such corporation attributable to such stock for such period.

(B) Nonaffiliated 10-percent owned corporation

For purposes of this paragraph, the term ''nonaffiliated 10-percent owned corporation'' means any corporation if—

(i) such corporation is not included in the taxpayer's affiliated group, and

(ii) members of such affiliated group own 10 percent or more of the total combined

[2] See References in Text note below.

voting power of all classes of stock of such corporation entitled to vote.

(C) Earnings and profits of lower tier corporations taken into account

(i) In general

If, by reason of holding stock in a nonaffiliated 10-percent owned corporation, the taxpayer is treated under clause (iii) as owning stock in another corporation with respect to which the stock ownership requirements of clause (ii) are met, the adjustment under subparagraph (A) shall include an adjustment for the amount of the earnings and profits (or deficit therein) of such other corporation which are attributable to the stock the taxpayer is so treated as owning and to the period during which the taxpayer is treated as owning such stock.

(ii) Stock ownership requirements

The stock ownership requirements of this clause are met with respect to any corporation if members of the taxpayer's affiliated group own (directly or through the application of clause (iii)) 10 percent or more of the total combined voting power of all classes of stock of such corporation entitled to vote.

(iii) Stock owned through entities

For purposes of this subparagraph, stock owned (directly or indirectly) by a corporation, partnership, or trust shall be treated as being owned proportionately by its shareholders, partners, or beneficiaries. Stock considered to be owned by a person by reason of the application of the preceding sentence, shall, for purposes of applying such sentence, be treated as actually owned by such person.

(D) Coordination with subpart F, etc.

For purposes of this paragraph, proper adjustment shall be made to the earnings and profits of any corporation to take into account any earnings and profits included in gross income under section 951 or under any other provision of this title and reflected in the adjusted basis of the stock.

(5) Affiliated group

For purposes of this subsection—

(A) In general

Except as provided in subparagraph (B), the term ''affiliated group'' has the meaning given such term by section 1504 (determined without regard to paragraph (4) of section 1504(b)). Notwithstanding the preceding sentence, a foreign corporation shall be treated as a member of the affiliated group if—

(i) more than 50 percent of the gross income of such foreign corporation for the taxable year is effectively connected with the conduct of a trade or business within the United States, and

(ii) at least 80 percent of either the vote or value of all outstanding stock of such foreign corporation is owned directly or indirectly by members of the affiliated group (determined with regard to this sentence).

(B) Treatment of certain financial institutions

For purposes of subparagraph (A), any corporation described in subparagraph (C) shall be treated as an includible corporation for purposes of section 1504 only for purposes of applying such section separately to corporations so described. This subparagraph shall not apply for purposes of paragraph (6).

(C) Description

A corporation is described in this subparagraph if—

(i) such corporation is a financial institution described in section 581 or 591,

(ii) the business of such financial institution is predominantly with persons other than related persons (within the meaning of subsection (d)(4)) or their customers, and

(iii) such financial institution is required by State or Federal law to be operated separately from any other entity which is not such an institution.

(D) Treatment of bank holding companies

To the extent provided in regulations—

(i) a bank holding company (within the meaning of section 2(a) of the Bank Holding Company Act of 1956), and

(ii) any subsidiary of a financial institution described in section 581 or 591 or of any bank holding company if such subsidiary is predominantly engaged (directly or indirectly) in the active conduct of a banking, financing, or similar business,

shall be treated as a corporation described in subparagraph (C).

(6) Allocation and apportionment of other expenses

Expenses other than interest which are not directly allocable or apportioned to any specific income producing activity shall be allocated and apportioned as if all members of the affiliated group were a single corporation.

(7) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations providing—

(A) for the resourcing of income of any member of an affiliated group or modifications to the consolidated return regulations to the extent such resourcing or modification is necessary to carry out the purposes of this section,

(B) for direct allocation of interest expense incurred to carry out an integrated financial transaction to any interest (or interest-type income) derived from such transaction and in other circumstances where such allocation would be appropriate to carry out the purposes of this subsection,

(C) for the apportionment of expenses allocated to foreign source income among the members of the affiliated group and various categories of income described in section 904(d)(1),

(D) for direct allocation of interest expense in the case of indebtedness resulting in a disallowance under section 246A,

(E) for appropriate adjustments in the application of paragraph (3) in the case of an insurance company,

(F) preventing assets or interest expense from being taken into account more than once, and

(G) that this subsection shall not apply for purposes of any provision of this subchapter to the extent the Secretary determines that the application of this subsection for such purposes would not be appropriate.

(f) Election to allocate interest, etc. on worldwide basis

For purposes of this subchapter, at the election of the worldwide affiliated group—

(1) Allocation and apportionment of interest expense

(A) In general

The taxable income of each domestic corporation which is a member of a worldwide affiliated group shall be determined by allocating and apportioning interest expense of each member as if all members of such group were a single corporation.

(B) Treatment of worldwide affiliated group

The taxable income of the domestic members of a worldwide affiliated group from sources outside the United States shall be determined by allocating and apportioning the interest expense of such domestic members to such income in an amount equal to the excess (if any) of—

(i) the total interest expense of the worldwide affiliated group multiplied by the ratio which the foreign assets of the worldwide affiliated group bears to all the assets of the worldwide affiliated group, over

(ii) the interest expense of all foreign corporations which are members of the worldwide affiliated group to the extent such interest expense of such foreign corporations would have been allocated and apportioned to foreign source income if this subsection were applied to a group consisting of all the foreign corporations in such worldwide affiliated group.

(C) Worldwide affiliated group

For purposes of this paragraph, the term ''worldwide affiliated group'' means a group consisting of—

(i) the includible members of an affiliated group (as defined in section 1504(a), determined without regard to paragraphs (2) and (4) of section 1504(b)), and

(ii) all controlled foreign corporations in which such members in the aggregate meet the ownership requirements of section 1504(a)(2) either directly or indirectly through applying paragraph (2) of section 958(a) or through applying rules similar to the rules of such paragraph to stock owned directly or indirectly by domestic partnerships, trusts, or estates.

(2) Allocation and apportionment of other expenses

Expenses other than interest which are not directly allocable or apportioned to any specific income producing activity shall be allocated and apportioned as if all members of the affiliated group were a single corporation. For purposes of the preceding sentence, the term ''affiliated group'' has the meaning given such term by section 1504 (determined without regard to paragraph (4) of section 1504(b)).

(3) Treatment of tax-exempt assets; basis of stock in nonaffiliated 10-percent owned corporations

The rules of paragraphs (3) and (4) of subsection (e) shall apply for purposes of this subsection, except that paragraph (4) shall be applied on a worldwide affiliated group basis.

(4) Treatment of certain financial institutions

(A) In general

For purposes of paragraph (1), any corporation described in subparagraph (B) shall be treated as an includible corporation for purposes of section 1504 only for purposes of applying this subsection separately to corporations so described.

(B) Description

A corporation is described in this subparagraph if—

(i) such corporation is a financial institution described in section 581 or 591,

(ii) the business of such financial institution is predominantly with persons other than related persons (within the meaning of subsection (d)(4)) or their customers, and

(iii) such financial institution is required by State or Federal law to be operated separately from any other entity which is not such an institution.

(C) Treatment of bank and financial holding companies

To the extent provided in regulations—

(i) a bank holding company (within the meaning of section 2(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a)),

(ii) a financial holding company (within the meaning of section 2(p) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(p)), and

(iii) any subsidiary of a financial institution described in section 581 or 591, or of any such bank or financial holding company, if such subsidiary is predominantly engaged (directly or indirectly) in the active conduct of a banking, financing, or similar business,

shall be treated as a corporation described in subparagraph (B).

(5) Election to expand financial institution group of worldwide group

(A) In general

If a worldwide affiliated group elects the application of this subsection, all financial corporations which—

(i) are members of such worldwide affiliated group, but

(ii) are not corporations described in paragraph (4)(B),

shall be treated as described in paragraph (4)(B) for purposes of applying paragraph

(4)(A). This subsection (other than this paragraph) shall apply to any such group in the same manner as this subsection (other than this paragraph) applies to the pre-election worldwide affiliated group of which such group is a part.

(B) Financial corporation

For purposes of this paragraph, the term ''financial corporation'' means any corporation if at least 80 percent of its gross income is income described in section 904(d)(2)(D)(ii) and the regulations thereunder which is derived from transactions with persons who are not related (within the meaning of section 267(b) or 707(b)(1)) to the corporation. For purposes of the preceding sentence, there shall be disregarded any item of income or gain from a transaction or series of transactions a principal purpose of which is the qualification of any corporation as a financial corporation.

(C) Anti-abuse rules

In the case of a corporation which is a member of an electing financial institution group, to the extent that such corporation—

(i) distributes dividends or makes other distributions with respect to its stock after the date of the enactment of this paragraph to any member of the pre-election worldwide affiliated group (other than to a member of the electing financial institution group) in excess of the greater of—

(I) its average annual dividend (expressed as a percentage of current earnings and profits) during the 5-taxable-year period ending with the taxable year preceding the taxable year, or

(II) 25 percent of its average annual earnings and profits for such 5-taxable-year period, or

(ii) deals with any person in any manner not clearly reflecting the income of the corporation (as determined under principles similar to the principles of section 482),

an amount of indebtedness of the electing financial institution group equal to the excess distribution or the understatement or overstatement of income, as the case may be, shall be recharacterized (for the taxable year and subsequent taxable years) for purposes of this paragraph as indebtedness of the worldwide affiliated group (excluding the electing financial institution group). If a corporation has not been in existence for 5 taxable years, this subparagraph shall be applied with respect to the period it was in existence.

(D) Election

An election under this paragraph with respect to any financial institution group may be made only by the common parent of the pre-election worldwide affiliated group and may be made only for the first taxable year beginning after December 31, 2020, in which such affiliated group includes 1 or more financial corporations. Such an election, once made, shall apply to all financial corporations which are members of the electing financial institution group for such taxable year and all subsequent years unless revoked with the consent of the Secretary.

(E) Definitions relating to groups

For purposes of this paragraph—

(i) Pre-election worldwide affiliated group

The term ''pre-election worldwide affiliated group'' means, with respect to a corporation, the worldwide affiliated group of which such corporation would (but for an election under this paragraph) be a member for purposes of applying paragraph (1).

(ii) Electing financial institution group

The term ''electing financial institution group'' means the group of corporations to which this subsection applies separately by reason of the application of paragraph (4)(A) and which includes financial corporations by reason of an election under subparagraph (A).

(F) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out this subsection, including regulations—

(i) providing for the direct allocation of interest expense in other circumstances where such allocation would be appropriate to carry out the purposes of this subsection,

(ii) preventing assets or interest expense from being taken into account more than once, and

(iii) dealing with changes in members of any group (through acquisitions or otherwise) treated under this paragraph as an affiliated group for purposes of this subsection.

(6) Election

An election to have this subsection apply with respect to any worldwide affiliated group may be made only by the common parent of the domestic affiliated group referred to in paragraph (1)(C) and may be made only for the first taxable year beginning after December 31, 2020, in which a worldwide affiliated group exists which includes such affiliated group and at least 1 foreign corporation. Such an election, once made, shall apply to such common parent and all other corporations which are members of such worldwide affiliated group for such taxable year and all subsequent years unless revoked with the consent of the Secretary.

(g) Allocation of research and experimental expenditures

(1) In general

For purposes of sections 861(b), 862(b), and 863(b), qualified research and experimental expenditures shall be allocated and apportioned as follows:

(A) Any qualified research and experimental expenditures expended solely to meet legal requirements imposed by a political entity with respect to the improvement or marketing of specific products or processes for purposes not reasonably expected to gen-

erate gross income (beyond de minimis amounts) outside the jurisdiction of the political entity shall be allocated only to gross income from sources within such jurisdiction.

(B) In the case of any qualified research and experimental expenditures (not allocated under subparagraph (A)) to the extent—

(i) that such expenditures are attributable to activities conducted in the United States, 50 percent of such expenditures shall be allocated and apportioned to income from sources within the United States and deducted from such income in determining the amount of taxable income from sources within the United States, and

(ii) that such expenditures are attributable to activities conducted outside the United States, 50 percent of such expenditures shall be allocated and apportioned to income from sources outside the United States and deducted from such income in determining the amount of taxable income from sources outside the United States.

(C) The remaining portion of qualified research and experimental expenditures (not allocated under subparagraphs (A) and (B)) shall be apportioned, at the annual election of the taxpayer, on the basis of gross sales or gross income, except that, if the taxpayer elects to apportion on the basis of gross income, the amount apportioned to income from sources outside the United States shall at least be 30 percent of the amount which would be so apportioned on the basis of gross sales.

(2) Qualified research and experimental expenditures

For purposes of this section, the term ''qualified research and experimental expenditures'' means amounts which are research and experimental expenditures within the meaning of section 174. For purposes of this paragraph, rules similar to the rules of subsection (c)[2] of section 174 shall apply. Any qualified research and experimental expenditures treated as deferred expenses under subsection (b)[2] of section 174 shall be taken into account under this subsection for the taxable year for which such expenditures are allowed as a deduction under such subsection.

(3) Special rules for expenditures attributable to activities conducted in space, etc.

(A) In general

Any qualified research and experimental expenditures described in subparagraph (B)—

(i) if incurred by a United States person, shall be allocated and apportioned under this section in the same manner as if they were attributable to activities conducted in the United States, and

(ii) if incurred by a person other than a United States person, shall be allocated and apportioned under this section in the same manner as if they were attributable to activities conducted outside the United States.

(B) Description of expenditures

For purposes of subparagraph (A), qualified research and experimental expenditures are described in this subparagraph if such expenditures are attributable to activities conducted—

(i) in space,

(ii) on or under water not within the jurisdiction (as recognized by the United States) of a foreign country, possession of the United States, or the United States, or

(iii) in Antarctica.

(4) Affiliated group

(A) Except as provided in subparagraph (B), the allocation and apportionment required by paragraph (1) shall be determined as if all members of the affiliated group (as defined in subsection (e)(5)) were a single corporation.

(B) For purposes of the allocation and apportionment required by paragraph (1)—

(i) sales and gross income from products produced in whole or in part in a possession by an electing corporation (within the meaning of section 936(h)(5)(E)), and

(ii) dividends from an electing corporation,

shall not be taken into account, except that this subparagraph shall not apply to sales of (and gross income and dividends attributable to sales of) products with respect to which an election under section 936(h)(5)(F) is not in effect.

(C) The qualified research and experimental expenditures taken into account for purposes of paragraph (1) shall be adjusted to reflect the amount of such expenditures included in computing the cost-sharing amount (determined under section 936(h)(5)(C)(i)(I)).

(D) The Secretary may prescribe such regulations as may be necessary to carry out the purposes of this paragraph, including regulations providing for the source of gross income and the allocation and apportionment of deductions to take into account the adjustments required by subparagraph (B) or (C).

(E) Paragraph (6) of subsection (e) shall not apply to qualified research and experimental expenditures.

(5) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this subsection, including regulations relating to the determination of whether any expenses are attributable to activities conducted in the United States or outside the United States and regulations providing such adjustments to the provisions of this subsection as may be appropriate in the case of cost-sharing arrangements and contract research.

(6) Applicability

This subsection shall apply to the taxpayer's first taxable year (beginning on or before August 1, 1994) following the taxpayer's last taxable year to which Revenue Procedure 92–56 applies or would apply if the taxpayer elected the benefits of such Revenue Procedure.

(Aug. 16, 1954, ch. 736, 68A Stat. 278; Pub. L. 89–809, title I, § 102(d), Nov. 13, 1966, 80 Stat. 1544;

Pub. L. 94–455, title XIX, §1901(a)(113), Oct. 4, 1976, 90 Stat. 1783; Pub. L. 98–369, div. A, title I, §§123(a), 127(c), July 18, 1984, 98 Stat. 644, 651; Pub. L. 99–514, title XII, §§1201(d)(4), 1211(b)(2), 1215(a), (b)(1), 1221(a)(2), 1223(b)(1), 1242(a), (b), 1275(c)(7), title XVIII, §§1810(c)(2), (3), 1899A(21), Oct. 22, 1986, 100 Stat. 2525, 2536, 2544, 2545, 2550, 2558, 2580, 2599, 2824, 2959; Pub. L. 100–203, title X, §10242(b), Dec. 22, 1987, 101 Stat. 1330–423; Pub. L. 100–647, title I, §1012(a)(1)(B), (d)(7), (10), (g)(5), (h)(1), (2)(A), (3)–(6), (p)(30), (r), Nov. 10, 1988, 102 Stat. 3494, 3498, 3499, 3501–3503, 3521, 3525; Pub. L. 101–239, title VII, §7111, Dec. 19, 1989, 103 Stat. 2326; Pub. L. 101–508, title XI, §11401(a), Nov. 5, 1990, 104 Stat. 1388–472; Pub. L. 102–227, title I, §101(a), Dec. 11, 1991, 105 Stat. 1686; Pub. L. 103–66, title XIII, §13234, Aug. 10, 1993, 107 Stat. 504; Pub. L. 105–34, title XI, §1162(a), Aug. 5, 1997, 111 Stat. 987; Pub. L. 106–170, title V, §532(c)(2)(N)–(P), Dec. 17, 1999, 113 Stat. 1931; Pub. L. 106–519, §4(3), Nov. 15, 2000, 114 Stat. 2432; Pub. L. 108–357, title I, §101(b)(6), title IV, §§401(a), (b), 403(b)(6), 413(c)(12), title VIII, §894(a), Oct. 22, 2004, 118 Stat. 1423, 1488, 1491, 1494, 1507, 1647; Pub. L. 110–289, div. C, title III, §3093(a), (b), July 30, 2008, 122 Stat. 2912; Pub. L. 111–92, §15(a), (b), Nov. 6, 2009, 123 Stat. 2996; Pub. L. 111–147, title V, §551(a), Mar. 18, 2010, 124 Stat. 117; Pub. L. 111–226, title II, §216(a), Aug. 10, 2010, 124 Stat. 2400; Pub. L. 111–240, title II, §2122(c), Sept. 27, 2010, 124 Stat. 2568; Pub. L. 115–97, title I, §§13501(a), 14502(a), Dec. 22, 2017, 131 Stat. 2138, 2235.)

References in Text

Section 956(b)(3), referred to in subsec. (d)(8), was redesignated section 956(c)(3) by Pub. L. 103–66, title XIII, §13232(a)(1), Aug. 10, 1993, 107 Stat. 501.

Section 2(a) of the Bank Holding Company Act of 1956, referred to in subsec. (e)(5)(D)(i), is classified to section 1841(a) of Title 12, Banks and Banking.

The date of the enactment of this paragraph, referred to in subsec. (f)(5)(C)(i), is the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

Section 174, referred to in subsec. (g)(2), was amended generally by Pub. L. 115–97, title I, §13206(a), Dec. 22, 2017, 131 Stat. 2111. Provisions similar to those contained in former subsec. (c) of section 174 are now contained in subsec. (c)(1) of section 174. For provisions similar to those contained in former subsec. (b) of section 174 relating to amortization of certain research and experimental expenditures, see subsecs. (a) and (b) of section 174.

Amendments

2017—Subsec. (c)(1)(A). Pub. L. 115–97, §13501(a)(2)(A), substituted ''(7), and (8)'' for ''and (7)''.

Subsec. (c)(1)(B). Pub. L. 115–97, §13501(a)(2)(B), substituted ''(7), or (8)'' for ''or (7)''.

Subsec. (c)(8). Pub. L. 115–97, §13501(a)(1), added par. (8).

Subsec. (e)(2). Pub. L. 115–97, §14502(a), amended par. (2) generally. Prior to amendment, text read as follows: ''All allocations and apportionments of interest expense shall be made on the basis of assets rather than gross income.''

2010—Subsec. (c)(4)(B)(ii). Pub. L. 111–240 substituted ''dividends, interest, or amounts received for the provision of guarantees of indebtedness'' for ''dividends or interest''.

Subsec. (e)(5)(A). Pub. L. 111–226 inserted at end ''Notwithstanding the preceding sentence, a foreign corporation shall be treated as a member of the affiliated group if—'' and added cls. (i) and (ii).

Subsec. (f)(5)(D), (6). Pub. L. 111–147 substituted ''December 31, 2020'' for ''December 31, 2017''.

2009—Subsec. (f)(5)(D), (6). Pub. L. 111–92, §15(a), substituted ''December 31, 2017'' for ''December 31, 2010''.

Subsec. (f)(7). Pub. L. 111–92, §15(b), struck out par. (7). Text read as follows: ''In the case of the first taxable year to which this subsection applies, the increase (if any) in the amount of the interest expense allocable to sources within the United States by reason of the application of this subsection shall be 30 percent of the amount of such increase determined without regard to this paragraph.''

2008—Subsec. (f)(5)(D), (6). Pub. L. 110–289, §3093(a), substituted ''December 31, 2010'' for ''December 31, 2008''.

Subsec. (f)(7). Pub. L. 110–289, §3093(b), added par. (7).

2004—Subsec. (c)(4)(B). Pub. L. 108–357, §894(a), added concluding provisions.

Subsec. (d)(2). Pub. L. 108–357, §413(c)(12), redesignated subpars. (B) and (C) as (A) and (B), respectively, and struck out former subpar. (A) which read as follows: ''Part III of subchapter G of this chapter (relating to foreign personal holding companies).''

Subsec. (d)(5)(A)(i). Pub. L. 108–357, §403(b)(6), substituted ''(C)(iii)(II)'' for ''(C)(iii)(III)''.

Subsec. (e)(3). Pub. L. 108–357, §101(b)(6), struck out ''(A) In general'' before ''For purposes'' and struck out heading and text of subpar. (B). Text read as follows: ''For purposes of allocating and apportioning any interest expense, there shall not be taken into account any qualifying foreign trade property (as defined in section 943(a)) which is held by the taxpayer for lease or rental in the ordinary course of trade or business for use by the lessee outside the United States (as defined in section 943(b)(2)).''

Subsec. (e)(7)(B). Pub. L. 108–357, §401(b)(1), inserted ''and in other circumstances where such allocation would be appropriate to carry out the purposes of this subsection'' before comma at end.

Subsec. (e)(7)(F), (G). Pub. L. 108–357, §401(b)(2), added subpar. (F) and redesignated former subpar. (F) as (G).

Subsecs. (f), (g). Pub. L. 108–357, §401(a), added subsec. (f) and redesignated former subsec. (f) as (g).

2000—Subsec. (e)(3). Pub. L. 106–519 designated existing provisions as subpar. (A), inserted heading, and added subpar. (B).

1999—Subsecs. (c)(4)(B)(iii), (d)(3)(A), (6)(A). Pub. L. 106–170 substituted ''section 1221(a)(1)'' for ''section 1221(1)''.

1997—Subsec. (b)(2)(A)(ii). Pub. L. 105–34 struck out '', or in the case of a corporation (other than a corporation which is, or but for section 542(c)(7), 542(c)(10), or 543(b)(1)(C) would be, a personal holding company) the principal business of which is trading in stocks or securities for its own account, if its principal office is in the United States'' after ''dealer in stocks or securities''.

1993—Subsec. (f)(1)(B). Pub. L. 103–66, §13234(a), substituted ''50 percent'' for ''64 percent'' in cls. (i) and (ii).

Subsec. (f)(4)(D). Pub. L. 103–66, §13234(b)(2), substituted ''subparagraph (B) or (C)'' for ''subparagraph (C)''.

Subsec. (f)(5), (6). Pub. L. 103–66, §13234(b)(1), added pars. (5) and (6) and struck out heading and text of former par. (5). Text read as follows:

''(A) In general.—This subsection shall apply to the taxpayer's first 3 taxable years beginning after August 1, 1989, and on or before August 1, 1992.

''(B) Reduction.—Notwithstanding subparagraph (A), in the case of the taxpayer's first taxable year beginning after August 1, 1991, this subsection shall only apply to qualified research and experimental expenditures incurred during the first 6 months of such taxable year.''

1991—Subsec. (f)(5). Pub. L. 102–227 amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''This subsection shall apply to the taxpayer's first 2 taxable years beginning after August 1, 1989, and on or before August 1, 1991.''

1990—Subsec. (f)(5). Pub. L. 101–508 substituted ''Years'' for ''Year'' in heading and amended text generally. Prior to amendment, text read as follows:

''(A) In general.—Except as provided in this paragraph, this subsection shall apply to the taxpayer's

first taxable year beginning after August 1, 1989, and before August 2, 1990.

''(B) REDUCTION.—Notwithstanding subparagraph (A), this subsection shall only apply to that portion of the qualified research and experimental expenditures for the taxable year referred to in subparagraph (A) which bears the same ratio to the total amount of such expenditures as—

''(i) the lesser of 9 months or the number of months in the taxable year, bears to

''(ii) the number of months in the taxable year.''

1989—Subsec. (f). Pub. L. 101–239 added subsec. (f).

1988—Subsec. (b)(2)(A)(ii). Pub. L. 100–647, §1012(p)(30), substituted ''section 542(c)(7), 542(c)(10),'' for ''section 542(c)(7)''.

Subsec. (c)(2). Pub. L. 100–647, §1012(g)(5), struck out at end ''In applying this paragraph and paragraph (4), interest referred to in section 861(a)(1)(A) shall be considered income from sources within the United States.''

Subsec. (c)(4)(B)(i), (ii). Pub. L. 100–647, §1012(d)(10), struck out ''(including any gain or loss realized on the sale or exchange of such property)'' after ''section 862(a)(4)'' in cl. (i) and '', or gain or loss from the sale or exchange of stock or notes, bonds, or other evidences of indebtedness'' after ''dividends or interest'' in cl. (ii).

Subsec. (c)(4)(B)(iii). Pub. L. 100–647, §1012(d)(7), added cl. (iii).

Subsec. (c)(6). Pub. L. 100–647, §1012(r)(2), amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''For purposes of this title, any income or gain of a nonresident alien individual or a foreign corporation for any taxable year which is attributable to a sale or exchange of property or the performance of services (or any other transaction) in any other taxable year shall be treated as effectively connected with the conduct of a trade or business within the United States if it would have been so treated if such income or gain were taken into account in such other taxable year.''

Subsec. (c)(7). Pub. L. 100–647, §1012(r)(1), amended par. (7) generally. Prior to amendment, par. (7) read as follows: ''For purposes of this title, if any property ceases to be used or held for use in connection with the conduct of a trade or business within the United States, the determination of whether any income or gain attributable to a sale or exchange of such property occurring within 10 years after such cessation is effectively connected with the conduct of a trade or business within the United States shall be made as if such sale or exchange occurred immediately before such cessation.''

Subsec. (d)(5)(A)(i). Pub. L. 100–647, §1012(a)(1)(B), substituted ''(C)(iii)(III)'' for ''(C)(iii)''.

Subsec. (e). Pub. L. 100–647, §1012(h)(6)(B), struck out ''(except as provided in regulations)'' after ''subchapter''.

Subsec. (e)(1). Pub. L. 100–647, §1012(h)(2)(A), struck out ''from sources outside the United States'' after ''affiliated group''.

Subsec. (e)(3). Pub. L. 100–647, §1012(h)(3), inserted sentence at end and struck out former last sentence which read as follows: ''A similar rule shall apply in the case of any dividend (other than a qualifying dividend as defined in section 243(b)) for which a deduction is allowable under section 243 or 245(a) and any stock the dividends on which would be so deductible and would not be qualifying dividends (as so defined).''

Subsec. (e)(4). Pub. L. 100–647, §1012(h)(1), substituted ''nonaffiliated 10-percent owned corporations'' for ''certain corporations'' in heading and amended text generally. Prior to amendment, text read as follows: ''For purposes of allocating and apportioning expenses on the basis of assets, the adjusted basis of any asset which is stock in a corporation which is not included in the affiliated group and in which members of the affiliated group own 10 percent or more of the total combined voting power of all classes of stock entitled to vote in such corporation shall be—

''(A) increased by the amount of the earnings and profits of such corporation attributable to such stock and accumulated during the period the taxpayer held such stock, or

''(B) reduced (but not below zero) by any deficit in earnings and profits of such corporation attributable to such stock for such period.''

Subsec. (e)(5)(B). Pub. L. 100–647, §1012(h)(4)(B), inserted at end ''This subparagraph shall not apply for purposes of paragraph (6).''

Subsec. (e)(5)(D). Pub. L. 100–647, §1012(h)(4)(A), added subpar. (D).

Subsec. (e)(6). Pub. L. 100–647, §1012(h)(5), substituted ''directly allocable or apportioned'' for ''directly allocable and apportioned''.

Subsec. (e)(7)(D) to (F). Pub. L. 100–647, §1012(h)(6)(A), added subpars. (D) to (F).

1987—Subsec. (c)(4)(C). Pub. L. 100–203 inserted ''or part II'' after ''part I''.

1986—Pub. L. 99–514, §1215(b)(1), inserted ''and special rules'' in section catchline.

Subsec. (c)(1)(A). Pub. L. 99–514, §1242(b)(1), inserted reference to pars. (6) and (7).

Subsec. (c)(1)(B). Pub. L. 99–514, §1242(b)(2), inserted ''paragraph (6) or (7) or in''.

Subsec. (c)(2). Pub. L. 99–514, §1899A(21), inserted a comma between ''section 871(h)'' and ''section 881(a)''.

Subsec. (c)(4)(B)(iii). Pub. L. 99–514, §1211(b)(2), struck out cl. (iii), which read as follows: ''is derived from the sale or exchange (without the United States) through such office or other fixed place of business of personal property described in section 1221(1), except that this clause shall not apply if the property is sold or exchanged for use, consumption, or disposition outside the United States and an office or other fixed place of business of the taxpayer outside the United States participated materially in such sale or exchange.''

Subsec. (c)(6), (7). Pub. L. 99–514, §1242(a), added pars. (6) and (7).

Subsec. (d)(5)(A)(i). Pub. L. 99–514, §1201(d)(4), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''Subparagraphs (A), (B), (C), and (D) of section 904(d)(2) (relating to interest income to which separate limitation applies) and subparagraph (J) of section 904(d)(3) (relating to interest from members of same affiliated group).''

Pub. L. 99–514, §1810(c)(3), inserted ''and subparagraph (J) of section 904(d)(3) (relating to interest from members of same affiliated group)''.

Subsec. (d)(5)(A)(ii). Pub. L. 99–514, §1223(b)(1), substituted ''less than 5 percent or $1,000,000'' for ''less than 10 percent''.

Subsec. (d)(5)(A)(iii). Pub. L. 99–514, §1221(a)(2), amended cl. (iii) generally, substituting ''section 954(c)(2) (relating to certain export financing)'' for ''section 954(c)(3) (relating to certain income derived in active conduct of trade or business)''.

Subsec. (d)(5)(A)(iv). Pub. L. 99–514, §1221(a)(2), amended cl. (iv) generally, substituting ''Clause (i) of section 954(c)(3)(A) (relating to'' for ''Subparagraphs (A) and (B) of section 954(c)(4) (relating to exception for''.

Subsec. (d)(5)(B). Pub. L. 99–514, §1275(c)(7), amended subpar. (B) generally, striking out cl. (i) heading, substituting ''An amount'' for ''Any amount'', and striking out cl. (ii), Virgin Islands corporations, which read as follows: ''Subsection (b) of section 934 shall not apply to any amount treated as interest under paragraph (1) unless such amount is from sources within the Virgin Islands (determined after the application of paragraph (1)).''

Subsec. (d)(7), (8). Pub. L. 99–514, §1810(c)(2), added par. (7) and redesignated former par. (7) as (8).

Subsec. (e). Pub. L. 99–514, §1215(a), added subsec. (e).

1984—Subsec. (c)(2). Pub. L. 98–369, §127(c), substituted ''section 871(a)(1), section 871(h) section 881(a), or section 881(c)'' for ''section 871(a)(1) or section 881(a)''.

Subsec. (d). Pub. L. 98–369, §123(a), added subsec. (d).

1976—Subsec. (a). Pub. L. 94–455, §1901(a)(113)(A), substituted in heading ''Produced'' for ''Sale, etc.'' and struck out in text provisions relating to the definition of sale and sold.

Subsec. (c)(4)(B)(i). Pub. L. 94–455, §1901(a)(113)(B), substituted ''sale or exchange'' for ''sale''.

Subsec. (c)(4)(B)(iii). Pub. L. 94–455, §1901(a)(113)(B), (C), substituted ''sold or exchanged'' for ''sold'' and ''sale or exchange'' for ''sale'' wherever appearing.

Subsec. (c)(5)(C). Pub. L. 94–455, §1901(a)(113)(B), substituted ''sale or exchange'' for ''sale'' wherever appearing.

1966—Pub. L. 89–809 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–97, title I, §13501(c)(1), Dec. 22, 2017, 131 Stat. 2141, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to sales, exchanges, and dispositions on or after November 27, 2017.''

Pub. L. 115–97, title I, §14502(b), Dec. 22, 2017, 131 Stat. 2235, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2017.''

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–240 applicable to guarantees issued after Sept. 27, 2010, see section 2122(d) of Pub. L. 111–240, set out as a note under section 861 of this title.

Pub. L. 111–226, title II, §216(b), Aug. 10, 2010, 124 Stat. 2400, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 10, 2010].''

Pub. L. 111–147, title V, §551(b), Mar. 18, 2010, 124 Stat. 117, provided that: ''The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Mar. 18, 2010].''

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–92, §15(c), Nov. 6, 2009, 123 Stat. 2996, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2010.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–289, div. C, title III, §3093(c), July 30, 2008, 122 Stat. 2912, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2008.''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 101(b)(6) of Pub. L. 108–357 applicable to transactions after Dec. 31, 2004, see section 101(c) of Pub. L. 108–357, set out as a note under section 56 of this title.

Pub. L. 108–357, title IV, §401(c), Oct. 22, 2004, 118 Stat. 1491, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2008.''

Pub. L. 108–357, title IV, §403(c), Oct. 22, 2004, 118 Stat. 1494, provided that: ''The amendments made by this section [amending this section and section 904 of this title] shall apply to taxable years beginning after December 31, 2002.''

Pub. L. 108–357, title IV, §403(d), as added by Pub. L. 109–135, title IV, §403(*l*), Dec. 21, 2005, 119 Stat. 2625, provided that: ''If the taxpayer elects (at such time and in such form and manner as the Secretary of the Treasury may prescribe) to have the rules of this subsection apply—

''(1) the amendments made by this section [amending this section and section 904 of this title] shall not apply to taxable years beginning after December 31, 2002, and before January 1, 2005, and

''(2) in the case of taxable years beginning after December 31, 2004, clause (iv) of section 904(d)(4)(C) of the Internal Revenue Code of 1986 (as amended by this section) shall be applied by substituting 'January 1, 2005' for 'January 1, 2003' both places it appears.''

[Amendment by Pub. L. 109–135 adding section 403(d) of Pub. L. 108–357, set out above, effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as an Effective Date of 2005 Amendment note under section 26 of this title.]

Amendment by section 413(c)(12) of Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

Pub. L. 108–357, title VIII, §894(b), Oct. 22, 2004, 118 Stat. 1647, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–519 applicable to transactions after Sept. 30, 2000, with special rules relating to existing foreign sales corporations, see section 5 of Pub. L. 106–519, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XI, §1162(b), Aug. 5, 1997, 111 Stat. 987, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1997.''

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102–227, title I, §101(b), Dec. 11, 1991, 105 Stat. 1686, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after August 1, 1989.''

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11401(b), Nov. 5, 1990, 104 Stat. 1388–472, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after August 1, 1989.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to taxable years beginning after Dec. 31, 1987, see section 10242(d) of Pub. L. 100–203, set out as a note under section 816 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1201(d)(4) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, except as otherwise provided, see section 1201(e) of Pub. L. 99–514, set out as a note under section 904 of this title.

Amendment by section 1211(b)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, except as otherwise provided, see section 1211(c) of Pub. L. 99–514, set out as an Effective Date note under section 865 of this title.

Pub. L. 99–514, title XII, §1215(c), Oct. 22, 1986, 100 Stat. 2545, as amended by Pub. L. 100–647, title I, §1012(h)(7), Nov. 10, 1988, 102 Stat. 3504; Pub. L. 104–191, title V, §521(a), Aug. 21, 1996, 110 Stat. 2103, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1986.

''(2) TRANSITIONAL RULES.—

''(A) GENERAL PHASE-IN.—

''(i) IN GENERAL.—In the case of the 1st 3 taxable years of the taxpayer beginning after December 31, 1986, the amendments made by this section shall not apply to interest expenses paid or accrued by the taxpayer during the taxable year with respect to an aggregate amount of indebtedness which does not exceed the general phase-in amount.

''(ii) GENERAL PHASE-IN AMOUNT.—Except as provided in clause (iii), the general phase-in amount for purposes of clause (i) is the applicable percentage (determined under the following table) of the aggregate amount of indebtedness of the taxpayer outstanding on November 16, 1985:

"In the case of the:	The applicable percentage is:
1st taxable year	75
2nd taxable year	50
3rd taxable year	25.

''(iii) LOWER LIMIT WHERE TAXPAYER REDUCES INDEBTEDNESS.—For purposes of applying this subparagraph to interest expenses attributable to any month, the general phase-in amount shall in no event exceed the lowest amount of indebtedness of the taxpayer outstanding as of the close of any preceding month beginning after November 16, 1985. To the extent provided in regulations, the average amount of indebtedness outstanding during any month shall be used (in lieu of the amount outstanding as of the close of such month) for purposes of the preceding sentence.

''(B) CONSOLIDATION RULE NOT TO APPLY TO CERTAIN INTEREST.—

''(i) IN GENERAL.—In the case of the 1st 5 taxable years of the taxpayer beginning after December 31, 1986—

''(I) subparagraph (A) shall not apply for purposes of paragraph (1) of section 864(e) of the Internal Revenue Code of 1986 (as added by this section), but

''(II) such paragraph (1) shall not apply to interest expenses paid or accrued by the taxpayer during the taxable year with respect to an aggregate amount of indebtedness which does not exceed the special phase-in amount.

''(ii) SPECIAL PHASE-IN AMOUNT.—The special phase-in amount for purposes of clause (i) is the sum of—

''(I) the general phase-in amount as determined for purposes of subparagraph (A),

''(II) the 5-year phase-in amount, and

''(III) the 4-year phase-in amount.

For purposes of applying this subparagraph to interest expense attributable to any month, the special phase-in amount shall in no event exceed the limitation determined under subparagraph (A)(iii).

''(iii) 5-YEAR PHASE-IN AMOUNT.—The 5-year phase-in amount is the lesser of—

''(I) the applicable percentage (determined under the following table for purposes of this subclause) of the 5-year debt amount, or

''(II) the applicable percentage (determined under the following table for purposes of this subclause) of the 5-year debt amount reduced by paydowns:

"In the case of the:	The applicable percentage for purposes of subclause (I) is:	The applicable percentage for purposes of subclause (II) is:
1st taxable year	8⅓	10
2nd taxable year	16⅔	25
3rd taxable year	25	50
4th taxable year	33⅓	100
5th taxable year	16⅔	100.

''(iv) 4-YEAR PHASE-IN AMOUNT.—The 4-year phase-in amount is the lesser of—

''(I) the applicable percentage (determined under the following table for purposes of this subclause) of the 4-year debt amount, or

''(II) the applicable percentage (determined under the following table for purposes of this subclause) of the 4-year debt amount reduced by paydowns to the extent such paydowns exceed the 5-year debt amount:

"In the case of the:	The applicable percentage for purposes of subclause (I) is:	The applicable percentage for purposes of subclause (II) is:
1st taxable year	5	6¼
2nd taxable year	10	16⅔
3rd taxable year	15	37½
4th taxable year	20	100
5th taxable year	0	0.

''(v) 5-YEAR DEBT AMOUNT.—The term '5-year debt amount' means the excess (if any) of—

''(I) the amount of the outstanding indebtedness of the taxpayer on May 29, 1985, over

''(II) the amount of the outstanding indebtedness of the taxpayer as of the close of December 31, 1983.

The 5-year debt amount shall not exceed the aggregate amount of indebtedness of the taxpayer outstanding on November 16, 1985.

''(vi) 4-YEAR DEBT AMOUNT.—The term '4-year debt amount' means the excess (if any) of—

''(I) the amount referred to in clause (v)(II), over

''(II) the amount of the outstanding indebtedness of the taxpayer as of the close of December 31, 1982.

The 4-year debt amount shall not exceed the aggregate amount of indebtedness of the taxpayer outstanding on November 16, 1985, reduced by the 5-year debt amount.

''(vii) PAYDOWNS.—For purposes of applying this subparagraph to interest expenses attributable to any month, the term 'paydowns' means the excess (if any) of—

''(I) the aggregate amount of indebtedness of the taxpayer outstanding on November 16, 1985, over

''(II) the lowest amount of indebtedness of the taxpayer outstanding as of the close of any preceding month beginning after November 16, 1985 (or, to the extent provided in regulations under subparagraph (A)(iii), the average amount of indebtedness outstanding during any such month).

''(C) COORDINATION OF SUBPARAGRAPHS (A) AND (B).—In applying subparagraph (B), there shall first be taken into account indebtedness to which subparagraph (A) applies.

''(D) SPECIAL RULES.—

''(i) In the case of the 1st 9 taxable years of the taxpayer beginning after December 31, 1986, the amendments made by this section shall not apply to interest expenses paid or accrued by the taxpayer during the taxable year with respect to an aggregate amount of indebtedness which does not exceed the applicable percentage (determined under the following table) of the indebtedness described in clause (iii) or (iv):

"In the case of the:	The applicable percentage is:
1st taxable year	90
2nd taxable year	80

"In the case of the:	The applicable percentage is:
3rd taxable year	70
4th taxable year	60
5th taxable year	50
6th taxable year	40
7th taxable year	30
8th taxable year	20
9th taxable year	10.

''(ii) The provisions of this subparagraph shall apply in lieu of the provisions of subparagraphs (A) and (B).

''(iii) INDEBTEDNESS OUTSTANDING ON MAY 29, 1985.—Indebtedness is described in this clause if it is indebtedness (which was outstanding on May 29, 1985) of a corporation incorporated on June 13, 1917, which has its principal place of business in Bartlesville, Oklahoma.

''(iv) INDEBTEDNESS OUTSTANDING ON MAY 29, 1985.—Indebtedness is described in this clause if it is indebtedness (which was outstanding on May 29, 1985) of a member of an affiliated group (as defined in section 1504(a) [of the Internal Revenue Code of 1986]), the common parent of which was incorporated on August 26, 1926, and has its principal place of business in Harrison, New York.

''(E) TREATMENT OF AFFILIATED GROUP.—For purposes of this paragraph, all members of the same affiliated group of corporations (as defined in section 864(e)(5)(A) of the Internal Revenue Code of 1986, as added by this section) shall be treated as 1 taxpayer whether or not such members filed a consolidated return.

''(F) ELECTION TO HAVE PARAGRAPH NOT APPLY.—A taxpayer may elect (at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe) to have this paragraph not apply. In the case of members of the same affiliated group (as so defined), such an election may be made only if each member consents to such election.

''(3) SPECIAL RULE.—

''(A) IN GENERAL.—In the case of a qualified corporation, in lieu of applying paragraph (2), the amendments made by this section shall not apply to interest expenses allocable to any indebtedness to the extent such indebtedness does not exceed $500,000,000 if—

''(i) the indebtedness was incurred to develop or improve existing property that is owned by the taxpayer on November 16, 1985, and was acquired with the intent to develop or improve the property,

''(ii) the loan agreement with respect to the indebtedness provides that the funds are to be utilized for purposes of developing or improving the above property, and

''(iii) the debt to equity ratio of the companies that join in the filing of the consolidated return is less than 15 percent.

''(B) QUALIFIED CORPORATION.—For purposes of subparagraph (A), the term 'qualified corporation' means a corporation—

''(i) which was incorporated in Delaware on June 29, 1964,

''(ii) the principal subsidiary of which is a resident of Arkansas, and

''(iii) which is a member of an affiliated group the average daily United States production of oil of which is less than 50,000 barrels and the average daily United States refining of which is less than 150,000 barrels.

''(4) SPECIAL RULES FOR SUBSIDIARY.—The amendments made by this section shall not apply to interest on up to the applicable dollar amount of indebtedness of a subsidiary incorporated on February 11, 1975, the indebtedness of which on May 6, 1986, included—

''(A) $100,000,000 face amount of 11¾ percent notes due in 1990,

''(B) $100,000,000 of 8¾ percent notes due in 1989,

''(C) 6¾ percent Japanese yen notes due in 1991, and

''(D) 5⅜ percent Swiss franc bonds due in 1994.

For purposes of this paragraph, the term 'applicable dollar amount' means $600,000,000 in the case of taxable years beginning in 1987 through 1991, $500,000,000 in the case of the taxable year beginning in 1992, $400,000,000 in the case of the taxable year beginning in 1993, $300,000,000 in the case of the taxable year beginning in 1994, $200,000,000 in the case of the taxable year beginning in 1995, $100,000,000 in the case of the taxable year beginning in 1996, and zero in the case of taxable years beginning after 1996.

''[(5) Repealed. Pub. L. 104–191, title V, §521(a), Aug. 21, 1996, 110 Stat. 2103.]

''(6) SPECIAL RULES FOR ALLOCATING GENERAL AND ADMINISTRATIVE EXPENSES.—

''(A) IN GENERAL.—In the case of an affiliated group of domestic corporations the common parent of which has its principal office in New Brunswick, New Jersey, and has a certificate of organization which was filed with the Secretary of the State of New Jersey on November 10, 1887, the amendments made by this section shall not apply to the phase-in percentage of general and administrative expenses paid or incurred in its 1st 3 taxable years beginning after December 31, 1986.

''(B) PHASE-IN PERCENTAGE.—For purposes of subparagraph (A):

"In the case of taxable years beginning in:	The phase-in percentage is:
1987	75
1988	50
1989	25.''

[Pub. L. 104–191, title V, §521(b), Aug. 21, 1996, 110 Stat. 2103, provided that:

[''(1) IN GENERAL.—The amendment made by this section [amending section 1215(c) of Pub. L. 99–514, set out above] shall apply to taxable years beginning after December 31, 1995.

[''(2) SPECIAL RULE.—In the case of the first taxable year beginning after December 31, 1995, the pre-effective date portion of the interest expense of the corporation referred to in such paragraph (5) of such section 1215(c) [of Pub. L. 99–514] for such taxable year shall be allocated and apportioned without regard to such amendment. For purposes of the preceding sentence, the pre-effective date portion is the amount which bears the same ratio to the interest expense for such taxable year as the number of days during such taxable year before the date of the enactment of this Act [Aug. 21, 1996] bears to 366.'']

Amendment by section 1221(a)(2) of Pub. L. 99–514 applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, except as otherwise provided, see section 1221(g) of Pub. L. 99–514, set out as a note under section 954 of this title.

Pub. L. 99–514, title XII, §1223(c), Oct. 22, 1986, 100 Stat. 2558, provided that: ''The amendments made by this section [amending this section and sections 881 and 954 of this title] shall apply to taxable years beginning after December 31, 1986.''

Pub. L. 99–514, title XII, §1242(c), Oct. 22, 1986, 100 Stat. 2580, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1986.''

Amendment by section 1275(c)(7) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as a note under section 931 of this title.

Amendment by section 1810(c)(2), (3) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §123(c), July 18, 1984, 98 Stat. 646, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 956 of this title] shall apply to accounts receivable and evidences of indebtedness transferred after March 1, 1984, in taxable years ending after such date.

''(2) TRANSITIONAL RULE.—The amendments made by this section shall not apply to accounts receivable and evidences of indebtedness acquired after March 1, 1984, and before March 1, 1994, by a Belgian corporation in existence on March 1, 1984, in any taxable year ending after such date, but only to the extent that the amount includible in gross income by reason of section 956 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] with respect to such corporation for all such taxable years is not reduced by reason of this paragraph by more than the lesser of—

''(A) $15,000,000 or

''(B) the amount of the Belgian corporation's adjusted basis on March 1, 1984, in stock of a foreign corporation formed to issue bonds outside the United States to the public.''

Amendment by section 127(c) of Pub. L. 98–369 applicable to interest received after July 18, 1984, with respect to obligations issued after such date, in taxable years ending after such date, see section 127(g)(1) of Pub. L. 98–369, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, except that in applying section 864(c)(4)(B)(iii) of this title with respect to a binding contract entered into on or before Feb. 24, 1966, activities in the United States on or before such date in negotiating or carrying out such contract shall not be taken into account, see section 102(e)(1) of Pub. L. 89–809, set out as a note under section 861 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 1201(d)(4) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, and for nonapplication of amendments by sections 1211(b)(2) and 1242(a) of Pub. L. 99–514 to the extent application of such amendments would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2) to (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 865. Source rules for personal property sales

(a) General rule

Except as otherwise provided in this section, income from the sale of personal property—

(1) by a United States resident shall be sourced in the United States, or

(2) by a nonresident shall be sourced outside the United States.

(b) Exception for inventory property

In the case of income derived from the sale of inventory property—

(1) this section shall not apply, and

(2) such income shall be sourced under the rules of sections 861(a)(6), 862(a)(6), and 863.

Notwithstanding the preceding sentence, any income from the sale of any unprocessed timber which is a softwood and was cut from an area in the United States shall be sourced in the United States and the rules of sections 862(a)(6) and 863(b) shall not apply to any such income. For purposes of the preceding sentence, the term ''unprocessed timber'' means any log, cant, or similar form of timber.

(c) Exception for depreciable personal property

(1) In general

Gain (not in excess of the depreciation adjustments) from the sale of depreciable personal property shall be allocated between sources in the United States and sources outside the United States—

(A) by treating the same proportion of such gain as sourced in the United States as the United States depreciation adjustments with respect to such property bear to the total depreciation adjustments, and

(B) by treating the remaining portion of such gain as sourced outside the United States.

(2) Gain in excess of depreciation

Gain (in excess of the depreciation adjustments) from the sale of depreciable personal property shall be sourced as if such property were inventory property.

(3) United States depreciation adjustments

For purposes of this subsection—

(A) In general

The term ''United States depreciation adjustments'' means the portion of the depreciation adjustments to the adjusted basis of the property which are attributable to the depreciation deductions allowable in computing taxable income from sources in the United States.

(B) Special rule for certain property

Except in the case of property of a kind described in section 168(g)(4), if, for any taxable year—

(i) such property is used predominantly in the United States, or

(ii) such property is used predominantly outside the United States,

all of the depreciation deductions allowable for such year shall be treated as having been allocated to income from sources in the United States (or, where clause (ii) applies, from sources outside the United States).

(4) Other definitions

For purposes of this subsection—

(A) Depreciable personal property

The term ''depreciable personal property'' means any personal property if the adjusted

basis of such property includes depreciation adjustments.

(B) Depreciation adjustments

The term ''depreciation adjustments'' means adjustments reflected in the adjusted basis of any property on account of depreciation deductions (whether allowed with respect to such property or other property and whether allowed to the taxpayer or to any other person).

(C) Depreciation deductions

The term ''depreciation deductions'' means any deductions for depreciation or amortization or any other deduction allowable under any provision of this chapter which treats an otherwise capital expenditure as a deductible expense.

(d) Exception for intangibles

(1) In general

In the case of any sale of an intangible—

(A) this section shall apply only to the extent the payments in consideration of such sale are not contingent on the productivity, use, or disposition of the intangible, and

(B) to the extent such payments are so contingent, the source of such payments shall be determined under this part in the same manner as if such payments were royalties.

(2) Intangible

For purposes of paragraph (1), the term ''intangible'' means any patent, copyright, secret process or formula, goodwill, trademark, trade brand, franchise, or other like property.

(3) Special rule in the case of goodwill

To the extent this section applies to the sale of goodwill, payments in consideration of such sale shall be treated as from sources in the country in which such goodwill was generated.

(4) Coordination with subsection (c)

(A) Gain not in excess of depreciation adjustments sourced under subsection (c)

Notwithstanding paragraph (1), any gain from the sale of an intangible shall be sourced under subsection (c) to the extent such gain does not exceed the depreciation adjustments with respect to such intangible.

(B) Subsection (c)(2) not to apply to intangibles

Paragraph (2) of subsection (c) shall not apply to any gain from the sale of an intangible.

(e) Special rules for sales through offices or fixed places of business

(1) Sales by residents

(A) In general

In the case of income not sourced under subsection (b), (c), (d)(1)(B) or (3), or (f), if a United States resident maintains an office or other fixed place of business in a foreign country, income from sales of personal property attributable to such office or other fixed place of business shall be sourced outside the United States.

(B) Tax must be imposed

Subparagraph (A) shall not apply unless an income tax equal to at least 10 percent of the income from the sale is actually paid to a foreign country with respect to such income.

(2) Sales by nonresidents

(A) In general

Notwithstanding any other provisions of this part, if a nonresident maintains an office or other fixed place of business in the United States, income from any sale of personal property (including inventory property) attributable to such office or other fixed place of business shall be sourced in the United States. The preceding sentence shall not apply for purposes of section 971 (defining export trade corporation).

(B) Exception

Subparagraph (A) shall not apply to any sale of inventory property which is sold for use, disposition, or consumption outside the United States if an office or other fixed place of business of the taxpayer in a foreign country materially participated in the sale.

(3) Sales attributable to an office or other fixed place of business

The principles of section 864(c)(5) shall apply in determining whether a taxpayer has an office or other fixed place of business and whether a sale is attributable to such an office or other fixed place of business.

(f) Stock of affiliates

If—

(1) a United States resident sells stock in an affiliate which is a foreign corporation,

(2) such sale occurs in a foreign country in which such affiliate is engaged in the active conduct of a trade or business, and

(3) more than 50 percent of the gross income of such affiliate for the 3-year period ending with the close of such affiliate's taxable year immediately preceding the year in which the sale occurred was derived from the active conduct of a trade or business in such foreign country,

any gain from such sale shall be sourced outside the United States. For purposes of paragraphs (2) and (3), the United States resident may elect to treat an affiliate and all other corporations which are wholly owned (directly or indirectly) by the affiliate as one corporation.

(g) United States resident; nonresident

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection—

(A) United States resident

The term ''United States resident'' means—

(i) any individual who—

(I) is a United States citizen or a resident alien and does not have a tax home (as defined in section 911(d)(3)) in a foreign country, or

(II) is a nonresident alien and has a tax home (as so defined) in the United States, and

(ii) any corporation, trust, or estate which is a United States person (as defined in section 7701(a)(30)).

(B) Nonresident

The term ''nonresident'' means any person other than a United States resident.

(2) Special rules for United States citizens and resident aliens

For purposes of this section, a United States citizen or resident alien shall not be treated as a nonresident with respect to any sale of personal property unless an income tax equal to at least 10 percent of the gain derived from such sale is actually paid to a foreign country with respect to that gain.

(3) Special rule for certain stock sales by residents of Puerto Rico

Paragraph (2) shall not apply to the sale by an individual who was a bona fide resident of Puerto Rico during the entire taxable year of stock in a corporation if—

(A) such corporation is engaged in the active conduct of a trade or business in Puerto Rico, and

(B) more than 50 percent of its gross income for the 3-year period ending with the close of such corporation's taxable year immediately preceding the year in which such sale occurred was derived from the active conduct of a trade or business in Puerto Rico.

For purposes of the preceding sentence, the taxpayer may elect to treat a corporation and all other corporations which are wholly owned (directly or indirectly) by such corporation as one corporation.

(h) Treatment of gains from sale of certain stock or intangibles and from certain liquidations

(1) In general

In the case of gain to which this subsection applies—

(A) such gain shall be sourced outside the United States, but

(B) subsections (a), (b), and (c) of section 904 and sections 907 and 960 shall be applied separately with respect to such gain.

(2) Gain to which subsection applies

This subsection shall apply to—

(A) Gain from sale of certain stock or intangibles

Any gain—

(i) which is from the sale of stock in a foreign corporation or an intangible (as defined in subsection (d)(2)) and which would otherwise be sourced in the United States under this section,

(ii) which, under a treaty obligation of the United States (applied without regard to this section), would be sourced outside the United States, and

(iii) with respect to which the taxpayer chooses the benefits of this subsection.

(B) Gain from liquidation in possession

Any gain which is derived from the receipt of any distribution in liquidation of a corporation—

(i) which is organized in a possession of the United States, and

(ii) more than 50 percent of the gross income of which during the 3-taxable year period ending with the close of the taxable year immediately preceding the taxable year in which the distribution is received is from the active conduct of a trade or business in such possession.

(i) Other definitions

For purposes of this section—

(1) Inventory property

The term ''inventory property'' means personal property described in paragraph (1) of section 1221(a).

(2) Sale includes exchange

The term ''sale'' includes an exchange or any other disposition.

(3) Treatment of possessions

Any possession of the United States shall be treated as a foreign country.

(4) Affiliate

The term ''affiliate'' means a member of the same affiliated group (within the meaning of section 1504(a) without regard to section 1504(b)).

(5) Treatment of partnerships

In the case of a partnership, except as provided in regulations, this section shall be applied at the partner level.

(j) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purpose of this section, including regulations—

(1) relating to the treatment of losses from sales of personal property,

(2) applying the rules of this section to income derived from trading in futures contracts, forward contracts, options contracts, and other instruments, and

(3) providing that, subject to such conditions (which may include provisions comparable to section 877) as may be provided in such regulations, subsections (e)(1)(B) and (g)(2) shall not apply for purposes of sections 931, 933, and 936.

(k) Cross references

(1) For provisions relating to the characterization as dividends for source purposes of gains from the sale of stock in certain foreign corporations, see section 1248.

(2) For sourcing of income from certain foreign currency transactions, see section 988.

(Added Pub. L. 99–514, title XII, § 1211(a), Oct. 22, 1986, 100 Stat. 2533; amended Pub. L. 100–647, title I, § 1012(d)(1)–(6), (8), (9), (11), (12), Nov. 10, 1988, 102 Stat. 3497–3499; Pub. L. 101–508, title XI, § 11813(b)(18), Nov. 5, 1990, 104 Stat. 1388–555; Pub. L. 103–66, title XIII, § 13239(c), Aug. 10, 1993, 107 Stat. 509; Pub. L. 104–188, title I, § 1704(f)(4)(A), Aug. 20, 1996, 110 Stat. 1880; Pub. L. 106–170, title

V, §532(c)(1)(E), Dec. 17, 1999, 113 Stat. 1930; Pub. L. 115–97, title I, §14301(c)(6), Dec. 22, 2017, 131 Stat. 2222.)

AMENDMENTS

2017—Subsec. (h)(1)(B). Pub. L. 115–97 substituted ''907'' for ''902, 907,''.

1999—Subsec. (i)(1). Pub. L. 106–170 substituted ''section 1221(a)'' for ''section 1221''.

1996—Subsec. (b)(2). Pub. L. 104–188 substituted ''863'' for ''863(b)''.

1993—Subsec. (b). Pub. L. 103–66 inserted at end ''Notwithstanding the preceding sentence, any income from the sale of any unprocessed timber which is a softwood and was cut from an area in the United States shall be sourced in the United States and the rules of sections 862(a)(6) and 863(b) shall not apply to any such income. For purposes of the preceding sentence, the term 'unprocessed timber' means any log, cant, or similar form of timber.''

1990—Subsec. (c)(3)(B). Pub. L. 101–508 substituted ''section 168(g)(4)'' for ''section 48(a)(2)(B)''.

1988—Subsec. (d)(2). Pub. L. 100–647, §1012(d)(12), inserted ''franchise,'' after ''trade brand,''.

Subsec. (d)(4). Pub. L. 100–647, §1012(d)(1), added par. (4).

Subsec. (e)(1)(A). Pub. L. 100–647, §1012(d)(2), (9), substituted ''(d)(1)(B) or (3)'' for ''(d)'' and ''in a foreign country'' for first reference to ''outside the United States''.

Subsec. (e)(2)(B). Pub. L. 100–647, §1012(d)(5), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''Subparagraph (A) shall not apply to—

''(i) any sale of inventory property which is sold for use, disposition, or consumption outside the United States if an office or other fixed place of business of the taxpayer outside the United States materially participated in the sale, or

''(ii) any amount included in gross income under section 951(a)(1)(A).''

Subsec. (f). Pub. L. 100–647, §1012(d)(4), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: ''If—

''(1) a United States resident sells stock in an affiliate which is a foreign corporation,

''(2) such affiliate is engaged in the active conduct of a trade or business, and

''(3) such sale occurs in the foreign country in which the affiliate derived more than 50 percent of its gross income for the 3-year period ending with the close of the affiliate's taxable year immediately preceding the year during which such sale occurred,

any gain from such sale shall be sourced outside the United States.''

Subsec. (g)(1)(A)(i). Pub. L. 100–647, §1012(d)(11), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''any individual who has a tax home (as defined in section 911(d)(3)) in the United States, and''.

Subsec. (g)(1)(A)(ii). Pub. L. 100–647, §1012(d)(3)(A), struck out ''partnership,'' after ''corporation,''.

Subsec. (g)(3). Pub. L. 100–647, §1012(d)(6)(A), added par. (3).

Subsec. (h). Pub. L. 100–647, §1012(d)(8), added subsec. (h) and redesignated former subsec. (h) as (i).

Pub. L. 100–647, §1012(d)(3)(B), added par. (5) to subsec. (h) prior to redesignation as subsec. (i).

Subsec. (i). Pub. L. 100–647, §1012(d)(8), redesignated former subsec. (h) as (i). Former subsec. (i) redesignated (j).

Pub. L. 100–647, §1012(d)(6)(B), added par. (3) to subsec. (i) prior to redesignation as subsec. (j).

Subsec. (i)(5). Pub. L. 100–647, §1012(d)(3)(B), added par. (5) to subsec. (h) prior to redesignation as subsec. (i).

Subsec. (j). Pub. L. 100–647, §1012(d)(8), redesignated former subsec. (i) as (j). Former subsec. (j) redesignated (k).

Subsec. (j)(3). Pub. L. 100–647, §1012(d)(6)(B), added par. (3) to subsec. (i) prior to redesignation as subsec. (j).

Subsec. (k). Pub. L. 100–647, §1012(d)(8), redesignated former subsec. (j) as (k).

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–97 applicable to taxable years of foreign corporations beginning after Dec. 31, 2017, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, see section 14301(d) of Pub. L. 115–97, set out as a note under section 78 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1704(f)(4)(B), Aug. 20, 1996, 110 Stat. 1880, provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect as if included in the amendments made by section 1211 of the Tax Reform Act of 1986 [Pub. L. 99–514].''

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13239(e), Aug. 10, 1993, 107 Stat. 509, provided that: ''The amendments made by this section [amending this section and sections 927, 954, and 993 of this title] shall apply to sales, exchanges, or other dispositions after the date of the enactment of this Act [Aug. 10, 1993].''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1012(d)(5), Nov. 10, 1988, 102 Stat. 3497, provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1987.

Amendment by section 1012(d)(1)–(4), (6), (8), (9), (11), (12) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Pub. L. 99–514, title XII, §1211(c), Oct. 22, 1986, 100 Stat. 2536, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this section, amending sections 861 to 864, 871, 881, and 904 of this title, and enacting provisions set out below] shall apply to taxable years beginning after December 31, 1986.

''(2) SPECIAL RULE FOR FOREIGN PERSONS.—In the case of any foreign person other than any controlled foreign corporations (within the meaning of section 957(a) of the Internal Revenue Code of 1954 [now 1986]), the amendments made by this section shall apply to transactions entered into after March 18, 1986.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account

prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendment by section 1211(a) of Pub. L. 99–514 (enacting this section) to the extent application of such amendment would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(3), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

STUDY OF SOURCE RULES FOR SALES OF INVENTORY PROPERTY

Pub. L. 99–514, title XII, §1211(d), Oct. 22, 1986, 100 Stat. 2536, directed Secretary of the Treasury or his delegate to conduct a study of source rules for sales of inventory property and, not later than Sept. 30, 1987 (due date extended to Jan. 1, 1992, by Pub. L. 101–508, title XI, §11831(b), Nov. 5, 1990, 104 Stat. 1388–559), to submit to Committee on Ways and Means of House of Representatives and Committee on Finance of Senate a report of such study (together with recommendations he deemed advisable).

PART II—NONRESIDENT ALIENS AND FOREIGN CORPORATIONS

AMENDMENTS

1986—Pub. L. 99–514, title XII, §1212(b)(2), Oct. 22, 1986, 100 Stat. 2538, added item for subpart C and redesignated item for former subpart C as D.

SUBPART A—NONRESIDENT ALIEN INDIVIDUALS

AMENDMENTS

2008—Pub. L. 110–245, title III, §301(f), June 17, 2008, 122 Stat. 1647, added item 877A.

1986—Pub. L. 99–514, title XII, §1272(d)(13), Oct. 22, 1986, 100 Stat. 2595, inserted ‘‘, Guam, American Samoa, or the Northern Mariana Islands’’ in item 876.

1984—Pub. L. 98–369, div. A, title I, §139(b)(2), July 18, 1984, 98 Stat. 677, substituted ‘‘nonresident alien individuals’’ for ‘‘a resident or citizen of the United States who is married to a nonresident alien individual’’ in item 879.

1976—Pub. L. 94–455, title X, §1012(b)(3)(A), Oct. 4, 1976, 90 Stat. 1614, added item 879.

1966—Pub. L. 89–809, title I, §103(e)(2), (f)(2), Nov. 13, 1966, 80 Stat. 1551, 1552, inserted ‘‘; beneficiaries of estates and trusts’’ in item 875, added item 877, and redesignated former item 877 as 878.

§ 871. Tax on nonresident alien individuals

(a) Income not connected with United States business—30 percent tax

(1) Income other than capital gains

Except as provided in subsection (h), there is hereby imposed for each taxable year a tax of 30 percent of the amount received from sources within the United States by a nonresident alien individual as—

(A) interest (other than original issue discount as defined in section 1273), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits, and income,

(B) gains described in subsection (b) or (c) of section 631,

(C) in the case of—

(i) a sale or exchange of an original issue discount obligation, the amount of the original issue discount accruing while such obligation was held by the nonresident alien individual (to the extent such discount was not theretofore taken into account under clause (ii)), and

(ii) a payment on an original issue discount obligation, an amount equal to the original issue discount accruing while such obligation was held by the nonresident alien individual (except that such original issue discount shall be taken into account under this clause only to the extent such discount was not theretofore taken into account under this clause and only to the extent that the tax thereon does not exceed the payment less the tax imposed by subparagraph (A) thereon), and

(D) gains from the sale or exchange after October 4, 1966, of patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other like property, or of any interest in any such property, to the extent such gains are from payments which are contingent on the productivity, use, or disposition of the property or interest sold or exchanged,

but only to the extent the amount so received is not effectively connected with the conduct of a trade or business within the United States.

(2) Capital gains of aliens present in the United States 183 days or more

In the case of a nonresident alien individual present in the United States for a period or periods aggregating 183 days or more during the taxable year, there is hereby imposed for such year a tax of 30 percent of the amount by which his gains, derived from sources within the United States, from the sale or exchange at any time during such year of capital assets exceed his losses, allocable to sources within the United States, from the sale or exchange at any time during such year of capital assets. For purposes of this paragraph, gains and losses shall be taken into account only if, and to the extent that, they would be recognized

and taken into account if such gains and losses were effectively connected with the conduct of a trade or business within the United States, except that such gains and losses shall be determined without regard to section 1202 and such losses shall be determined without the benefits of the capital loss carryover provided in section 1212. Any gain or loss which is taken into account in determining the tax under paragraph (1) or subsection (b) shall not be taken into account in determining the tax under this paragraph. For purposes of the 183-day requirement of this paragraph, a nonresident alien individual not engaged in trade or business within the United States who has not established a taxable year for any prior period shall be treated as having a taxable year which is the calendar year.

(3) Taxation of social security benefits

For purposes of this section and section 1441—

(A) 85 percent of any social security benefit (as defined in section 86(d)) shall be included in gross income (notwithstanding section 207 of the Social Security Act), and

(B) section 86 shall not apply.

For treatment of certain citizens of possessions of the United States, see section 932(c).[1]

(b) Income connected with United States business—graduated rate of tax

(1) Imposition of tax

A nonresident alien individual engaged in trade or business within the United States during the taxable year shall be taxable as provided in section 1 or 55 on his taxable income which is effectively connected with the conduct of a trade or business within the United States.

(2) Determination of taxable income

In determining taxable income for purposes of paragraph (1), gross income includes only gross income which is effectively connected with the conduct of a trade or business within the United States.

(c) Participants in certain exchange or training programs

For purposes of this section, a nonresident alien individual who (without regard to this subsection) is not engaged in trade or business within the United States and who is temporarily present in the United States as a nonimmigrant under subparagraph (F), (J), (M), or (Q) of section 101(a)(15) of the Immigration and Nationality Act, as amended (8 U.S.C. 1101(a)(15)(F), (J), (M), or (Q)), shall be treated as a nonresident alien individual engaged in trade or business within the United States, and any income described in the second sentence of section 1441(b) which is received by such individual shall, to the extent derived from sources within the United States, be treated as effectively connected with the conduct of a trade or business within the United States.

(d) Election to treat real property income as income connected with United States business

(1) In general

A nonresident alien individual who during the taxable year derives any income—

(A) from real property held for the production of income and located in the United States, or from any interest in such real property, including (i) gains from the sale or exchange of such real property or an interest therein, (ii) rents or royalties from mines, wells, or other natural deposits, and (iii) gains described in section 631(b) or (c), and

(B) which, but for this subsection, would not be treated as income which is effectively connected with the conduct of a trade or business within the United States,

may elect for such taxable year to treat all such income as income which is effectively connected with the conduct of a trade or business within the United States. In such case, such income shall be taxable as provided in subsection (b)(1) whether or not such individual is engaged in trade or business within the United States during the taxable year. An election under this paragraph for any taxable year shall remain in effect for all subsequent taxable years, except that it may be revoked with the consent of the Secretary with respect to any taxable year.

(2) Election after revocation

If an election has been made under paragraph (1) and such election has been revoked, a new election may not be made under such paragraph for any taxable year before the 5th taxable year which begins after the first taxable year for which such revocation is effective, unless the Secretary consents to such new election.

(3) Form and time of election and revocation

An election under paragraph (1), and any revocation of such an election, may be made only in such manner and at such time as the Secretary may by regulations prescribe.

[(e) Repealed. Pub. L. 99–514, title XII, § 1211(b)(5), Oct. 22, 1986, 100 Stat. 2536]

(f) Certain annuities received under qualified plans

(1) In general

For purposes of this section, gross income does not include any amount received as an annuity under a qualified annuity plan described in section 403(a)(1), or from a qualified trust described in section 401(a) which is exempt from tax under section 501(a), if—

(A) all of the personal services by reason of which the annuity is payable were either—

(i) personal services performed outside the United States by an individual who, at the time of performance of such personal services, was a nonresident alien, or

(ii) personal services described in section 864(b)(1) performed within the United States by such individual, and

(B) at the time the first amount is paid as an annuity under the annuity plan or by the

[1] See References in Text note below.

trust, 90 percent or more of the employees for whom contributions or benefits are provided under such annuity plan, or under the plan or plans of which the trust is a part, are citizens or residents of the United States.

(2) Exclusion

Income received during the taxable year which would be excluded from gross income under this subsection but for the requirement of paragraph (1)(B) shall not be included in gross income if—

(A) the recipient's country of residence grants a substantially equivalent exclusion to residents and citizens of the United States; or

(B) the recipient's country of residence is a beneficiary developing country under title V of the Trade Act of 1974 (19 U.S.C. 2461 et seq.).

(g) Special rules for original issue discount

For purposes of this section and section 881—

(1) Original issue discount obligation

(A) In general

Except as provided in subparagraph (B), the term ''original issue discount obligation'' means any bond or other evidence of indebtedness having original issue discount (within the meaning of section 1273).

(B) Exceptions

The term ''original issue discount obligation'' shall not include—

(i) Certain short-term obligations

Any obligation payable 183 days or less from the date of original issue (without regard to the period held by the taxpayer).

(ii) Tax-exempt obligations

Any obligation the interest on which is exempt from tax under section 103 or under any other provision of law without regard to the identity of the holder.

(2) Determination of portion of original issue discount accruing during any period

The determination of the amount of the original issue discount which accrues during any period shall be made under the rules of section 1272 (or the corresponding provisions of prior law) without regard to any exception for short-term obligations.

(3) Source of original issue discount

Except to the extent provided in regulations prescribed by the Secretary, the determination of whether any amount described in subsection (a)(1)(C) is from sources within the United States shall be made at the time of the payment (or sale or exchange) as if such payment (or sale or exchange) involved the payment of interest.

(4) Stripped bonds

The provisions of section 1286 (relating to the treatment of stripped bonds and stripped coupons as obligations with original issue discount) shall apply for purposes of this section.

(h) Repeal of tax on interest of nonresident alien individuals received from certain portfolio debt investments

(1) In general

In the case of any portfolio interest received by a nonresident individual from sources within the United States, no tax shall be imposed under paragraph (1)(A) or (1)(C) of subsection (a).

(2) Portfolio interest

For purposes of this subsection, the term ''portfolio interest'' means any interest (including original issue discount) which—

(A) would be subject to tax under subsection (a) but for this subsection, and

(B) is paid on an obligation—

(i) which is in registered form, and

(ii) with respect to which—

(I) the United States person who would otherwise be required to deduct and withhold tax from such interest under section 1441(a) receives a statement (which meets the requirements of paragraph (5)) that the beneficial owner of the obligation is not a United States person, or

(II) the Secretary has determined that such a statement is not required in order to carry out the purposes of this subsection.

(3) Portfolio interest not to include interest received by 10-percent shareholders

For purposes of this subsection—

(A) In general

The term ''portfolio interest'' shall not include any interest described in paragraph (2) which is received by a 10-percent shareholder.

(B) 10-Percent shareholder

The term ''10-percent shareholder'' means—

(i) in the case of an obligation issued by a corporation, any person who owns 10 percent or more of the total combined voting power of all classes of stock of such corporation entitled to vote, or

(ii) in the case of an obligation issued by a partnership, any person who owns 10 percent or more of the capital or profits interest in such partnership.

(C) Attribution rules

For purposes of determining ownership of stock under subparagraph (B)(i) the rules of section 318(a) shall apply, except that—

(i) section 318(a)(2)(C) shall be applied without regard to the 50-percent limitation therein,

(ii) section 318(a)(3)(C) shall be applied—

(I) without regard to the 50-percent limitation therein; and

(II) in any case where such section would not apply but for subclause (I), by considering a corporation as owning the stock (other than stock in such corporation) which is owned by or for any shareholder of such corporation in that proportion which the value of the stock

which such shareholder owns in such corporation bears to the value of all stock in such corporation, and

(iii) any stock which a person is treated as owning after application of section 318(a)(4) shall not, for purposes of applying paragraphs (2) and (3) of section 318(a), be treated as actually owned by such person.

Under regulations prescribed by the Secretary, rules similar to the rules of the preceding sentence shall be applied in determining the ownership of the capital or profits interest in a partnership for purposes of subparagraph (B)(ii).

(4) Portfolio interest not to include certain contingent interest

For purposes of this subsection—

(A) In general

Except as otherwise provided in this paragraph, the term ''portfolio interest'' shall not include—

(i) any interest if the amount of such interest is determined by reference to—

(I) any receipts, sales or other cash flow of the debtor or a related person,

(II) any income or profits of the debtor or a related person,

(III) any change in value of any property of the debtor or a related person, or

(IV) any dividend, partnership distributions, or similar payments made by the debtor or a related person, or

(ii) any other type of contingent interest that is identified by the Secretary by regulation, where a denial of the portfolio interest exemption is necessary or appropriate to prevent avoidance of Federal income tax.

(B) Related person

The term ''related person'' means any person who is related to the debtor within the meaning of section 267(b) or 707(b)(1), or who is a party to any arrangement undertaken for a purpose of avoiding the application of this paragraph.

(C) Exceptions

Subparagraph (A)(i) shall not apply to—

(i) any amount of interest solely by reason of the fact that the timing of any interest or principal payment is subject to a contingency,

(ii) any amount of interest solely by reason of the fact that the interest is paid with respect to nonrecourse or limited recourse indebtedness,

(iii) any amount of interest all or substantially all of which is determined by reference to any other amount of interest not described in subparagraph (A) (or by reference to the principal amount of indebtedness on which such other interest is paid),

(iv) any amount of interest solely by reason of the fact that the debtor or a related person enters into a hedging transaction to manage the risk of interest rate or currency fluctuations with respect to such interest,

(v) any amount of interest determined by reference to—

(I) changes in the value of property (including stock) that is actively traded (within the meaning of section 1092(d)) other than property described in section 897(c)(1) or (g),

(II) the yield on property described in subclause (I), other than a debt instrument that pays interest described in subparagraph (A), or stock or other property that represents a beneficial interest in the debtor or a related person, or

(III) changes in any index of the value of property described in subclause (I) or of the yield on property described in subclause (II), and

(vi) any other type of interest identified by the Secretary by regulation.

(D) Exception for certain existing indebtedness

Subparagraph (A) shall not apply to any interest paid or accrued with respect to any indebtedness with a fixed term—

(i) which was issued on or before April 7, 1993, or

(ii) which was issued after such date pursuant to a written binding contract in effect on such date and at all times thereafter before such indebtedness was issued.

(5) Certain statements

A statement with respect to any obligation meets the requirements of this paragraph if such statement is made by—

(A) the beneficial owner of such obligation, or

(B) a securities clearing organization, a bank, or other financial institution that holds customers' securities in the ordinary course of its trade or business.

The preceding sentence shall not apply to any statement with respect to payment of interest on any obligation by any person if, at least one month before such payment, the Secretary has published a determination that any statement from such person (or any class including such person) does not meet the requirements of this paragraph.

(6) Secretary may provide subsection not to apply in cases of inadequate information exchange

(A) In general

If the Secretary determines that the exchange of information between the United States and a foreign country is inadequate to prevent evasion of the United States income tax by United States persons, the Secretary may provide in writing (and publish a statement) that the provisions of this subsection shall not apply to payments of interest to any person within such foreign country (or payments addressed to, or for the account of, persons within such foreign country) during the period—

(i) beginning on the date specified by the Secretary, and

(ii) ending on the date that the Secretary determines that the exchange of in-

formation between the United States and the foreign country is adequate to prevent the evasion of United States income tax by United States persons.

(B) Exception for certain obligations

Subparagraph (A) shall not apply to the payment of interest on any obligation which is issued on or before the date of the publication of the Secretary's determination under such subparagraph.

(7) Registered form

For purposes of this subsection, the term ''registered form'' has the same meaning given such term by section 163(f).

(i) Tax not to apply to certain interest and dividends

(1) In general

No tax shall be imposed under paragraph (1)(A) or (1)(C) of subsection (a) on any amount described in paragraph (2).

(2) Amounts to which paragraph (1) applies

The amounts described in this paragraph are as follows:

(A) Interest on deposits, if such interest is not effectively connected with the conduct of a trade or business within the United States.

(B) The active foreign business percentage of—

(i) any dividend paid by an existing 80/20 company, and

(ii) any interest paid by an existing 80/20 company.

(C) Income derived by a foreign central bank of issue from bankers' acceptances.

(D) Dividends paid by a foreign corporation which are treated under section 861(a)(2)(B) as income from sources within the United States.

(3) Deposits

For purposes of paragraph (2), the term ''deposits'' means amounts which are—

(A) deposits with persons carrying on the banking business,

(B) deposits or withdrawable accounts with savings institutions chartered and supervised as savings and loan or similar associations under Federal or State law, but only to the extent that amounts paid or credited on such deposits or accounts are deductible under section 591 (determined without regard to sections 265 and 291) in computing the taxable income of such institutions, and

(C) amounts held by an insurance company under an agreement to pay interest thereon.

(j) Exemption for certain gambling winnings

No tax shall be imposed under paragraph (1)(A) of subsection (a) on the proceeds from a wager placed in any of the following games: blackjack, baccarat, craps, roulette, or big-6 wheel. The preceding sentence shall not apply in any case where the Secretary determines by regulation that the collection of the tax is administratively feasible.

(k) Exemption for certain dividends of regulated investment companies

(1) Interest-related dividends

(A) In general

Except as provided in subparagraph (B), no tax shall be imposed under paragraph (1)(A) of subsection (a) on any interest-related dividend received from a regulated investment company which meets the requirements of section 852(a) for the taxable year with respect to which the dividend is paid.

(B) Exceptions

Subparagraph (A) shall not apply—

(i) to any interest-related dividend received from a regulated investment company by a person to the extent such dividend is attributable to interest (other than interest described in subparagraph (E)(i) or (iii)) received by such company on indebtedness issued by such person or by any corporation or partnership with respect to which such person is a 10-percent shareholder,

(ii) to any interest-related dividend with respect to stock of a regulated investment company unless the person who would otherwise be required to deduct and withhold tax from such dividend under chapter 3 receives a statement (which meets requirements similar to the requirements of subsection (h)(5)) that the beneficial owner of such stock is not a United States person, and

(iii) to any interest-related dividend paid to any person within a foreign country (or any interest-related dividend payment addressed to, or for the account of, persons within such foreign country) during any period described in subsection (h)(6) with respect to such country.

Clause (iii) shall not apply to any dividend with respect to any stock which was acquired on or before the date of the publication of the Secretary's determination under subsection (h)(6).

(C) Interest-related dividend

For purposes of this paragraph—

(i) In general

Except as provided in clause (ii), an interest related dividend is any dividend, or part thereof, which is reported by the company as an interest related dividend in written statements furnished to its shareholders.

(ii) Excess reported amounts

If the aggregate reported amount with respect to the company for any taxable year exceeds the qualified net interest income of the company for such taxable year, an interest related dividend is the excess of—

(I) the reported interest related dividend amount, over

(II) the excess reported amount which is allocable to such reported interest related dividend amount.

(iii) Allocation of excess reported amount

(I) In general

Except as provided in subclause (II), the excess reported amount (if any) which is allocable to the reported interest related dividend amount is that portion of the excess reported amount which bears the same ratio to the excess reported amount as the reported interest related dividend amount bears to the aggregate reported amount.

(II) Special rule for noncalendar year taxpayers

In the case of any taxable year which does not begin and end in the same calendar year, if the post-December reported amount equals or exceeds the excess reported amount for such taxable year, subclause (I) shall be applied by substituting ''post-December reported amount'' for ''aggregate reported amount'' and no excess reported amount shall be allocated to any dividend paid on or before December 31 of such taxable year.

(iv) Definitions

For purposes of this subparagraph—

(I) Reported interest related dividend amount

The term ''reported interest related dividend amount'' means the amount reported to its shareholders under clause (i) as an interest related dividend.

(II) Excess reported amount

The term ''excess reported amount'' means the excess of the aggregate reported amount over the qualified net interest income of the company for the taxable year.

(III) Aggregate reported amount

The term ''aggregate reported amount'' means the aggregate amount of dividends reported by the company under clause (i) as interest related dividends for the taxable year (including interest related dividends paid after the close of the taxable year described in section 855).

(IV) Post-December reported amount

The term ''post-December reported amount'' means the aggregate reported amount determined by taking into account only dividends paid after December 31 of the taxable year.

(D) Qualified net interest income

For purposes of subparagraph (C), the term ''qualified net interest income'' means the qualified interest income of the regulated investment company reduced by the deductions properly allocable to such income.

(E) Qualified interest income

For purposes of subparagraph (D), the term ''qualified interest income'' means the sum of the following amounts derived by the regulated investment company from sources within the United States:

(i) Any amount includible in gross income as original issue discount (within the meaning of section 1273) on an obligation payable 183 days or less from the date of original issue (without regard to the period held by the company).

(ii) Any interest includible in gross income (including amounts recognized as ordinary income in respect of original issue discount or market discount or acquisition discount under part V of subchapter P and such other amounts as regulations may provide) on an obligation which is in registered form; except that this clause shall not apply to—

(I) any interest on an obligation issued by a corporation or partnership if the regulated investment company is a 10-percent shareholder in such corporation or partnership, and

(II) any interest which is treated as not being portfolio interest under the rules of subsection (h)(4).

(iii) Any interest referred to in subsection (i)(2)(A) (without regard to the trade or business of the regulated investment company).

(iv) Any interest-related dividend includable in gross income with respect to stock of another regulated investment company.

(F) 10-percent shareholder

For purposes of this paragraph, the term ''10-percent shareholder'' has the meaning given such term by subsection (h)(3)(B).

(2) Short-term capital gain dividends

(A) In general

Except as provided in subparagraph (B), no tax shall be imposed under paragraph (1)(A) of subsection (a) on any short-term capital gain dividend received from a regulated investment company which meets the requirements of section 852(a) for the taxable year with respect to which the dividend is paid.

(B) Exception for aliens taxable under subsection (a)(2)

Subparagraph (A) shall not apply in the case of any nonresident alien individual subject to tax under subsection (a)(2).

(C) Short-term capital gain dividend

For purposes of this paragraph—

(i) In general

Except as provided in clause (ii), the term ''short-term capital gain dividend'' means any dividend, or part thereof, which is reported by the company as a short-term capital gain dividend in written statements furnished to its shareholders.

(ii) Excess reported amounts

If the aggregate reported amount with respect to the company for any taxable year exceeds the qualified short-term gain of the company for such taxable year, the term ''short-term capital gain dividend'' means the excess of—

(I) the reported short-term capital gain dividend amount, over

(II) the excess reported amount which is allocable to such reported short-term capital gain dividend amount.

(iii) Allocation of excess reported amount

(I) In general

Except as provided in subclause (II), the excess reported amount (if any) which is allocable to the reported short-term capital gain dividend amount is that portion of the excess reported amount which bears the same ratio to the excess reported amount as the reported short-term capital gain dividend amount bears to the aggregate reported amount.

(II) Special rule for noncalendar year taxpayers

In the case of any taxable year which does not begin and end in the same calendar year, if the post-December reported amount equals or exceeds the excess reported amount for such taxable year, subclause (I) shall be applied by substituting ''post-December reported amount'' for ''aggregate reported amount'' and no excess reported amount shall be allocated to any dividend paid on or before December 31 of such taxable year.

(iv) Definitions

For purposes of this subparagraph—

(I) Reported short-term capital gain dividend amount

The term ''reported short-term capital gain dividend amount'' means the amount reported to its shareholders under clause (i) as a short-term capital gain dividend.

(II) Excess reported amount

The term ''excess reported amount'' means the excess of the aggregate reported amount over the qualified short-term gain of the company for the taxable year.

(III) Aggregate reported amount

The term ''aggregate reported amount'' means the aggregate amount of dividends reported by the company under clause (i) as short-term capital gain dividends for the taxable year (including short-term capital gain dividends paid after the close of the taxable year described in section 855).

(IV) Post-December reported amount

The term ''post-December reported amount'' means the aggregate reported amount determined by taking into account only dividends paid after December 31 of the taxable year.

(D) Qualified short-term gain

For purposes of subparagraph (C), the term ''qualified short-term gain'' means the excess of the net short-term capital gain of the regulated investment company for the taxable year over the net long-term capital loss (if any) of such company for such taxable year. For purposes of this subparagraph, the net short-term capital gain of the regulated investment company shall be computed by treating any short-term capital gain dividend includible in gross income with respect to stock of another regulated investment company as a short-term capital gain.

(E) Certain distributions

In the case of a distribution to which section 897 does not apply by reason of the second sentence of section 897(h)(1), the amount which would be treated as a short-term capital gain dividend to the shareholder (without regard to this subparagraph)—

(i) shall not be treated as a short-term capital gain dividend, and

(ii) shall be included in such shareholder's gross income as a dividend from the regulated investment company.

***(l)* Rules relating to existing 80/20 companies**

For purposes of this subsection and subsection (i)(2)(B)—

(1) Existing 80/20 company

(A) In general

The term ''existing 80/20 company'' means any corporation if—

(i) such corporation met the 80-percent foreign business requirements of section 861(c)(1) (as in effect before the date of the enactment of this subsection) for such corporation's last taxable year beginning before January 1, 2011,

(ii) such corporation meets the 80-percent foreign business requirements of subparagraph (B) with respect to each taxable year after the taxable year referred to in clause (i), and

(iii) there has not been an addition of a substantial line of business with respect to such corporation after the date of the enactment of this subsection.

(B) Foreign business requirements

(i) In general

Except as provided in clause (iv), a corporation meets the 80-percent foreign business requirements of this subparagraph if it is shown to the satisfaction of the Secretary that at least 80 percent of the gross income from all sources of such corporation for the testing period is active foreign business income.

(ii) Active foreign business income

For purposes of clause (i), the term ''active foreign business income'' means gross income which—

(I) is derived from sources outside the United States (as determined under this subchapter), and

(II) is attributable to the active conduct of a trade or business in a foreign country or possession of the United States.

(iii) Testing period

For purposes of this subsection, the term ''testing period'' means the 3-year period

ending with the close of the taxable year of the corporation preceding the payment (or such part of such period as may be applicable). If the corporation has no gross income for such 3-year period (or part thereof), the testing period shall be the taxable year in which the payment is made.

(iv) Transition rule

In the case of a taxable year for which the testing period includes 1 or more taxable years beginning before January 1, 2011—

(I) a corporation meets the 80-percent foreign business requirements of this subparagraph if and only if the weighted average of—

(aa) the percentage of the corporation's gross income from all sources that is active foreign business income (as defined in subparagraph (B) of section 861(c)(1) (as in effect before the date of the enactment of this subsection)) for the portion of the testing period that includes taxable years beginning before January 1, 2011, and

(bb) the percentage of the corporation's gross income from all sources that is active foreign business income (as defined in clause (ii) of this subparagraph) for the portion of the testing period, if any, that includes taxable years beginning on or after January 1, 2011,

is at least 80 percent, and

(II) the active foreign business percentage for such taxable year shall equal the weighted average percentage determined under subclause (I).

(2) Active foreign business percentage

Except as provided in paragraph (1)(B)(iv), the term ''active foreign business percentage'' means, with respect to any existing 80/20 company, the percentage which—

(A) the active foreign business income of such company for the testing period, is of

(B) the gross income of such company for the testing period from all sources.

(3) Aggregation rules

For purposes of applying paragraph (1) (other than subparagraphs (A)(i) and (B)(iv) thereof) and paragraph (2)—

(A) In general

The corporation referred to in paragraph (1)(A) and all of such corporation's subsidiaries shall be treated as one corporation.

(B) Subsidiaries

For purposes of subparagraph (A), the term ''subsidiary'' means any corporation in which the corporation referred to in subparagraph (A) owns (directly or indirectly) stock meeting the requirements of section 1504(a)(2) (determined by substituting ''50 percent'' for ''80 percent'' each place it appears and without regard to section 1504(b)(3)).

(4) Regulations

The Secretary may issue such regulations or other guidance as is necessary or appropriate to carry out the purposes of this section, including regulations or other guidance which provide for the proper application of the aggregation rules described in paragraph (3).

(m) Treatment of dividend equivalent payments

(1) In general

For purposes of subsection (a), sections 881 and 4948(a), and chapters 3 and 4, a dividend equivalent shall be treated as a dividend from sources within the United States.

(2) Dividend equivalent

For purposes of this subsection, the term ''dividend equivalent'' means—

(A) any substitute dividend made pursuant to a securities lending or a sale-repurchase transaction that (directly or indirectly) is contingent upon, or determined by reference to, the payment of a dividend from sources within the United States,

(B) any payment made pursuant to a specified notional principal contract that (directly or indirectly) is contingent upon, or determined by reference to, the payment of a dividend from sources within the United States, and

(C) any other payment determined by the Secretary to be substantially similar to a payment described in subparagraph (A) or (B).

(3) Specified notional principal contract

For purposes of this subsection, the term ''specified notional principal contract'' means—

(A) any notional principal contract if—

(i) in connection with entering into such contract, any long party to the contract transfers the underlying security to any short party to the contract,

(ii) in connection with the termination of such contract, any short party to the contract transfers the underlying security to any long party to the contract,

(iii) the underlying security is not readily tradable on an established securities market,

(iv) in connection with entering into such contract, the underlying security is posted as collateral by any short party to the contract with any long party to the contract, or

(v) such contract is identified by the Secretary as a specified notional principal contract,

(B) in the case of payments made after the date which is 2 years after the date of the enactment of this subsection, any notional principal contract unless the Secretary determines that such contract is of a type which does not have the potential for tax avoidance.

(4) Definitions

For purposes of paragraph (3)(A)—

(A) Long party

The term ''long party'' means, with respect to any underlying security of any notional principal contract, any party to the contract which is entitled to receive any

payment pursuant to such contract which is contingent upon, or determined by reference to, the payment of a dividend from sources within the United States with respect to such underlying security.

(B) Short party

The term ''short party'' means, with respect to any underlying security of any notional principal contract, any party to the contract which is not a long party with respect to such underlying security.

(C) Underlying security

The term ''underlying security'' means, with respect to any notional principal contract, the security with respect to which the dividend referred to in paragraph (2)(B) is paid. For purposes of this paragraph, any index or fixed basket of securities shall be treated as a single security.

(5) Payments determined on gross basis

For purposes of this subsection, the term ''payment'' includes any gross amount which is used in computing any net amount which is transferred to or from the taxpayer.

(6) Prevention of over-withholding

In the case of any chain of dividend equivalents one or more of which is subject to tax under subsection (a) or section 881, the Secretary may reduce such tax, but only to the extent that the taxpayer can establish that such tax has been paid with respect to another dividend equivalent in such chain, or is not otherwise due, or as the Secretary determines is appropriate to address the role of financial intermediaries in such chain. For purposes of this paragraph, a dividend shall be treated as a dividend equivalent.

(7) Coordination with chapters 3 and 4

For purposes of chapters 3 and 4, each person that is a party to any contract or other arrangement that provides for the payment of a dividend equivalent shall be treated as having control of such payment.

(n) Cross references

(1) For tax treatment of certain amounts distributed by the United States to nonresident alien individuals, see section 402(e)(2).

(2) For taxation of nonresident alien individuals who are expatriate United States citizens, see section 877.

(3) For doubling of tax on citizens of certain foreign countries, see section 891.

(4) For adjustment of tax in case of nationals or residents of certain foreign countries, see section 896.

(5) For withholding of tax at source on nonresident alien individuals, see section 1441.

(6) For election to treat married nonresident alien individual as resident of United States in certain cases, see subsections (g) and (h) of section 6013.

(7) For special tax treatment of gain or loss from the disposition by a nonresident alien individual of a United States real property interest, see section 897.

(Aug. 16, 1954, ch. 736, 68A Stat. 278; Pub. L. 85–866, title I, §§ 40(a), 41(a), Sept. 2, 1958, 72 Stat. 1638, 1639; Pub. L. 86–437, § 2(b), Apr. 22, 1960, 74 Stat. 79; Pub. L. 87–256, § 110(b), Sept. 21, 1961, 75 Stat. 535; Pub. L. 88–272, title I, § 113(b), title II, § 201(d)(12), Feb. 26, 1964, 78 Stat. 24, 32; Pub. L. 89–809, title I, § 103(a)(1), Nov. 13, 1966, 80 Stat. 1547; Pub. L. 92–178, title III, § 313(a), (b), Dec. 10, 1971, 85 Stat. 526, 527; Pub. L. 93–406, title II, § 2005(c)(8), Sept. 2, 1974, 88 Stat. 992; Pub. L. 94–455, title X, § 1012(a)(2), title XIX, §§ 1901(b)(3)(I), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1613, 1793, 1834; Pub. L. 95–600, title IV, §§ 401(b)(3), 421(e)(4), Nov. 6, 1978, 92 Stat. 2867, 2876; Pub. L. 96–222, title I, § 104(a)(4)(H)(v), Apr. 1, 1980, 94 Stat. 217; Pub. L. 96–499, title XI, § 1122(c)(1), Dec. 5, 1980, 94 Stat. 2687; Pub. L. 96–605, title II, § 227(a), Dec. 28, 1980, 94 Stat. 3530; Pub. L. 97–34, title VII, § 725(c)(1), Aug. 13, 1981, 95 Stat. 346; Pub. L. 98–21, title I, § 121(c)(1), title III, § 335(b)(2)(B), Apr. 20, 1983, 97 Stat. 82, 130; Pub. L. 98–369, div. A, title I, §§ 42(a)(9), 127(a), 128(a), title IV, § 412(b)(1), July 18, 1984, 98 Stat. 557, 648, 653, 792; Pub. L. 99–272, title XII, § 12103(b), Apr. 7, 1986, 100 Stat. 285; Pub. L. 99–514, title III, § 301(b)(9), title XII, §§ 1211(b)(4), (5), 1214(c)(1), title XVIII, § 1810(d)(1)(A), (2), (3)(A), (B), (e)(2)(A), Oct. 22, 1986, 100 Stat. 2217, 2536, 2542, 2825, 2826; Pub. L. 100–647, title I, § 1001(d)(2)(B), title VI, § 6134(a)(1), Nov. 10, 1988, 102 Stat. 3350, 3721; Pub. L. 102–318, title V, § 521(b)(28)–(30), July 3, 1992, 106 Stat. 312; Pub. L. 103–66, title XIII, §§ 13113(d)(5), 13237(a)(1), (c)(1), Aug. 10, 1993, 107 Stat. 430, 506, 508; Pub. L. 103–296, title III, § 320(a)(1)(A), Aug. 15, 1994, 108 Stat. 1535; Pub. L. 103–465, title VII, § 733(a), Dec. 8, 1994, 108 Stat. 5006; Pub. L. 104–188, title I, §§ 1401(b)(10), 1954(b)(1), Aug. 20, 1996, 110 Stat. 1789, 1928; Pub. L. 105–206, title VI, § 6023(10), July 22, 1998, 112 Stat. 825; Pub. L. 106–170, title V, § 532(b)(2), Dec. 17, 1999, 113 Stat. 1930; Pub. L. 106–554, § 1(a)(7) [title III, § 319(11)], Dec. 21, 2000, 114 Stat. 2763, 2763A–646; Pub. L. 108–357, title IV, §§ 409(a), 411(a)(1), Oct. 22, 2004, 118 Stat. 1500; Pub. L. 109–222, title V, § 505(c)(2), May 17, 2006, 120 Stat. 356; Pub. L. 110–343, div. C, title II, § 206(a), (b), Oct. 3, 2008, 122 Stat. 3865; Pub. L. 111–147, title V, §§ 502(b)(1), (2)(A), 541(a), Mar. 18, 2010, 124 Stat. 107, 115; Pub. L. 111–226, title II, § 217(b), Aug. 10, 2010, 124 Stat. 2400; Pub. L. 111–312, title VII, § 748(a), Dec. 17, 2010, 124 Stat. 3320; Pub. L. 111–325, title III, §§ 301(f), 302(b)(2), 308(b)(3), Dec. 22, 2010, 124 Stat. 3544, 3548, 3551; Pub. L. 112–240, title III, § 320(a), Jan. 2, 2013, 126 Stat. 2332; Pub. L. 113–295, div. A, title I, § 132(a), title II, § 221(a)(71), Dec. 19, 2014, 128 Stat. 4018, 4048; Pub. L. 114–113, div. Q, title I, § 125(a), Dec. 18, 2015, 129 Stat. 3054.)

REFERENCES IN TEXT

Section 207 of the Social Security Act, referred to in subsec. (a)(3)(A), is classified to section 407 of Title 42, The Public Health and Welfare.

Section 932(c), referred to in subsec. (a)(3), was repealed and a new section 932(c) of this title, which does not relate to taxation of social security benefits, was enacted by Pub. L. 99–514, title XII, §§ 1272(d)(1), 1274(a), Oct. 22, 1986, 100 Stat. 2594, 2596.

The Trade Act of 1974, referred to in subsec. (f)(2)(B), is Pub. L. 93–618, Jan. 3, 1975, 88 Stat. 1978, as amended. Title V of the Trade Act of 1974 is classified generally to subchapter V (§ 2461 et seq.) of chapter 12 of Title 19, Customs Duties. For complete classification of this Act to the Code, see section 2101 of Title 19 and Tables.

The date of the enactment of this subsection, referred to in subsec. (*l*)(1)(A)(i), (iii), (B)(iv)(I)(aa), is the date of enactment of Pub. L. 111–226, which was approved Aug. 10, 2010.

The date of the enactment of this subsection, referred to in subsec. (m)(3)(B), is the date of enactment of Pub. L. 111–147, which was approved Mar. 18, 2010.

AMENDMENTS

2015—Subsec. (k)(1)(C)(v). Pub. L. 114–113 struck out cl. (v). Text read as follows: ''The term 'interest related dividend' shall not include any dividend with respect to any taxable year of the company beginning after December 31, 2014.''

Subsec. (k)(2)(C)(v). Pub. L. 114–113 struck out cl. (v). Text read as follows: ''The term 'short-term capital gain dividend' shall not include any dividend with respect to any taxable year of the company beginning after December 31, 2014.''

2014—Subsec. (a)(1)(B). Pub. L. 113–295, §221(a)(71), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''gains described in section 631(b) or (c), and gains on transfers described in section 1235 made on or before October 4, 1966,''.

Subsec. (k)(1)(C)(v), (2)(C)(v). Pub. L. 113–295, §132(a), substituted ''December 31, 2014'' for ''December 31, 2013''.

2013—Subsec. (k)(1)(C)(v), (2)(C)(v). Pub. L. 112–240 substituted ''December 31, 2013'' for ''December 31, 2011''.

2010—Subsec. (h)(2). Pub. L. 111–147, §502(b)(1), amended par. (2) generally. Prior to amendment, par. (2) defined portfolio interest to also include interest on certain obligations not in registered form.

Subsec. (h)(3)(A). Pub. L. 111–147, §502(b)(2)(A), struck out ''subparagraph (A) or (B) of'' before ''paragraph (2)''.

Subsec. (i)(2)(B). Pub. L. 111–226, §217(b)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''A percentage of any dividend paid by a domestic corporation meeting the 80-percent foreign business requirements of section 861(c)(1) equal to the percentage determined for purposes of section 861(c)(2)(A).''

Subsec. (k)(1)(A). Pub. L. 111–325, §302(b)(2), inserted ''which meets the requirements of section 852(a) for the taxable year with respect to which the dividend is paid'' before period at end.

Subsec. (k)(1)(C). Pub. L. 111–325, §301(f)(1), substituted introductory provisions, cls. (i) to (iv), and cl. (v) heading and ''The term 'interest related dividend' shall not include any dividend with respect to'' for ''For purposes of this paragraph, the term 'interest-related dividend' means any dividend (or part thereof) which is designated by the regulated investment company as an interest-related dividend in a written notice mailed to its shareholders not later than 60 days after the close of its taxable year. If the aggregate amount so designated with respect to a taxable year of the company (including amounts so designated with respect to dividends paid after the close of the taxable year described in section 855) is greater than the qualified net interest income of the company for such taxable year, the portion of each distribution which shall be an interest-related dividend shall be only that portion of the amounts so designated which such qualified net interest income bears to the aggregate amount so designated. Such term shall not include any dividend with respect to''.

Pub. L. 111–312, §748(a), substituted ''December 31, 2011'' for ''December 31, 2009''.

Subsec. (k)(2)(A). Pub. L. 111–325, §302(b)(2), inserted ''which meets the requirements of section 852(a) for the taxable year with respect to which the dividend is paid'' before period at end.

Subsec. (k)(2)(C). Pub. L. 111–325, §301(f)(2), substituted introductory provisions, cls. (i) to (iv), and cl. (v) heading and ''The term 'short-term capital gain dividend' shall not include any dividend with respect to'' for ''For purposes of this paragraph, the term 'short-term capital gain dividend' means any dividend (or part thereof) which is designated by the regulated investment company as a short-term capital gain dividend in a written notice mailed to its shareholders not later than 60 days after the close of its taxable year. If the aggregate amount so designated with respect to a taxable year of the company (including amounts so designated with respect to dividends paid after the close of the taxable year described in section 855) is greater than the qualified short-term gain of the company for such taxable year, the portion of each distribution which shall be a short-term capital gain dividend shall be only that portion of the amounts so designated which such qualified short-term gain bears to the aggregate amount so designated. Such term shall not include any dividend with respect to''.

Pub. L. 111–312, §748(a), substituted ''December 31, 2011'' for ''December 31, 2009''.

Subsec. (k)(2)(D). Pub. L. 111–325, §308(b)(3), substituted ''For purposes of this subparagraph, the net short-term capital gain of the regulated investment company shall be computed by treating any short-term capital gain dividend includible in gross income with respect to stock of another regulated investment company as a short-term capital gain.'' for ''For purposes of this subparagraph—

''(i) the net short-term capital gain of the regulated investment company shall be computed by treating any short-term capital gain dividend includible in gross income with respect to stock of another regulated investment company as a short-term capital gain, and

''(ii) the excess of the net short-term capital gain for a taxable year over the net long-term capital loss for a taxable year (to which an election under section 4982(e)(4) does not apply) shall be determined without regard to any net capital loss or net short-term capital loss attributable to transactions after October 31 of such year, and any such net capital loss or net short-term capital loss shall be treated as arising on the 1st day of the next taxable year.

To the extent provided in regulations, clause (ii) shall apply also for purposes of computing the taxable income of the regulated investment company.''

Subsec. (*l*). Pub. L. 111–226, §217(b)(2), added subsec. (*l*). Former subsec. (*l*) redesignated (m).

Pub. L. 111–147, §541(a), added subsec. (*l*). Former subsec. (*l*) redesignated (m).

Subsec. (m). Pub. L. 111–226, §217(b)(2), redesignated subsec. (*l*) as (m). Former subsec. (m) redesignated (n).

Pub. L. 111–147, §541(a), redesignated subsec. (*l*) as (m).

Subsec. (n). Pub. L. 111–226, §217(b)(2), redesignated subsec. (m) as (n).

2008—Subsec. (k)(1)(C), (2)(C). Pub. L. 110–343 substituted ''December 31, 2009'' for ''December 31, 2007''.

2006—Subsec. (k)(2)(E). Pub. L. 109–222 added subpar. (E).

2004—Subsec. (i)(2)(D). Pub. L. 108–357, §409(a), added subpar. (D).

Subsecs. (k), (*l*). Pub. L. 108–357, §411(a)(1), added subsec. (k) and redesignated former subsec. (k) as (*l*).

2000—Subsec. (f)(2)(B). Pub. L. 106–554 inserted opening parenthesis before ''19 U.S.C.''.

1999—Subsec. (h)(4)(C)(iv). Pub. L. 106–170 substituted ''to manage'' for ''to reduce''.

1998—Subsec. (f)(2)(B). Pub. L. 105–206 substituted ''19 U.S.C. 2461 et seq.)'' for ''(19 U.S.C. 2462)''.

1996—Subsec. (b)(1). Pub. L. 104–188, §1401(b)(10), substituted ''section 1 or 55'' for ''section 1, 55, or 402(d)(1)''.

Subsec. (f)(2)(B). Pub. L. 104–188, §1954(b)(1), substituted ''under title V'' for ''within the meaning of section 502''.

1994—Subsec. (a)(3)(A). Pub. L. 103–465 substituted ''85 percent'' for ''one-half''.

Subsec. (c). Pub. L. 103–296 substituted ''(J), (M), or (Q)'' for ''(J), or (M)'' in two places.

1993—Subsec. (a)(2). Pub. L. 103–66, §13113(d)(5), inserted ''such gains and losses shall be determined without regard to section 1202 and'' after ''except that'' in second sentence.

Subsec. (h)(2)(B)(ii). Pub. L. 103–66, §13237(c)(1), substituted ''paragraph (5)'' for ''paragraph (4)''.

Subsec. (h)(4) to (7). Pub. L. 103–66, § 13237(a)(1), added par. (4) and redesignated former pars. (4) to (6) as (5) to (7), respectively.

1992—Subsec. (a)(1)(B). Pub. L. 102–318, § 521(b)(28), struck out ''402(a)(2), 403(a)(2), or'' before ''631(b)''.

Subsec. (b)(1). Pub. L. 102–318, § 521(b)(29), substituted ''402(d)(1)'' for ''402(e)(1)''.

Subsec. (k)(1). Pub. L. 102–318, § 521(b)(30), substituted ''402(e)(2)'' for ''402(a)(4)''.

1988—Subsec. (c). Pub. L. 100–647, § 1001(d)(2)(B), substituted ''the second sentence of section 1441(b)'' for ''section 1441(b)(1) or (2)'', and ''(F), (J), or (M)'' for ''(F) or (J)'' in two places.

Subsecs. (j), (k). Pub. L. 100–647, § 6134(a)(1), added subsec. (j) and redesignated former subsec. (j) as (k).

1986—Subsec. (a)(1). Pub. L. 99–514, § 1810(d)(3)(A), substituted ''subsection (h)'' for ''subsection (i)'' in introductory provisions.

Subsec. (a)(1)(C). Pub. L. 99–514, § 1810(e)(2)(A), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''in the case of—

''(i) a sale or exchange of an original issue discount obligation, the amount of any gain not in excess of the original issue discount accruing while such obligation was held by the nonresident alien individual (to the extent such discount was not theretofore taken into account under clause (ii)), and

''(ii) the payment of interest on an original issue discount obligation, an amount equal to the original issue discount accrued on such obligation since the last payment of interest thereon (except that such original issue discount shall be taken into account under this clause only to the extent that the tax thereon does not exceed the interest payment less the tax imposed by subparagraph (A) thereon), and''.

Subsec. (a)(1)(D). Pub. L. 99–514, § 1211(b)(4), struck out ''or from payments which are treated as being so contingent under subsection (e),'' after ''sold or exchanged,''.

Subsec. (a)(2). Pub. L. 99–514, § 301(b)(9), struck out ''such gains and losses shall be determined without regard to section 1202 (relating to deduction for capital gains) and'' after ''United States, except that''.

Subsec. (a)(3). Pub. L. 99–272 inserted at end ''For treatment of certain citizens of possessions of the United States, see section 932(c).''

Subsec. (e). Pub. L. 99–514, § 1211(b)(5), struck out subsec. (e) which related to gains from sale or exchange of certain intangible property, par. (1) treating payments as contingent on use, etc., and par. (2) containing source rule.

Subsec. (h)(2). Pub. L. 99–514, § 1810(d)(1)(A), (3)(B), inserted ''which would be subject to tax under subsection (a) but for this subsection and'' in introductory provisions and substituted ''receives a statement'' for ''has received a statement'' in subpar. (B)(ii).

Subsec. (h)(3)(C)(ii), (iii). Pub. L. 99–514, § 1810(d)(2), added cl. (ii) and redesignated former cl. (ii) as (iii).

Subsecs. (i), (j). Pub. L. 99–514, § 1214(c)(1), added subsec. (i) and redesignated former subsec. (i) as (j).

1984—Subsec. (a)(1). Pub. L. 98–369, § 127(a)(2), substituted ''Except as provided in subsection (i), there'' for ''There''.

Subsec. (a)(1)(A). Pub. L. 98–369, § 42(a)(9), substituted ''section 1273'' for ''section 1232(b)''.

Subsec. (a)(1)(C). Pub. L. 98–369, § 128(a)(1), amended subpar. (C) generally, substituting in cl. (i), ''a sale or exchange of an original issue discount obligation, the amount of any gain not in excess of the original issue discount accruing while such obligation was held by the nonresident alien individual (to the extent such discount was not theretofore taken into account under clause (ii)), and'' for ''bonds or other evidences of indebtedness issued after September 28, 1965, and before April 1, 1972, amounts which under section 1232(a)(2)(B) are considered as ordinary income, and, in the case of corporate obligations issued after May 27, 1969, and before April 1, 1972, amounts which would be so considered but for the fact the obligations were issued after May 27, 1969,'', substituting in cl. (ii), ''the payment of interest on an original issue discount obligation, an amount equal to the original issue discount accrued on such obligation since the last payment of interest thereon (except that such original issue discount shall be taken into account under this clause only to the extent that the tax thereon does not exceed the interest payment less the tax imposed by subparagraph (A) thereon), and'' for ''bonds or other evidences of indebtedness issued after March 31, 1972, and payable more than 6 months from the date of original issue (without regard to the period held by the taxpayer), amounts which under section 1232(a)(2)(B) would be considered as ordinary income but for the fact such obligations were issued after May 27, 1969, and'', and striking out cl. (iii) which required that in the case of the payment of interest on an obligation described in cl. (ii), an amount equal to the original issue discount, but not in excess of such interest less the tax imposed by subpar. (A) thereon, accrued on such obligation since the last payment of interest thereon, be included for purpose of the 30 percent tax.

Subsec. (g). Pub. L. 98–369, § 128(a)(2), added subsec. (g). Former subsec. (g), relating to cross references, redesignated (h).

Subsec. (g)(6) to (8). Pub. L. 98–369, § 412(b)(1), amended subsec. (g), relating to cross references, by striking out par. (6) referring to section 6015(j) for the requirement of making a declaration of estimated tax by certain nonresident alien individuals and redesignating pars. (7) and (8) as (6) and (7), respectively.

Subsec. (h). Pub. L. 98–369, § 127(a), added subsec. (h). Former subsec. (h), relating to cross references, redesignated (i).

Pub. L. 98–369, § 128(a)(2), redesignated subsec. (g), relating to cross references, as (h).

Subsec. (i). Pub. L. 98–369, § 127(a)(1), redesignated subsec. (h), relating to cross references, as (i).

1983—Subsec. (a)(3). Pub. L. 98–21, § 121(c)(1), added par. (3).

Subsec. (a)(3)(A). Pub. L. 98–21, § 335(b)(2)(B), inserted ''(notwithstanding section 207 of the Social Security Act)'' after ''income''.

1981—Subsec. (g)(6). Pub. L. 97–34 substituted ''6015(j)'' for ''6015(i)''.

1980—Subsec. (b)(1). Pub. L. 96–222 substituted ''55'' for ''section 55''.

Subsec. (f). Pub. L. 96–605 designated existing provision as par. (1), inserted heading ''In general'' and redesignated par. (1) as subpar. (A), cls. (A) and (B) of subpar. (A) as so redesignated as cls. (i) and (ii), and par. (2) as subpar. (B), and added par. (2).

Subsec. (g)(8). Pub. L. 96–499 added par. (8).

1978—Subsec. (b)(1). Pub. L. 95–600, §§ 401(b)(3), 421(e)(4), substituted ''section 1, section 55, or 402(e)(1)'' for ''section 1, 402(e)(1), or 1201(b)''.

1976—Subsec. (a)(1)(C)(i), (ii). Pub. L. 94–455, § 1901(b)(3)(I), substituted ''ordinary income'' for ''gain from the sale or exchange of property which is not a capital asset''.

Subsec. (d). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'', each time appearing.

Subsec. (g)(7). Pub. L. 94–455, § 1012(a)(2), added par. (7).

1974—Subsec. (b)(1). Pub. L. 93–406 inserted reference to section 402(e)(1).

1971—Subsec. (a)(1)(A). Pub. L. 92–178, § 313(a), inserted ''(other than original issue discount as defined in section 1232(b))'' after ''interest''.

Subsec. (a)(1)(C). Pub. L. 92–178, § 313(b), designated existing provisions as cl. (i), inserted ''and before April 1, 1972,'' after ''September 28, 1965,'', substituted ''section 1232(a)(2)(B)'' for ''section 1232'', and inserted '', in the case of corporate obligations issued after May 27, 1969, and before April 1, 1972, amounts which would be so considered but for the fact the obligations were issued after May 27, 1969,'', and added cls. (ii) and (iii).

1966—Subsecs. (a), (b). Pub. L. 89–809 consolidated the substance of former subsecs. (a) to (c) and, as part of the consolidation, revised the overall income tax treat-

ment of nonresident alien individuals by substituting provisions dividing their income for tax purposes into two basic groups according to whether or not the income is effectively connected with a United States trade or business for provisions calling for different tax treatment based upon whether or not they are, or are not, engaged in a trade or business in the United States, with a further breakdown of those not engaged in trade or business in the United States as to whether their income is over or under $21,200.

Subsec. (c). Pub. L. 89–809 redesignated subsec. (d) as (c) and inserted provisions that any income described in section 1441(b)(1) or (2) which is received by such individual shall, to the extent derived from sources within the United States, be treated as effectively connected with the conduct of a trade or business within the United States. Substance of former subsec. (c) revised and incorporated into subsecs. (a) and (b).

Subsecs. (d) to (f). Pub. L. 89–809 added subsecs. (d) to (f) and redesignated former subsecs. (d) and (e) as (c) and (g), respectively.

Subsec. (g). Pub. L. 89–809 redesignated former subsec. (e) as (g), added pars. (2) and (4) to (6), and redesignated former pars. (1) and (2) as (3) and (1), respectively.

1964—Subsec. (a). Pub. L. 88–272, §113(b)(2), substituted ''30 percent tax'' for ''and gross income of not more than $15,400'' in heading.

Subsec. (b). Pub. L. 88–272, §§113(b)(1), (3), 201(d)(12), substituted ''$19,000 in the case of a taxable year beginning in 1964 or more than $21,200 in the case of a taxable year beginning after 1964'' for ''$15,400'', ''the credit under section 35'' for ''the sum of the credits under sections 34 and 35'' in text, and ''Regular tax'' for ''and gross income of more than $15,400'' in heading.

1961—Subsecs. (d), (e). Pub. L. 87–256 added subsec. (d) and redesignated former subsec. (d) as (e).

1960—Subsec. (d). Pub. L. 86–437 substituted ''Cross references'' for ''Doubling of tax'' in heading, and inserted cross reference to section 402(a)(4).

1958—Subsec. (a)(1). Pub. L. 85–866, §40(a), inserted ''section 403(a)(2),'' after ''section 402(a)(2),''.

Subsec. (b). Pub. L. 85–866, §41(a), inserted last par. covering former provisions of par. (3), which was struck out by the amendment, and containing new provisions with references to credits under section 34 and 35 and exclusion under section 116 of this title.

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114–113, div. Q, title I, §125(b), Dec. 18, 2015, 129 Stat. 3054, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2014.''

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113–295, div. A, title I, §132(b), Dec. 19, 2014, 128 Stat. 4018, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2013.''

Amendment by section 221(a)(71) of Pub. L. 113–295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113–295, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title III, §320(b), Jan. 2, 2013, 126 Stat. 2332, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2011.''

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 301(f) of Pub. L. 111–325 applicable to taxable years beginning after Dec. 22, 2010, see section 301(h) of Pub. L. 111–325, set out as a note under section 852 of this title.

Amendment by section 302(b)(2) of Pub. L. 111–325 applicable to taxable years beginning after Dec. 22, 2010, see section 302(c) of Pub. L. 111–325, set out as a note under section 852 of this title.

Amendment by section 308(b)(3) of Pub. L. 111–325 applicable to taxable years beginning after Dec. 22, 2010, see section 308(c) of Pub. L. 111–325, set out as a note under section 852 of this title.

Pub. L. 111–312, title VII, §748(b), Dec. 17, 2010, 124 Stat. 3320, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009.''

Amendment by Pub. L. 111–226 applicable to taxable years beginning after Dec. 31, 2010, with certain exceptions, see section 217(d) of Pub. L. 111–226, set out as a note under section 861 of this title.

Amendment by section 502(b)(1), (2)(A) of Pub. L. 111–147 applicable to obligations issued after the date which is 2 years after Mar. 18, 2010, see section 502(f) of Pub. L. 111–147, set out as a note under section 149 of this title.

Pub. L. 111–147, title V, §541(b), Mar. 18, 2010, 124 Stat. 117, provided that: ''The amendments made by this section [amending this section] shall apply to payments made on or after the date that is 180 days after the date of the enactment of this Act [Mar. 18, 2010].''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title II, §206(c), Oct. 3, 2008, 122 Stat. 3865, provided that: ''The amendments made by this section [amending this section] shall apply to dividends with respect to taxable years of regulated investment companies beginning after December 31, 2007.''

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–222 applicable to taxable years of qualified investment entities beginning after December 31, 2005, except that no amount shall be required to be withheld under section 1441, 1442, or 1445 of the Internal Revenue Code of 1986 with respect to any distribution before May 17, 2006 if such amount was not otherwise required to be withheld under any such section as in effect before such amendments, see section 505(d) of Pub. L. 109–222, set out as a note under section 852 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title IV, §409(b), Oct. 22, 2004, 118 Stat. 1500, provided that: ''The amendment made by this section [amending this section] shall apply to payments made after December 31, 2004.''

Pub. L. 108–357, title IV, §411(d), Oct. 22, 2004, 118 Stat. 1505, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 881, 897, 1441, 1442, and 2105 of this title] shall apply to dividends with respect to taxable years of regulated investment companies beginning after December 31, 2004.

''(2) ESTATE TAX TREATMENT.—The amendment made by subsection (b) [amending section 2105 of this title] shall apply to estates of decedents dying after December 31, 2004.

''(3) CERTAIN OTHER PROVISIONS.—The amendments made by subsection (c) [amending section 897 of this title] (other than paragraph (1) thereof) shall take effect after December 31, 2004.''

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1401(b)(10) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1999, with retention of certain transition rules, see section 1401(c) of Pub. L. 104–188, set out as a note under section 402 of this title.

Amendment by section 1954(b)(1) of Pub. L. 104–188 applicable to articles entered on or after Oct. 1, 1996, with provisions relating to retroactive application, see section 1953 of Pub. L. 104–188, set out as an Effective Date note under section 2461 of Title 19, Customs Duties.

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–465, title VII, § 733(b), Dec. 8, 1994, 108 Stat. 5006, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to benefits paid after December 31, 1994, in taxable years ending after such date.''

Pub. L. 103–296, title III, § 320(c), Aug. 15, 1994, 108 Stat. 1535, provided that: ''The amendments made by this subsection [probably means this section, which amended this section, sections 872, 1441, 3121, 3231, 3306, and 7701 of this title, and section 410 of Title 42, The Public Health and Welfare] shall take effect with the calendar quarter following the date of the enactment of this Act [Aug. 15, 1994].''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13113(d)(5) of Pub. L. 103–66 applicable to stock issued after Aug. 10, 1993, see section 13113(e) of Pub. L. 103–66, set out as a note under section 53 of this title.

Pub. L. 103–66, title XIII, § 13237(d), Aug. 10, 1993, 107 Stat. 508, provided that: ''The amendments made by this section [amending this section and sections 881, 1441, 1442, and 2105 of this title] shall apply to interest received after December 31, 1993; except that the amendments made by subsection (b) [amending section 2105 of this title] shall apply to the estates of decedents dying after December 31, 1993.''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102–318, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1001(d)(2)(B) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title VI, § 6134(b), Nov. 10, 1988, 102 Stat. 3721, provided that: ''The amendments made by subsection (a) [amending this section and section 1441 of this title] shall take effect on the date of the enactment of this Act [Nov. 10, 1988].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 301(b)(9) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 301(c) of Pub. L. 99–514, set out as a note under section 62 of this title.

Amendment by section 1211(b)(4), (5) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, except as otherwise provided, see section 1211(c) of Pub. L. 99–514, set out as an Effective Date note under section 865 of this title.

Amendment by section 1214(c)(1) of Pub. L. 99–514 applicable to payments made in taxable year of payor beginning after Dec. 31, 1986, except as otherwise provided, see section 1214(d) of Pub. L. 99–514, as amended, set out as a note under section 861 of this title.

Amendment by section 1810(d)(1)(A), (2), (3)(A), (B), (e)(2)(A) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Pub. L. 99–272, title XII, § 12103(c), Apr. 7, 1986, 100 Stat. 285, provided that: ''The amendments made by this section [amending this section and section 932 of this title] shall apply to benefits received after December 31, 1983, in taxable years ending after such date.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 42(a)(9) of Pub. L. 98–369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98–369, set out as an Effective Date note under section 1271 of this title.

Pub. L. 98–369, div. A, title I, § 127(g), July 18, 1984, 98 Stat. 652, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–647, title VI, § 6128(a), Nov. 10, 1988, 102 Stat. 3716, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 163, 864, 881, 1441, 1442, and 2105 of this title] shall apply to interest received after the date of the enactment of this Act [July 18, 1984] with respect to obligations issued after such date, in taxable years ending after such date.

''(2) SUBSECTION (d).—The amendment made by subsection (d) [amending section 2105 of this title] shall apply to obligations issued after the date of the enactment of this Act [July 18, 1984] with respect to the estates of decedents dying after such date.

''(3) SPECIAL RULE FOR CERTAIN UNITED STATES AFFILIATE OBLIGATIONS.—

''(A) IN GENERAL.—For purposes of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], payments of interest on a United States affiliate obligation to an applicable CFC in existence on or before June 22, 1984, shall be treated as payments to a resident of the country in which the applicable CFC is incorporated.

''(B) EXCEPTION.—Subparagraph (A) shall not apply to any applicable CFC which did not meet requirements which are based on the principles set forth in Revenue Rulings 69–501, 69–377, 70–645, and 73–110 as such principles are applied in Revenue Ruling 86–6, except that the maximum debt-to-equity ratio described in such Revenue Rulings shall be increased from 5-to-1 to 25-to-1.

''(C) DEFINITIONS.—

''(i) The term 'applicable CFC' has the meaning given such term by section 121(b)(2)(D) of this Act [set out as a note under section 904 of this title], except that such section shall be applied by substituting 'the date of interest payment' for 'March 31, 1984,' in clause (i) thereof.

''(ii) The term 'United States affiliate obligation' means an obligation described in section 121(b)(2)(F) of this Act [set out as a note under section 904 of this title] which was issued before June 22, 1984.''

[Pub. L. 100–647, title VI, § 6128(b), Nov. 10, 1988, 102 Stat. 3716, provided that: ''The amendment made by subsection (a) [amending section 127(g) of Pub. L. 98–369, set out above] shall apply to taxable years ending after the date of the enactment of this Act [Nov. 10, 1988].'']

Pub. L. 98–369, div. A, title I, § 128(d), July 18, 1984, 98 Stat. 655, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 163 and 881 of this title] shall apply to payments made on or after the 60th day after the date of the enactment of this Act [July 18, 1984] with respect to obligations issued after March 31, 1972.

''(2) SUBSECTION (c).—The amendment made by subsection (c) [amending section 163 of this title] shall apply to obligations issued after June 9, 1984.''

Amendment by section 412(b)(1) of Pub. L. 98–369 applicable with respect to taxable years beginning after Dec. 31, 1984, see section 414(a)(1) of Pub. L. 98–369, set out as a note under section 6654 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 121(c)(1) of Pub. L. 98–21 applicable to benefits received after Dec. 31, 1983, in taxable years ending after such date, except for any portion of a lump-sum payment of social security benefits received after Dec. 31, 1983, if the generally applicable payment date for such portion was before Jan. 1, 1984, see section 121(g) of Pub. L. 98–21, set out as an Effective Date note under section 86 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title VII, § 725(d), Aug. 13, 1981, 95 Stat. 346, provided that: ''The amendments made by this sec-

tion [amending this section and sections 6015, 6153, 6654, and 7701 of this title] shall apply to estimated tax for taxable years beginning after December 31, 1980.''

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–605, title II, §227(b), Dec. 28, 1980, 94 Stat. 3530, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to amounts received after July 1, 1979.''

Amendment by Pub. L. 96–499 applicable to dispositions after June 18, 1980, see section 1125(a) of Pub. L. 96–499, set out as an Effective Date note under section 897 of this title.

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 401(b)(3) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 401(c) of Pub. L. 95–600, set out as a note under section 3 of this title.

Amendment by section 421(e)(4) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 421(g) of Pub. L. 95–600, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1012(a)(2) of Pub. L. 94–455 applicable to taxable years ending on or after Dec. 31, 1975, see section 1012(d) of Pub. L. 94–455, set out as a note under section 6013 of this title.

Amendment by section 1901(b)(3)(I) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–406 applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after Dec. 31, 1973, see section 2005(d) of Pub. L. 93–406, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Pub. L. 92–178, title III, §313(f), Dec. 10, 1971, 85 Stat. 528, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments to section 871 and 881 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] made by this section shall apply with respect to taxable years beginning after December 31, 1966. The amendments to sections 1441 and 1442 of such Code made by this section shall apply with respect to payments occurring on or after April 1, 1972.''

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89–809, title I, §103(n), Nov. 13, 1966, 80 Stat. 1555, provided that:

''(1) The amendments made by this section (other than the amendments made by subsections (h), (i), and (k)) [amending this section and sections 1, 116, 154, 872 to 874, 875, 932, 6015, and 7701 of this title, redesignating section 877 as 878, enacting section 877 of this title, and repealing section 1493 of this title] shall apply with respect to taxable years beginning after December 31, 1966.

''(2) The amendments made by subsection (h) [amending section 1441 of this title] shall apply with respect to payments made in taxable years of recipients beginning after December 31, 1966.

''(3) The amendments made by subsection (i) [amending section 1461 of this title] shall apply with respect to payments occurring after December 31, 1966.

''(4) The amendments made by subsection (k) [amending section 3401 of this title] shall apply with respect to remuneration paid after December 31, 1966.''

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by section 113(b)(1) of Pub. L. 88–272 effective, except for purposes of section 21 of this title, with respect to taxable years beginning after Dec. 31, 1963, see section 131 of Pub. L. 88–272, set out as a note under section 1 of this title.

Amendment by section 201(d)(12) of Pub. L. 88–272 applicable with respect to dividends received after Dec. 31, 1964, in taxable years ending after such date, see section 201(e) of Pub. L. 88–272, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–256 applicable to taxable years beginning after Dec. 31, 1961, see section 110(h)(1) of Pub. L. 87–256, set out as a note under section 117 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–437 applicable only with respect to taxable years beginning after Dec. 31, 1959, see section 3 of Pub. L. 86–437, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–866, title I, §40(c), Sept. 2, 1958, 72 Stat. 1639, provided that: ''The amendment made by subsection (a) [amending this section] shall apply only with respect to taxable years ending after the date of the enactment of this Act [Sept. 2, 1958]. The amendments made by subsection (b) [amending section 1441 of this title] shall take effect on the day following the date of the enactment of this Act [Sept. 2, 1958].''

Pub. L. 85–866, title I, §41(c), Sept. 2, 1958, 72 Stat. 1639, provided that: ''The amendments made by this section [amending this section and section 35 of this title] shall apply only with respect to taxable years beginning after December 31, 1957.''

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendments by sections 1211(b)(4), (5) and 1214(c)(1) of Pub. L. 99–514 to the extent application of such amendments would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(3), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L.

99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 872. Gross income

(a) General rule

In the case of a nonresident alien individual, except where the context clearly indicates otherwise, gross income includes only—

(1) gross income which is derived from sources within the United States and which is not effectively connected with the conduct of a trade or business within the United States, and

(2) gross income which is effectively connected with the conduct of a trade or business within the United States.

(b) Exclusions

The following items shall not be included in gross income of a nonresident alien individual, and shall be exempt from taxation under this subtitle:

(1) Ships operated by certain nonresidents

Gross income derived by an individual resident of a foreign country from the international operation of a ship or ships if such foreign country grants an equivalent exemption to individual residents of the United States.

(2) Aircraft operated by certain nonresidents

Gross income derived by an individual resident of a foreign country from the international operation of aircraft if such foreign country grants an equivalent exemption to individual residents of the United States.

(3) Compensation of participants in certain exchange or training programs

Compensation paid by a foreign employer to a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F), (J), or (Q) of section 101(a)(15) of the Immigration and Nationality Act, as amended. For purposes of this paragraph, the term ''foreign employer'' means—

(A) a nonresident alien individual, foreign partnership, or foreign corporation, or

(B) an office or place of business maintained in a foreign country or in a possession of the United States by a domestic corporation, a domestic partnership, or an individual who is a citizen or resident of the United States.

(4) Certain bond income of residents of the Ryukyu Islands or the Trust Territory of the Pacific Islands

Income derived by a nonresident alien individual from a series E or series H United States savings bond, if such individual acquired such bond while a resident of the Ryukyu Islands or the Trust Territory of the Pacific Islands.

(5) Income derived from wagering transactions in certain parimutuel pools

Gross income derived by a nonresident alien individual from a legal wagering transaction initiated outside the United States in a parimutuel pool with respect to a live horse race or dog race in the United States.

(6) Certain rental income

Income to which paragraphs (1) and (2) apply shall include income which is derived from the rental on a full or bareboat basis of a ship or ships or aircraft, as the case may be.

(7) Application to different types of transportation

The Secretary may provide that this subsection be applied separately with respect to income from different types of transportation.

(8) Treatment of possessions

To the extent provided in regulations, a possession of the United States shall be treated as a foreign country for purposes of this subsection.

(Aug. 16, 1954, ch. 736, 68A Stat. 280; Pub. L. 87–256, § 110(c), Sept. 21, 1961, 75 Stat. 536; Pub. L. 89–809, title I, § 103(b), Nov. 13, 1966, 80 Stat. 1550; Pub. L. 99–514, title XII, § 1212(c)(1), (2), Oct. 22, 1986, 100 Stat. 2538; Pub. L. 100–647, title I, § 1012(e)(2)(B), (5), (s)(2)(A), Nov. 10, 1988, 102 Stat. 3500, 3527; Pub. L. 101–239, title VII, § 7811(i)(8)(C), Dec. 19, 1989, 103 Stat. 2411; Pub. L. 103–296, title III, § 320(a)(2), Aug. 15, 1994, 108 Stat. 1535; Pub. L. 108–357, title IV, § 419(a), Oct. 22, 2004, 118 Stat. 1513.)

REFERENCES IN TEXT

Section 101 of the Immigration and Nationality Act, referred to in subsec. (b)(3), is classified to section 1101 of Title 8, Aliens and Nationality.

AMENDMENTS

2004—Subsec. (b)(5) to (8). Pub. L. 108–357 added par. (5) and redesignated former pars. (5) to (7) as (6) to (8), respectively.

1994—Subsec. (b)(3). Pub. L. 103–296 substituted ''(F), (J), or (Q)'' for ''(F) or (J)''.

1989—Subsec. (b)(7). Pub. L. 101–239 added par. (7).

1988—Subsec. (a). Pub. L. 100–647, § 1012(s)(2)(A), inserted '', except where the context clearly indicates otherwise'' after ''individual''.

Subsec. (b)(1), (2). Pub. L. 100–647, § 1012(e)(2)(B), (5), substituted ''to individual residents of the United States'' for ''to citizens of the United States and to corporations organized in the United States'' and ''international operation'' for ''operation''.

1986—Subsec. (b)(1). Pub. L. 99–514, § 1212(c)(1), added par. (1) and struck out former par. (1), ships under foreign flag, which read as follows: ''Earnings derived from the operation of a ship or ships documented under the laws of a foreign country which grants an equivalent exemption to citizens of the United States and to corporations organized in the United States.''

Subsec. (b)(2). Pub. L. 99–514, § 1212(c)(1), added par. (2) and struck out former par. (2), aircraft of foreign registry, which read as follows: ''Earnings derived from the operation of aircraft registered under the laws of a foreign country which grants an equivalent exemption to citizens of the United States and to corporations organized in the United States.''

Subsec. (b)(5), (6). Pub. L. 99–514, § 1212(c)(2), added pars. (5) and (6).

1966—Subsec. (a). Pub. L. 89–809, § 103(b)(1), limited the inclusion of gross income which is derived from sources within the United States to such income which is not effectively connected with the conduct of a trade or business within the United States and inserted provision including gross income without the limitation as to source which is effectively connected with the conduct of a trade or business within the United States.

Subsec. (b)(3)(B). Pub. L. 89–809, §103(b)(2), substituted ''by a domestic corporation, a domestic partnership, or an individual who is a citizen or resident of the United States'' for ''by a domestic corporation''.

Subsec. (b)(4). Pub. L. 89–809, §102(b)(3), added par. (4).

1961—Subsec. (b)(3). Pub. L. 87–256 added par. (3).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title IV, §419(c), Oct. 22, 2004, 118 Stat. 1513, provided that: ''The amendments made by this section [amending this section and section 883 of this title] shall apply to wagers made after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective with calendar quarter following Aug. 15, 1994, see section 320(c) of Pub. L. 103–296, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1212(f) of Pub. L. 99–514, set out as a note under section 863 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 103(n)(1) of Pub. L. 89–809, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–256 applicable to taxable years beginning after Dec. 31, 1961, see section 110(h)(1) of Pub. L. 87–256, set out as a note under section 117 of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendment by section 1212(c)(1), (2) of Pub. L. 99–514 to the extent application of such amendment would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(3), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

§ 873. Deductions

(a) General rule

In the case of a nonresident alien individual, the deductions shall be allowed only for purposes of section 871(b) and (except as provided by subsection (b)) only if and to the extent that they are connected with income which is effectively connected with the conduct of a trade or business within the United States; and the proper apportionment and allocation of the deductions for this purpose shall be determined as provided in regulations prescribed by the Secretary.

(b) Exceptions

The following deductions shall be allowed whether or not they are connected with income which is effectively connected with the conduct of a trade or business within the United States:

(1) Losses

The deduction allowed by section 165 for casualty or theft losses described in paragraph (2) or (3) of section 165(c), but only if the loss is of property located within the United States.

(2) Charitable contributions

The deduction for charitable contributions and gifts allowed by section 170.

(3) Personal exemption

The deduction for personal exemptions allowed by section 151, except that only one exemption shall be allowed under section 151 unless the taxpayer is a resident of a contiguous country or is a national of the United States.

(c) Cross reference

For rule that certain foreign taxes are not to be taken into account in determining deduction or credit, see section 906(b)(1).

(Aug. 16, 1954, ch. 736, 68A Stat. 280; Pub. L. 89–809, title I, §103(c)(1), Nov. 13, 1966, 80 Stat. 1550; Pub. L. 92–580, §1(b), Oct. 27, 1972, 86 Stat. 1276; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–30, title I, §101(d)(11), May 23, 1977, 91 Stat. 134; Pub. L. 98–369, div. A, title VII, §711(c)(2)(A)(iv), July 18, 1984, 98 Stat. 945; Pub. L. 105–277, div. J, title IV, §4004(b)(3), Oct. 21, 1998, 112 Stat. 2681–911.)

AMENDMENTS

1998—Subsec. (b)(1). Pub. L. 105–277 amended heading and text of par. (1) generally. Prior to amendment, text read as follows: ''The deduction for losses allowed by section 165(c)(3), but only if the loss is of property located within the United States.''

1984—Subsec. (b)(1). Pub. L. 98–369 substituted ''for losses'' for '', for losses of property not connected with the trade or business if arising from certain casualties or theft,''.

1977—Subsec. (c). Pub. L. 95–30 struck out par. (1) which made a cross reference to section 142(b)(1) for disallowance of the standard deduction and struck out ''(2)'' at beginning of single remaining cross reference.

1976—Subsec. (a). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

1972—Subsec. (b)(3). Pub. L. 92–580 substituted exception that only one exemption be allowed under section 151 unless the taxpayer is a resident of a contiguous country or is a national of the United States, for exception that in the case of a non-resident alien individual who is not a resident of a contiguous country only one exception be allowed under section 151.

1966—Pub. L. 89–809 amended section generally, substituting ''connected with income which is effectively connected with the conduct of a trade or business within the United States'' for ''connected with income from sources within the United States'' in subsec. (a), strik-

ing out provisions relating to the deduction of losses not connected with a trade or business but incurred in transactions entered into for profit in subsec. (b), making the casualty loss deduction available even if the property giving rise to the loss is not effectively connected with the conduct of a trade or business in the United States if the property is located in this country, making the charitable contribution deduction available even though not related to the trade or business, and adding subsec. (c)(2) making a cross reference to section 906(b)(1) for rule that certain foreign taxes are not to be taken into account in determining deduction or credit.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–277 applicable to taxable years beginning after Dec. 31, 1983, see section 4004(c)(1) of Pub. L. 105–277, set out as a note under section 172 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 711(c)(2)(A)(v) of Pub. L. 98–369, set out as a note under section 165 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–580 applicable to taxable years beginning after Dec. 31, 1971, see section 1(c) of Pub. L. 92–580, set out as a note under section 152 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 103(n)(1) of Pub. L. 89–809, set out as a note under section 871 of this title.

§ 874. Allowance of deductions and credits

(a) Return prerequisite to allowance

A nonresident alien individual shall receive the benefit of the deductions and credits allowed to him in this subtitle only by filing or causing to be filed with the Secretary a true and accurate return, in the manner prescribed in subtitle F (sec. 6001 and following, relating to procedure and administration), including therein all the information which the Secretary may deem necessary for the calculation of such deductions and credits. This subsection shall not be construed to deny the credits provided by sections 31 and 33 for tax withheld at source or the credit provided by section 34 for certain uses of gasoline and special fuels.

(b) Tax withheld at source

The benefit of the deduction for exemptions under section 151 may, in the discretion of the Secretary, and under regulations prescribed by the Secretary, be received by a non-resident alien individual entitled thereto, by filing a claim therefor with the withholding agent.

(c) Foreign tax credit

Except as provided in section 906, a nonresident alien individual shall not be allowed the credits against the tax for taxes of foreign countries and possessions of the United States allowed by section 901.

(Aug. 16, 1954, ch. 736, 68A Stat. 281; Pub. L. 89–44, title VIII, § 809(d)(3), June 21, 1965, 79 Stat. 167; Pub. L. 89–809, title I, §§ 103(d), 106(a)(3), Nov. 13, 1966, 80 Stat. 1551, 1569; Pub. L. 91–258, title II, § 207(d)(1), May 21, 1970, 84 Stat. 248; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–424, title V, § 515(b)(6)(E), Jan. 6, 1983, 96 Stat. 2182; Pub. L. 98–369, div. A, title IV, § 474(r)(19), July 18, 1984, 98 Stat. 843.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–369 substituted reference to section ''33'' for ''32'' and ''34'' for ''39''.

1983—Subsec. (a). Pub. L. 97–424 substituted ''and special fuels'' for '', special fuels, and lubricating oil''.

1976—Subsecs. (a), (b). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

1970—Subsec. (a). Pub. L. 91–258 included provision against construction of subsec. (a) to deny credit provided by section 39 for certain uses of special fuels.

1966—Subsec. (a). Pub. L. 89–809, § 103(d), struck out ''of his total income received from all sources in the United States'' after ''true and accurate return''.

Subsec. (c). Pub. L. 89–809, § 106(a)(3), substituted ''Foreign tax credit'' for ''Foreign tax credit not allowed'' in heading and inserted reference to an exception provided in section 906.

1965—Subsec. (a). Pub. L. 89–44 inserted ''or the credit provided by section 39 for certain uses of gasoline and lubricating oil''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–424 applicable with respect to articles sold after Jan. 6, 1983, see section 515(c) of Pub. L. 97–424, set out as a note under section 34 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–258 effective July 1, 1970, see section 211(a) of Pub. L. 91–258, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by section 103(d) of Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 103(n)(1) of Pub. L. 89–809, set out as a note under section 871 of this title.

Pub. L. 89–809, title I, § 106(a)(6), Nov. 13, 1966, 80 Stat. 1569, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this subsection [enacting section 906 of this title and amending this section and section 901 of this title] shall apply with respect to taxable years beginning after Dec. 31, 1966. In applying section 904 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] with respect to section 906 of such Code, no amount may be carried from or to any taxable year beginning before Jan. 1, 1967, and no such year shall be taken into account.''

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 applicable to taxable years beginning on or after July 1, 1965, see section 809(f) of Pub. L. 89–44, set out as a note under section 6420 of this title.

§ 875. Partnerships; beneficiaries of estates and trusts

For purposes of this subtitle—

(1) a nonresident alien individual or foreign corporation shall be considered as being en-

gaged in a trade or business within the United States if the partnership of which such individual or corporation is a member is so engaged, and

(2) a nonresident alien individual or foreign corporation which is a beneficiary of an estate or trust which is engaged in any trade or business within the United States shall be treated as being engaged in such trade or business within the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 281; Pub. L. 89–809, title I, §103(e)(1), Nov. 13, 1966, 80 Stat. 1551.)

AMENDMENTS

1966—Pub. L. 89–809 designated existing provisions as par. (1), substituted reference to nonresident alien individuals or foreign corporations for reference simply to nonresident alien individuals, and added par. (2).

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 103(n)(1) of Pub. L. 89–809, set out as a note under section 871 of this title.

§ 876. Alien residents of Puerto Rico, Guam, American Samoa, or the Northern Mariana Islands

(a) General rule

This subpart shall not apply to any alien individual who is a bona fide resident of Puerto Rico, Guam, American Samoa, or the Northern Mariana Islands during the entire taxable year and such alien shall be subject to the tax imposed by section 1.

(b) Cross references

For exclusion from gross income of income derived from sources within—

(1) Guam, American Samoa, and the Northern Mariana Islands, see section 931, and

(2) Puerto Rico, see section 933.

(Aug. 16, 1954, ch. 736, 68A Stat. 281; Pub. L. 99–514, title XII, §1272(b), Oct. 22, 1986, 100 Stat. 2593.)

AMENDMENTS

1986—Pub. L. 99–514, §1272(b), inserted ‘‘, Guam, American Samoa, or the Northern Mariana Islands’’ in section catchline.

Subsec. (a). Pub. L. 99–514, §1272(b), amended subsec. (a) generally, substituting ‘‘General rule’’ for ‘‘No application to certain alien residents of Puerto Rico’’ in heading and inserting references to residents of Guam, American Samoa, and the Northern Mariana Islands in text.

Subsec. (b). Pub. L. 99–514, §1272(b), amended subsec. (b) generally, inserting references to Guam, American Samoa, and the Northern Mariana Islands.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as a note under section 931 of this title.

§ 877. Expatriation to avoid tax

(a) Treatment of expatriates

(1) In general

Every nonresident alien individual to whom this section applies and who, within the 10-year period immediately preceding the close of the taxable year, lost United States citizenship shall be taxable for such taxable year in the manner provided in subsection (b) if the tax imposed pursuant to such subsection (after any reduction in such tax under the last sentence of such subsection) exceeds the tax which, without regard to this section, is imposed pursuant to section 871.

(2) Individuals subject to this section

This section shall apply to any individual if—

(A) the average annual net income tax (as defined in section 38(c)(1)) of such individual for the period of 5 taxable years ending before the date of the loss of United States citizenship is greater than $124,000,

(B) the net worth of the individual as of such date is $2,000,000 or more, or

(C) such individual fails to certify under penalty of perjury that he has met the requirements of this title for the 5 preceding taxable years or fails to submit such evidence of such compliance as the Secretary may require.

In the case of the loss of United States citizenship in any calendar year after 2004, such $124,000 amount shall be increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting ‘‘2003’’ for ‘‘1992’’ in subparagraph (B) thereof. Any increase under the preceding sentence shall be rounded to the nearest multiple of $1,000.

(b) Alternative tax

A nonresident alien individual described in subsection (a) shall be taxable for the taxable year as provided in section 1 or 55, except that—

(1) the gross income shall include only the gross income described in section 872(a) (as modified by subsection (d) of this section), and

(2) the deductions shall be allowed if and to the extent that they are connected with the gross income included under this section, except that the capital loss carryover provided by section 1212(b) shall not be allowed; and the proper allocation and apportionment of the deductions for this purpose shall be determined as provided under regulations prescribed by the Secretary.

For purposes of paragraph (2), the deductions allowed by section 873(b) shall be allowed; and the deduction (for losses not connected with the trade or business if incurred in transactions entered into for profit) allowed by section 165(c)(2) shall be allowed, but only if the profit, if such transaction had resulted in a profit, would be included in gross income under this section. The tax imposed solely by reason of this section shall be reduced (but not below zero) by the amount of any income, war profits, and excess profits taxes (within the meaning of section 903) paid to any foreign country or possession of the United States on any income of the taxpayer on which tax is imposed solely by reason of this section.

(c) Exceptions

(1) In general

Subparagraphs (A) and (B) of subsection (a)(2) shall not apply to an individual described in paragraph (2) or (3).

(2) Dual citizens

(A) In general

An individual is described in this paragraph if—

(i) the individual became at birth a citizen of the United States and a citizen of another country and continues to be a citizen of such other country, and

(ii) the individual has had no substantial contacts with the United States.

(B) Substantial contacts

An individual shall be treated as having no substantial contacts with the United States only if the individual—

(i) was never a resident of the United States (as defined in section 7701(b)),

(ii) has never held a United States passport, and

(iii) was not present in the United States for more than 30 days during any calendar year which is 1 of the 10 calendar years preceding the individual's loss of United States citizenship.

(3) Certain minors

An individual is described in this paragraph if—

(A) the individual became at birth a citizen of the United States,

(B) neither parent of such individual was a citizen of the United States at the time of such birth,

(C) the individual's loss of United States citizenship occurs before such individual attains age 18½, and

(D) the individual was not present in the United States for more than 30 days during any calendar year which is 1 of the 10 calendar years preceding the individual's loss of United States citizenship.

(d) Special rules for source, etc.

For purposes of subsection (b)—

(1) Source rules

The following items of gross income shall be treated as income from sources within the United States:

(A) Sale of property

Gains on the sale or exchange of property (other than stock or debt obligations) located in the United States.

(B) Stock or debt obligations

Gains on the sale or exchange of stock issued by a domestic corporation or debt obligations of United States persons or of the United States, a State or political subdivision thereof, or the District of Columbia.

(C) Income or gain derived from controlled foreign corporation

Any income or gain derived from stock in a foreign corporation but only—

(i) if the individual losing United States citizenship owned (within the meaning of section 958(a)), or is considered as owning (by applying the ownership rules of section 958(b)), at any time during the 2-year period ending on the date of the loss of United States citizenship, more than 50 percent of—

(I) the total combined voting power of all classes of stock entitled to vote of such corporation, or

(II) the total value of the stock of such corporation, and

(ii) to the extent such income or gain does not exceed the earnings and profits attributable to such stock which were earned or accumulated before the loss of citizenship and during periods that the ownership requirements of clause (i) are met.

(2) Gain recognition on certain exchanges

(A) In general

In the case of any exchange of property to which this paragraph applies, notwithstanding any other provision of this title, such property shall be treated as sold for its fair market value on the date of such exchange, and any gain shall be recognized for the taxable year which includes such date.

(B) Exchanges to which paragraph applies

This paragraph shall apply to any exchange during the 10-year period beginning on the date the individual loses United States citizenship if—

(i) gain would not (but for this paragraph) be recognized on such exchange in whole or in part for purposes of this subtitle,

(ii) income derived from such property was from sources within the United States (or, if no income was so derived, would have been from such sources), and

(iii) income derived from the property acquired in the exchange would be from sources outside the United States.

(C) Exception

Subparagraph (A) shall not apply if the individual enters into an agreement with the Secretary which specifies that any income or gain derived from the property acquired in the exchange (or any other property which has a basis determined in whole or part by reference to such property) during such 10-year period shall be treated as from sources within the United States. If the property transferred in the exchange is disposed of by the person acquiring such property, such agreement shall terminate and any gain which was not recognized by reason of such agreement shall be recognized as of the date of such disposition.

(D) Secretary may extend period

To the extent provided in regulations prescribed by the Secretary, subparagraph (B) shall be applied by substituting the 15-year period beginning 5 years before the loss of United States citizenship for the 10-year period referred to therein. In the case of any exchange occurring during such 5 years, any gain recognized under this subparagraph

shall be recognized immediately after such loss of citizenship.

(E) Secretary may require recognition of gain in certain cases

To the extent provided in regulations prescribed by the Secretary—

(i) the removal of appreciated tangible personal property from the United States, and

(ii) any other occurrence which (without recognition of gain) results in a change in the source of the income or gain from property from sources within the United States to sources outside the United States,

shall be treated as an exchange to which this paragraph applies.

(3) Substantial diminishing of risks of ownership

For purposes of determining whether this section applies to any gain on the sale or exchange of any property, the running of the 10-year period described in subsection (a) and the period applicable under paragraph (2) shall be suspended for any period during which the individual's risk of loss with respect to the property is substantially diminished by—

(A) the holding of a put with respect to such property (or similar property),

(B) the holding by another person of a right to acquire the property, or

(C) a short sale or any other transaction.

(4) Treatment of property contributed to controlled foreign corporations

(A) In general

If—

(i) an individual losing United States citizenship contributes property during the 10-year period beginning on the date the individual loses United States citizenship to any corporation which, at the time of the contribution, is described in subparagraph (B), and

(ii) income derived from such property immediately before such contribution was from sources within the United States (or, if no income was so derived, would have been from such sources),

any income or gain on such property (or any other property which has a basis determined in whole or part by reference to such property) received or accrued by the corporation shall be treated as received or accrued directly by such individual and not by such corporation. The preceding sentence shall not apply to the extent the property has been treated under subparagraph (C) as having been sold by such corporation.

(B) Corporation described

A corporation is described in this subparagraph with respect to an individual if, were such individual a United States citizen—

(i) such corporation would be a controlled foreign corporation (as defined in[1] 957), and

(ii) such individual would be a United States shareholder (as defined in section 951(b)) with respect to such corporation.

(C) Disposition of stock in corporation

If stock in the corporation referred to in subparagraph (A) (or any other stock which has a basis determined in whole or part by reference to such stock) is disposed of during the 10-year period referred to in subsection (a) and while the property referred to in subparagraph (A) is held by such corporation, a pro rata share of such property (determined on the basis of the value of such stock) shall be treated as sold by the corporation immediately before such disposition.

(D) Anti-abuse rules

The Secretary shall prescribe such regulations as may be necessary to prevent the avoidance of the purposes of this paragraph, including where—

(i) the property is sold to the corporation, and

(ii) the property taken into account under subparagraph (A) is sold by the corporation.

(E) Information reporting

The Secretary shall require such information reporting as is necessary to carry out the purposes of this paragraph.

(e) Comparable treatment of lawful permanent residents who cease to be taxed as residents

(1) In general

Any long-term resident of the United States who ceases to be a lawful permanent resident of the United States (within the meaning of section 7701(b)(6)) shall be treated for purposes of this section and sections 2107, 2501, and 6039G in the same manner as if such resident were a citizen of the United States who lost United States citizenship on the date of such cessation or commencement.

(2) Long-term resident

For purposes of this subsection, the term ''long-term resident'' means any individual (other than a citizen of the United States) who is a lawful permanent resident of the United States in at least 8 taxable years during the period of 15 taxable years ending with the taxable year during which the event described in paragraph (1) occurs. For purposes of the preceding sentence, an individual shall not be treated as a lawful permanent resident for any taxable year if such individual is treated as a resident of a foreign country for the taxable year under the provisions of a tax treaty between the United States and the foreign country and does not waive the benefits of such treaty applicable to residents of the foreign country.

(3) Special rules

(A) Exceptions not to apply

Subsection (c) shall not apply to an individual who is treated as provided in paragraph (1).

(B) Step-up in basis

Solely for purposes of determining any tax imposed by reason of this subsection, prop-

[1] So in original. Probably should be followed by ''section''.

erty which was held by the long-term resident on the date the individual first became a resident of the United States shall be treated as having a basis on such date of not less than the fair market value of such property on such date. The preceding sentence shall not apply if the individual elects not to have such sentence apply. Such an election, once made, shall be irrevocable.

(4) Authority to exempt individuals

This subsection shall not apply to an individual who is described in a category of individuals prescribed by regulation by the Secretary.

(5) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out this subsection, including regulations providing for the application of this subsection in cases where an alien individual becomes a resident of the United States during the 10-year period after being treated as provided in paragraph (1).

(f) Burden of proof

If the Secretary establishes that it is reasonable to believe that an individual's loss of United States citizenship would, but for this section, result in a substantial reduction for the taxable year in the taxes on his probable income for such year, the burden of proving for such taxable year that such loss of citizenship did not have for one of its principal purposes the avoidance of taxes under this subtitle or subtitle B shall be on such individual.

(g) Physical presence

(1) In general

This section shall not apply to any individual to whom this section would otherwise apply for any taxable year during the 10-year period referred to in subsection (a) in which such individual is physically present in the United States at any time on more than 30 days in the calendar year ending in such taxable year, and such individual shall be treated for purposes of this title as a citizen or resident of the United States, as the case may be, for such taxable year.

(2) Exception

(A) In general

In the case of an individual described in any of the following subparagraphs of this paragraph, a day of physical presence in the United States shall be disregarded if the individual is performing services in the United States on such day for an employer. The preceding sentence shall not apply if—

(i) such employer is related (within the meaning of section 267 and 707) to such individual, or

(ii) such employer fails to meet such requirements as the Secretary may prescribe by regulations to prevent the avoidance of the purposes of this paragraph.

Not more than 30 days during any calendar year may be disregarded under this subparagraph.

(B) Individuals with ties to other countries

An individual is described in this subparagraph if—

(i) the individual becomes (not later than the close of a reasonable period after loss of United States citizenship or termination of residency) a citizen or resident of the country in which—

(I) such individual was born,

(II) if such individual is married, such individual's spouse was born, or

(III) either of such individual's parents were born, and

(ii) the individual becomes fully liable for income tax in such country.

(C) Minimal prior physical presence in the United States

An individual is described in this subparagraph if, for each year in the 10-year period ending on the date of loss of United States citizenship or termination of residency, the individual was physically present in the United States for 30 days or less. The rule of section 7701(b)(3)(D) shall apply for purposes of this subparagraph.

(h) Termination

This section shall not apply to any individual whose expatriation date (as defined in section 877A(g)(3)) is on or after the date of the enactment of this subsection.

(Added Pub. L. 89–809, title I, § 103(f)(1), Nov. 13, 1966, 80 Stat. 1551; amended Pub. L. 93–406, title II, § 2005(c)(8), Sept. 2, 1974, 88 Stat. 992; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–600, title IV, § 421(e)(5), Nov. 6, 1978, 92 Stat. 2876; Pub. L. 96–222, title I, § 104(a)(1), (4)(H)(v), Apr. 1, 1980, 94 Stat. 214, 217; Pub. L. 99–514, title XII, § 1243(a), Oct. 22, 1986, 100 Stat. 2580; Pub. L. 102–318, title V, § 521(b)(31), July 3, 1992, 106 Stat. 312; Pub. L. 104–188, title I, § 1401(b)(11), Aug. 20, 1996, 110 Stat. 1789; Pub. L. 104–191, title V, § 511(a)–(d), (f)(1), Aug. 21, 1996, 110 Stat. 2093–2098; Pub. L. 105–34, title XVI, § 1602(g)(1)–(4), (h)(3), Aug. 5, 1997, 111 Stat. 1095, 1096; Pub. L. 108–357, title VIII, § 804(a)(1), (2), (c), Oct. 22, 2004, 118 Stat. 1569, 1570; Pub. L. 109–135, title IV, § 403(v)(1), Dec. 21, 2005, 119 Stat. 2628; Pub. L. 110–245, title III, § 301(c)(2)(A), (d), June 17, 2008, 122 Stat. 1646; Pub. L. 113–295, div. A, title II, § 213(c)(2), Dec. 19, 2014, 128 Stat. 4034.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (h), is the date of enactment of Pub. L. 110–245, which was approved June 17, 2008.

PRIOR PROVISIONS

A prior section 877 was renumbered section 878 of this title.

AMENDMENTS

2014—Subsec. (e)(2). Pub. L. 113–295 struck out ''subparagraph (A) or (B) of'' after ''event described in''.

2008—Subsec. (e)(1). Pub. L. 110–245, § 301(c)(2)(A), amended par. (1) generally. Prior to amendment, text

read as follows: ''Any long-term resident of the United States who—

''(A) ceases to be a lawful permanent resident of the United States (within the meaning of section 7701(b)(6)), or

''(B) commences to be treated as a resident of a foreign country under the provisions of a tax treaty between the United States and the foreign country and who does not waive the benefits of such treaty applicable to residents of the foreign country,

shall be treated for purposes of this section and sections 2107, 2501, and 6039G in the same manner as if such resident were a citizen of the United States who lost United States citizenship on the date of such cessation or commencement.''

Subsec. (h). Pub. L. 110–245, § 301(d), added subsec. (h).

2005—Subsec. (g)(2)(C). Pub. L. 109–135 substituted ''section 7701(b)(3)(D)'' for ''section 7701(b)(3)(D)(ii)''.

2004—Subsec. (a). Pub. L. 108–357, § 804(a)(1), reenacted heading without change and amended text of subsec. (a) generally. Prior to amendment, subsec. (a) stated general rule on taxation of nonresident alien individuals who lost United States citizenship and provided that an individual would be treated as having a tax avoidance purpose if the average annual net income tax was greater than $100,000 or the net worth of the individual was $500,000 or more.

Subsec. (c). Pub. L. 108–357, § 804(a)(2), amended heading and text of subsec. (c) generally, substituting provisions setting forth exceptions for dual citizens and certain minors for provisions relating to inapplicability of presumption of tax avoidance to dual citizens, long-term foreign residents, minors who renounced citizenship upon reaching age of majority, and individuals specified in regulations.

Subsec. (g). Pub. L. 108–357, § 804(c), added subsec. (g).

1997—Subsec. (d)(2)(B). Pub. L. 105–34, § 1602(g)(1), substituted ''the 10-year period beginning on the date the individual loses United States citizenship'' for ''the 10-year period described in subsection (a)'' in introductory provisions.

Subsec. (d)(2)(D). Pub. L. 105–34, § 1602(g)(2), inserted at end ''In the case of any exchange occurring during such 5 years, any gain recognized under this subparagraph shall be recognized immediately after such loss of citizenship.''

Subsec. (d)(3). Pub. L. 105–34, § 1602(g)(3), inserted ''and the period applicable under paragraph (2)'' after ''subsection (a)'' in introductory provisions.

Subsec. (d)(4)(A). Pub. L. 105–34, § 1602(g)(4)(C), struck out ''during the 10-year period referred to in subsection (a),'' before ''any income or gain'' in concluding provisions.

Subsec. (d)(4)(A)(i). Pub. L. 105–34, § 1602(g)(4)(A), inserted ''during the 10-year period beginning on the date the individual loses United States citizenship'' after ''contributes property''.

Subsec. (d)(4)(A)(ii). Pub. L. 105–34, § 1602(g)(4)(B), inserted ''immediately before such contribution'' after ''from such property''.

Subsec. (e)(1). Pub. L. 105–34, § 1602(h)(3), substituted ''6039G'' for ''6039F'' in concluding provisions.

1996—Subsec. (a). Pub. L. 104–191, § 511(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows:

''(a) IN GENERAL.—Every nonresident alien individual who at any time after March 8, 1965, and within the 10-year period immediately preceding the close of the taxable year lost United States citizenship, unless such loss did not have for one of its principal purposes the avoidance of taxes under this subtitle or subtitle B, shall be taxable for such taxable year in the manner provided in subsection (b) if the tax imposed pursuant to such subsection exceeds the tax which, without regard to this section, is imposed pursuant to section 871.''

Subsec. (a)(1). Pub. L. 104–191, § 511(d)(2), inserted ''(after any reduction in such tax under the last sentence of such subsection)'' after ''such subsection''.

Subsec. (b). Pub. L. 104–191, § 511(d)(1), inserted at end ''The tax imposed solely by reason of this section shall be reduced (but not below zero) by the amount of any income, war profits, and excess profits taxes (within the meaning of section 903) paid to any foreign country or possession of the United States on any income of the taxpayer on which tax is imposed solely by reason of this section.''

Pub. L. 104–188 substituted ''section 1 or 55'' for ''section 1, 55, or 402(d)(1)''.

Subsec. (b)(1). Pub. L. 104–191, § 511(b)(2), substituted ''subsection (d)'' for ''subsection (c)''.

Subsec. (c). Pub. L. 104–191, § 511(b)(1), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 104–191, § 511(c), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows:

''(d) SPECIAL RULES OF SOURCE.—For purposes of subsection (b), the following items of gross income shall be treated as income from sources within the United States:

''(1) SALE OF PROPERTY.—Gains on the sale or exchange of property (other than stock or debt obligations) located in the United States.

''(2) STOCK OR DEBT OBLIGATIONS.—Gains on the sale or exchange of stock issued by a domestic corporation or debt obligations of United States persons or of the United States, a State or political subdivision thereof, or the District of Columbia.

For purposes of this section, gain on the sale or exchange of property which has a basis determined in whole or in part by reference to property described in paragraph (1) or (2) shall be treated as gain described in paragraph (1) or (2).''

Pub. L. 104–191, § 511(b)(1), redesignated subsec. (c) as (d) and struck out former subsec. (d) which read as follows:

''(d) EXCEPTION FOR LOSS OF CITIZENSHIP FOR CERTAIN CAUSES.—Subsection (a) shall not apply to a nonresident alien individual whose loss of United States citizenship resulted from the application of section 301(b), 350, or 355 of the Immigration and Nationality Act, as amended (8 U.S.C. 1401(b), 1482, or 1487).''

Subsecs. (e), (f). Pub. L. 104–191, § 511(f)(1), added subsec. (e) and redesignated former subsec. (e) as (f).

1992—Subsec. (b). Pub. L. 102–318 substituted ''402(d)(1)'' for ''402(e)(1)''.

1986—Subsec. (c). Pub. L. 99–514 inserted at end ''For purposes of this section, gain on the sale or exchange of property which has a basis determined in whole or in part by reference to property described in paragraph (1) or (2) shall be treated as gain described in paragraph (1) or (2).''

1980—Subsec. (b). Pub. L. 96–222 substituted ''55, or 402(e)(1)'' for ''section 55, 402(e)(1), or section 1201(b)''.

1978—Subsec. (b). Pub. L. 95–600 substituted ''section 1, section 55,'' for ''section 1''.

1976—Subsecs. (b)(2), (e). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

1974—Subsec. (b). Pub. L. 93–406 inserted reference to section 402(e)(1).

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–295 effective as if included in the provisions of the Heroes Earnings Assistance and Relief Tax Act of 2008, Pub. L. 110–245, to which such amendment relates, see section 213(d) of Pub. L. 113–295, set out as a note under section 121 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–245 applicable to any individual whose expatriation date is on or after June 17, 2008, see section 301(g)(1) of Pub. L. 110–245, set out as an Effective Date note under section 2801 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, § 804(f), Oct. 22, 2004, 118 Stat. 1573, provided that: ''The amendments made by this section [amending this section and sections 2107, 2501, 6039G, and 7701 of this title] shall apply to individuals who expatriate after June 3, 2004.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 effective as if included in the provisions of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104–191, to which such amendment relates, see section 1602(i) of Pub. L. 105–34, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–191, title V, § 511(g), Aug. 21, 1996, 110 Stat. 2100, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 2107 and 2501 of this title] shall apply to—

''(A) individuals losing United States citizenship (within the meaning of section 877 of the Internal Revenue Code of 1986) on or after February 6, 1995, and

''(B) long-term residents of the United States with respect to whom an event described in [former] subparagraph (A) or (B) of section 877(e)(1) of such Code occurs on or after February 6, 1995.

''(2) RULING REQUESTS.—In no event shall the 1-year period referred to in section 877(c)(1)(B) of such Code, as amended by this section, expire before the date which is 90 days after the date of the enactment of this Act [Aug. 21, 1996].

''(3) SPECIAL RULE.—

''(A) IN GENERAL.—In the case of an individual who performed an act of expatriation specified in paragraph (1), (2), (3), or (4) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(1)–(4)) before February 6, 1995, but who did not, on or before such date, furnish to the United States Department of State a signed statement of voluntary relinquishment of United States nationality confirming the performance of such act, the amendments made by this section and section 512 [enacting section 6039F of this title] shall apply to such individual except that the 10-year period described in section 877(a) of such Code shall not expire before the end of the 10-year period beginning on the date such statement is so furnished.

''(B) EXCEPTION.—Subparagraph (A) shall not apply if the individual establishes to the satisfaction of the Secretary of the Treasury that such loss of United States citizenship occurred before February 6, 1994.''

Amendment by Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1999, with retention of certain transition rules, see section 1401(c) of Pub. L. 104–188, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102–318, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XII, § 1243(b), Oct. 22, 1986, 100 Stat. 2581, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to sales or exchanges of property received in exchanges after September 25, 1985.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 421(g) of Pub. L. 95–600, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–406 applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after Dec. 31, 1973, see section 2005(d) of Pub. L. 93–406, set out as a note under section 402 of this title.

EFFECTIVE DATE

Section applicable with respect to taxable years beginning after Dec. 31, 1966, see section 103(n)(1) of Pub. L. 89–809, set out as an Effective Date of 1966 Amendment note under section 871 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§ 1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§ 521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

§ 877A. Tax responsibilities of expatriation

(a) General rules

For purposes of this subtitle—

(1) Mark to market

All property of a covered expatriate shall be treated as sold on the day before the expatriation date for its fair market value.

(2) Recognition of gain or loss

In the case of any sale under paragraph (1)—

(A) notwithstanding any other provision of this title, any gain arising from such sale shall be taken into account for the taxable year of the sale, and

(B) any loss arising from such sale shall be taken into account for the taxable year of the sale to the extent otherwise provided by this title, except that section 1091 shall not apply to any such loss.

Proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account under the preceding sentence, determined without regard to paragraph (3).

(3) Exclusion for certain gain

(A) In general

The amount which would (but for this paragraph) be includible in the gross income of any individual by reason of paragraph (1) shall be reduced (but not below zero) by $600,000.

(B) Adjustment for inflation

(i) In general

In the case of any taxable year beginning in a calendar year after 2008, the dollar

amount in subparagraph (A) shall be increased by an amount equal to—

(I) such dollar amount, multiplied by

(II) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting ''calendar year 2007'' for ''calendar year 2016'' in subparagraph (A)(ii) thereof.

(ii) Rounding

If any amount as adjusted under clause (i) is not a multiple of $1,000, such amount shall be rounded to the nearest multiple of $1,000.

(b) Election to defer tax

(1) In general

If the taxpayer elects the application of this subsection with respect to any property treated as sold by reason of subsection (a), the time for payment of the additional tax attributable to such property shall be extended until the due date of the return for the taxable year in which such property is disposed of (or, in the case of property disposed of in a transaction in which gain is not recognized in whole or in part, until such other date as the Secretary may prescribe).

(2) Determination of tax with respect to property

For purposes of paragraph (1), the additional tax attributable to any property is an amount which bears the same ratio to the additional tax imposed by this chapter for the taxable year solely by reason of subsection (a) as the gain taken into account under subsection (a) with respect to such property bears to the total gain taken into account under subsection (a) with respect to all property to which subsection (a) applies.

(3) Termination of extension

The due date for payment of tax may not be extended under this subsection later than the due date for the return of tax imposed by this chapter for the taxable year which includes the date of death of the expatriate (or, if earlier, the time that the security provided with respect to the property fails to meet the requirements of paragraph (4), unless the taxpayer corrects such failure within the time specified by the Secretary).

(4) Security

(A) In general

No election may be made under paragraph (1) with respect to any property unless adequate security is provided with respect to such property.

(B) Adequate security

For purposes of subparagraph (A), security with respect to any property shall be treated as adequate security if—

(i) it is a bond which is furnished to, and accepted by, the Secretary, which is conditioned on the payment of tax (and interest thereon), and which meets the requirements of section 6325, or

(ii) it is another form of security for such payment (including letters of credit) that meets such requirements as the Secretary may prescribe.

(5) Waiver of certain rights

No election may be made under paragraph (1) unless the taxpayer makes an irrevocable waiver of any right under any treaty of the United States which would preclude assessment or collection of any tax imposed by reason of this section.

(6) Elections

An election under paragraph (1) shall only apply to property described in the election and, once made, is irrevocable.

(7) Interest

For purposes of section 6601, the last date for the payment of tax shall be determined without regard to the election under this subsection.

(c) Exception for certain property

Subsection (a) shall not apply to—

(1) any deferred compensation item (as defined in subsection (d)(4)),

(2) any specified tax deferred account (as defined in subsection (e)(2)), and

(3) any interest in a nongrantor trust (as defined in subsection (f)(3)).

(d) Treatment of deferred compensation items

(1) Withholding on eligible deferred compensation items

(A) In general

In the case of any eligible deferred compensation item, the payor shall deduct and withhold from any taxable payment to a covered expatriate with respect to such item a tax equal to 30 percent thereof.

(B) Taxable payment

For purposes of subparagraph (A), the term ''taxable payment'' means with respect to a covered expatriate any payment to the extent it would be includible in the gross income of the covered expatriate if such expatriate continued to be subject to tax as a citizen or resident of the United States. A deferred compensation item shall be taken into account as a payment under the preceding sentence when such item would be so includible.

(2) Other deferred compensation items

In the case of any deferred compensation item which is not an eligible deferred compensation item—

(A)(i) with respect to any deferred compensation item to which clause (ii) does not apply, an amount equal to the present value of the covered expatriate's accrued benefit shall be treated as having been received by such individual on the day before the expatriation date as a distribution under the plan, and

(ii) with respect to any deferred compensation item referred to in paragraph (4)(D), the rights of the covered expatriate to such item shall be treated as becoming transferable and not subject to a substantial risk of forfeiture on the day before the expatriation date,

(B) no early distribution tax shall apply by reason of such treatment, and

(C) appropriate adjustments shall be made to subsequent distributions from the plan to reflect such treatment.

(3) Eligible deferred compensation items

For purposes of this subsection, the term ''eligible deferred compensation item'' means any deferred compensation item with respect to which—

(A) the payor of such item is—

(i) a United States person, or

(ii) a person who is not a United States person but who elects to be treated as a United States person for purposes of paragraph (1) and meets such requirements as the Secretary may provide to ensure that the payor will meet the requirements of paragraph (1), and

(B) the covered expatriate—

(i) notifies the payor of his status as a covered expatriate, and

(ii) makes an irrevocable waiver of any right to claim any reduction under any treaty with the United States in withholding on such item.

(4) Deferred compensation item

For purposes of this subsection, the term ''deferred compensation item'' means—

(A) any interest in a plan or arrangement described in section 219(g)(5),

(B) any interest in a foreign pension plan or similar retirement arrangement or program,

(C) any item of deferred compensation, and

(D) any property, or right to property, which the individual is entitled to receive in connection with the performance of services to the extent not previously taken into account under section 83 or in accordance with section 83.

(5) Exception

Paragraphs (1) and (2) shall not apply to any deferred compensation item to the extent attributable to services performed outside the United States while the covered expatriate was not a citizen or resident of the United States.

(6) Special rules

(A) Application of withholding rules

Rules similar to the rules of subchapter B of chapter 3 shall apply for purposes of this subsection.

(B) Application of tax

Any item subject to the withholding tax imposed under paragraph (1) shall be subject to tax under section 871.

(C) Coordination with other withholding requirements

Any item subject to withholding under paragraph (1) shall not be subject to withholding under section 1441 or chapter 24.

(e) Treatment of specified tax deferred accounts

(1) Account treated as distributed

In the case of any interest in a specified tax deferred account held by a covered expatriate on the day before the expatriation date—

(A) the covered expatriate shall be treated as receiving a distribution of his entire interest in such account on the day before the expatriation date,

(B) no early distribution tax shall apply by reason of such treatment, and

(C) appropriate adjustments shall be made to subsequent distributions from the account to reflect such treatment.

(2) Specified tax deferred account

For purposes of paragraph (1), the term ''specified tax deferred account'' means an individual retirement plan (as defined in section 7701(a)(37)) other than any arrangement described in subsection (k) or (p) of section 408, a qualified tuition program (as defined in section 529), a qualified ABLE program (as defined in section 529A), a Coverdell education savings account (as defined in section 530), a health savings account (as defined in section 223), and an Archer MSA (as defined in section 220).

(f) Special rules for nongrantor trusts

(1) In general

In the case of a distribution (directly or indirectly) of any property from a nongrantor trust to a covered expatriate—

(A) the trustee shall deduct and withhold from such distribution an amount equal to 30 percent of the taxable portion of the distribution, and

(B) if the fair market value of such property exceeds its adjusted basis in the hands of the trust, gain shall be recognized to the trust as if such property were sold to the expatriate at its fair market value.

(2) Taxable portion

For purposes of this subsection, the term ''taxable portion'' means, with respect to any distribution, that portion of the distribution which would be includible in the gross income of the covered expatriate if such expatriate continued to be subject to tax as a citizen or resident of the United States.

(3) Nongrantor trust

For purposes of this subsection, the term ''nongrantor trust'' means the portion of any trust that the individual is not considered the owner of under subpart E of part I of subchapter J. The determination under the preceding sentence shall be made immediately before the expatriation date.

(4) Special rules relating to withholding

For purposes of this subsection—

(A) rules similar to the rules of subsection (d)(6) shall apply, and

(B) the covered expatriate shall be treated as having waived any right to claim any reduction under any treaty with the United States in withholding on any distribution to which paragraph (1)(A) applies unless the covered expatriate agrees to such other treatment as the Secretary determines appropriate.

(5) Application

This subsection shall apply to a nongrantor trust only if the covered expatriate was a ben-

eficiary of the trust on the day before the expatriation date.

(g) Definitions and special rules relating to expatriation

For purposes of this section—

(1) Covered expatriate

(A) In general

The term ''covered expatriate'' means an expatriate who meets the requirements of subparagraph (A), (B), or (C) of section 877(a)(2).

(B) Exceptions

An individual shall not be treated as meeting the requirements of subparagraph (A) or (B) of section 877(a)(2) if—

(i) the individual—

(I) became at birth a citizen of the United States and a citizen of another country and, as of the expatriation date, continues to be a citizen of, and is taxed as a resident of, such other country, and

(II) has been a resident of the United States (as defined in section 7701(b)(1)(A)(ii)) for not more than 10 taxable years during the 15-taxable year period ending with the taxable year during which the expatriation date occurs, or

(ii)(I) the individual's relinquishment of United States citizenship occurs before such individual attains age 18½, and

(II) the individual has been a resident of the United States (as so defined) for not more than 10 taxable years before the date of relinquishment.

(C) Covered expatriates also subject to tax as citizens or residents

In the case of any covered expatriate who is subject to tax as a citizen or resident of the United States for any period beginning after the expatriation date, such individual shall not be treated as a covered expatriate during such period for purposes of subsections (d)(1) and (f) and section 2801.

(2) Expatriate

The term ''expatriate'' means—

(A) any United States citizen who relinquishes his citizenship, and

(B) any long-term resident of the United States who ceases to be a lawful permanent resident of the United States (within the meaning of section 7701(b)(6)).

(3) Expatriation date

The term ''expatriation date'' means—

(A) the date an individual relinquishes United States citizenship, or

(B) in the case of a long-term resident of the United States, the date on which the individual ceases to be a lawful permanent resident of the United States (within the meaning of section 7701(b)(6)).

(4) Relinquishment of citizenship

A citizen shall be treated as relinquishing his United States citizenship on the earliest of—

(A) the date the individual renounces his United States nationality before a diplomatic or consular officer of the United States pursuant to paragraph (5) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(5)),

(B) the date the individual furnishes to the United States Department of State a signed statement of voluntary relinquishment of United States nationality confirming the performance of an act of expatriation specified in paragraph (1), (2), (3), or (4) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(1)–(4)),

(C) the date the United States Department of State issues to the individual a certificate of loss of nationality, or

(D) the date a court of the United States cancels a naturalized citizen's certificate of naturalization.

Subparagraph (A) or (B) shall not apply to any individual unless the renunciation or voluntary relinquishment is subsequently approved by the issuance to the individual of a certificate of loss of nationality by the United States Department of State.

(5) Long-term resident

The term ''long-term resident'' has the meaning given to such term by section 877(e)(2).

(6) Early distribution tax

The term ''early distribution tax'' means any increase in tax imposed under section 72(t), 220(e)(4),[1] 223(f)(4), 409A(a)(1)(B), 529(c)(6), 529A(c)(3), or 530(d)(4).

(h) Other rules

(1) Termination of deferrals, etc.

In the case of any covered expatriate, notwithstanding any other provision of this title—

(A) any time period for acquiring property which would result in the reduction in the amount of gain recognized with respect to property disposed of by the taxpayer shall terminate on the day before the expatriation date, and

(B) any extension of time for payment of tax shall cease to apply on the day before the expatriation date and the unpaid portion of such tax shall be due and payable at the time and in the manner prescribed by the Secretary.

(2) Step-up in basis

Solely for purposes of determining any tax imposed by reason of subsection (a), property which was held by an individual on the date the individual first became a resident of the United States (within the meaning of section 7701(b)) shall be treated as having a basis on such date of not less than the fair market value of such property on such date. The preceding sentence shall not apply if the individual elects not to have such sentence apply. Such an election, once made, shall be irrevocable.

(3) Coordination with section 684

If the expatriation of any individual would result in the recognition of gain under section

[1] See References in Text note below.

684, this section shall be applied after the application of section 684.

(i) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

(Added Pub. L. 110–245, title III, § 301(a), June 17, 2008, 122 Stat. 1638; amended Pub. L. 113–295, div. B, title I, § 102(e)(2), Dec. 19, 2014, 128 Stat. 4062; Pub. L. 115–97, title I, § 11002(d)(1)(BB), Dec. 22, 2017, 131 Stat. 2060.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

REFERENCES IN TEXT

Section 220(e), referred to in subsec. (g)(6), does not contain a par. (4).

AMENDMENTS

2017—Subsec. (a)(3)(B)(i)(II). Pub. L. 115–97 substituted ''for 'calendar year 2016' in subparagraph (A)(ii)'' for ''for 'calendar year 1992' in subparagraph (B) thereof''.

2014—Subsec. (e)(2). Pub. L. 113–295, § 102(e)(2)(A), inserted ''a qualified ABLE program (as defined in section 529A),'' after ''529),''.

Subsec. (g)(6). Pub. L. 113–295, § 102(e)(2)(B), inserted ''529A(c)(3),'' after ''529(c)(6),''.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–97 applicable to taxable years beginning after Dec. 31, 2017, see section 11002(e) of Pub. L. 115–97, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–295 applicable to taxable years beginning after Dec. 31, 2014, see section 102(f)(1) of Pub. L. 113–295, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Section applicable to any individual whose expatriation date is on or after June 17, 2008, see section 301(g)(1) of Pub. L. 110–245, set out as a note under section 2801 of this title.

§ 878. Foreign educational, charitable, and certain other exempt organizations

For special provisions relating to foreign educational, charitable, and other exempt organizations, see sections 512(a) and 4948.

(Aug. 16, 1954, ch. 736, 68A Stat. 282, § 877; renumbered § 878, Pub. L. 89–809, title I, § 103(f)(1), Nov. 13, 1966, 80 Stat. 1551; amended Pub. L. 91–172, title I, § 101(j)(20), Dec. 30, 1969, 83 Stat. 528.)

AMENDMENTS

1969—Pub. L. 91–172 substituted provisions requiring reference to organizations in sections 512(a) and 4948 for provisions requiring reference to trusts in section 512(a), and struck out reference to unrelated business income.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 101(k)(2)(B) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

§ 879. Tax treatment of certain community income in the case of nonresident alien individuals

(a) General rule

In the case of a married couple 1 or both of whom are nonresident alien individuals and who have community income for the taxable year, such community income shall be treated as follows:

(1) Earned income (within the meaning of section 911(d)(2)), other than trade or business income and a partner's distributive share of partnership income, shall be treated as the income of the spouse who rendered the personal services,

(2) Trade or business income, and a partner's distributive share of partnership income, shall be treated as provided in section 1402(a)(5),

(3) Community income not described in paragraph (1) or (2) which is derived from the separate property (as determined under the applicable community property law) of one spouse shall be treated as the income of such spouse, and

(4) All other such community income shall be treated as provided in the applicable community property law.

(b) Exception where election under section 6013(g) is in effect

Subsection (a) shall not apply for any taxable year for which an election under subsection (g) or (h) of section 6013 (relating to election to treat nonresident alien individual as resident of the United States) is in effect.

(c) Definitions and special rules

For purposes of this section—

(1) Community income

The term ''community income'' means income which, under applicable community property laws, is treated as community income.

(2) Community property laws

The term ''community property laws'' means the community property laws of a State, a foreign country, or a possession of the United States.

(3) Determination of marital status

The determination of marital status shall be made under section 7703(a).

(Added Pub. L. 94–455, title X, § 1012(b)(1), Oct. 4, 1976, 90 Stat. 1613; amended Pub. L. 97–34, title I, § 111(b)(4), Aug. 13, 1981, 95 Stat. 194; Pub. L. 98–369, div. A, title I, § 139(a), (b)(1), July 18, 1984, 98 Stat. 677; Pub. L. 99–514, title XIII, § 1301(j)(9), Oct. 22, 1986, 100 Stat. 2658.)

AMENDMENTS

1986—Subsec. (c)(3). Pub. L. 99–514 substituted ''section 7703(a)'' for ''section 143(a)''.

1984—Pub. L. 98–369, § 139(b)(1), substituted ''nonresident alien individuals'' for ''a resident or citizen of the United States who is married to a nonresident alien individual'' in section catchline.

Subsec. (a). Pub. L. 98–369, § 139(a), substituted in provision preceding par. (1) ''married couple 1 or both of whom are nonresident alien individuals'' for ''citizen or resident of the United States who is married to a nonresident alien individual''.

1981—Subsec. (a)(1). Pub. L. 97–34 substituted ''section 911(d)(2)'' for ''section 911(b)''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99–514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §139(c), July 18, 1984, 98 Stat. 677, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1984.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable with respect to taxable years beginning after Dec. 31, 1981, see section 115 of Pub. L. 97–34, set out as a note under section 911 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1976, see section 1012(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 6013 of this title.

SUBPART B—FOREIGN CORPORATIONS

Sec.
881. Tax on income of foreign corporations not connected with United States business.
882. Tax on income of foreign corporations connected with United States business.
883. Exclusions from gross income.
884. Branch profits tax.
885. Cross references.

AMENDMENTS

1986—Pub. L. 99–514, title XII, §1241(d), Oct. 22, 1986, 100 Stat. 2580, added item 884 and redesignated former item 884 as 885.

1966—Pub. L. 89–809, title I, §104(b)(3), Nov. 13, 1966, 80 Stat. 1557, substituted ''Tax on income of foreign corporations not connected with United States business'' for ''Tax on foreign corporations not engaged in business in United States'' in item 881, and ''Tax on income of foreign corporations connected with United States business'' for ''Tax on resident foreign corporations'' in item 882.

§ 881. Tax on income of foreign corporations not connected with United States business

(a) Imposition of tax

Except as provided in subsection (c), there is hereby imposed for each taxable year a tax of 30 percent of the amount received from sources within the United States by a foreign corporation as—

(1) interest (other than original issue discount as defined in section 1273), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits, and income,

(2) gains described in section 631(b) or (c),

(3) in the case of—

(A) a sale or exchange of an original issue discount obligation, the amount of the original issue discount accruing while such obligation was held by the foreign corporation (to the extent such discount was not theretofore taken into account under subparagraph (B)), and

(B) a payment on an original issue discount obligation, an amount equal to the original issue discount accruing while such obligation was held by the foreign corporation (except that such original issue discount shall be taken into account under this subparagraph only to the extent such discount was not theretofore taken into account under this subparagraph and only to the extent that the tax thereon does not exceed the payment less the tax imposed by paragraph (1) thereon), and

(4) gains from the sale or exchange after October 4, 1966, of patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other like property, or of any interest in any such property, to the extent such gains are from payments which are contingent on the productivity, use, or disposition of the property or interest sold or exchanged,

but only to the extent the amount so received is not effectively connected with the conduct of a trade or business within the United States.

(b) Exception for certain possessions

(1) Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands

For purposes of this section and section 884, a corporation created or organized in Guam, American Samoa, the Northern Mariana Islands, or the Virgin Islands or under the law of any such possession shall not be treated as a foreign corporation for any taxable year if—

(A) at all times during such taxable year less than 25 percent in value of the stock of such corporation is beneficially owned (directly or indirectly) by foreign persons,

(B) at least 65 percent of the gross income of such corporation is shown to the satisfaction of the Secretary to be effectively connected with the conduct of a trade or business in such a possession or the United States for the 3-year period ending with the close of the taxable year of such corporation (or for such part of such period as the corporation or any predecessor has been in existence), and

(C) no substantial part of the income of such corporation is used (directly or indirectly) to satisfy obligations to persons who are not bona fide residents of such a possession or the United States.

(2) Commonwealth of Puerto Rico

(A) In general

If dividends are received during a taxable year by a corporation—

(i) created or organized in, or under the law of, the Commonwealth of Puerto Rico, and

(ii) with respect to which the requirements of subparagraphs (A), (B), and (C) of paragraph (1) are met for the taxable year,

subsection (a) shall be applied for such taxable year by substituting ''10 percent'' for ''30 percent''.

(B) Applicability

If, on or after the date of the enactment of this paragraph, an increase in the rate of the

Commonwealth of Puerto Rico's withholding tax which is generally applicable to dividends paid to United States corporations not engaged in a trade or business in the Commonwealth to a rate greater than 10 percent takes effect, this paragraph shall not apply to dividends received on or after the effective date of the increase.

(3) Definitions

(A) Foreign person

For purposes of paragraph (1), the term ''foreign person'' means any person other than—

(i) a United States person, or

(ii) a person who would be a United States person if references to the United States in section 7701 included references to a possession of the United States.

(B) Indirect ownership rules

For purposes of paragraph (1), the rules of section 318(a)(2) shall apply except that ''5 percent'' shall be substituted for ''50 percent'' in subparagraph (C) thereof.

(c) Repeal of tax on interest of foreign corporations received from certain portfolio debt investments

(1) In general

In the case of any portfolio interest received by a foreign corporation from sources within the United States, no tax shall be imposed under paragraph (1) or (3) of subsection (a).

(2) Portfolio interest

For purposes of this subsection, the term ''portfolio interest'' means any interest (including original issue discount) which—

(A) would be subject to tax under subsection (a) but for this subsection, and

(B) is paid on an obligation—

(i) which is in registered form, and

(ii) with respect to which—

(I) the person who would otherwise be required to deduct and withhold tax from such interest under section 1442(a) receives a statement which meets the requirements of section 871(h)(5) that the beneficial owner of the obligation is not a United States person, or

(II) the Secretary has determined that such a statement is not required in order to carry out the purposes of this subsection.

(3) Portfolio interest shall not include interest received by certain persons

For purposes of this subsection, the term ''portfolio interest'' shall not include any portfolio interest which—

(A) except in the case of interest paid on an obligation of the United States, is received by a bank on an extension of credit made pursuant to a loan agreement entered into in the ordinary course of its trade or business,

(B) is received by a 10-percent shareholder (within the meaning of section 871(h)(3)(B)), or

(C) is received by a controlled foreign corporation from a related person (within the meaning of section 864(d)(4)).

(4) Portfolio interest not to include certain contingent interest

For purposes of this subsection, the term ''portfolio interest'' shall not include any interest which is treated as not being portfolio interest under the rules of section 871(h)(4).

(5) Special rules for controlled foreign corporations

(A) In general

In the case of any portfolio interest received by a controlled foreign corporation, the following provisions shall not apply:

(i) Subparagraph (A) of section 954(b)(3) (relating to exception where foreign base company income is less than 5 percent or $1,000,000).

(ii) Paragraph (4) of section 954(b) (relating to exception for certain income subject to high foreign taxes).

(iii) Clause (i) of section 954(c)(3)(A) (relating to certain income received from related persons).

(B) Controlled foreign corporation

For purposes of this subsection, the term ''controlled foreign corporation'' has the meaning given to such term by section 957(a).

(6) Secretary may cease application of this subsection

Under rules similar to the rules of section 871(h)(6), the Secretary may provide that this subsection shall not apply to payments of interest described in section 871(h)(6).

(7) Registered form

For purposes of this subsection, the term ''registered form'' has the meaning given such term by section 163(f).

(d) Tax not to apply to certain interest and dividends

No tax shall be imposed under paragraph (1) or (3) of subsection (a) on any amount described in section 871(i)(2).

(e) Tax not to apply to certain dividends of regulated investment companies

(1) Interest-related dividends

(A) In general

Except as provided in subparagraph (B), no tax shall be imposed under paragraph (1) of subsection (a) on any interest-related dividend (as defined in section 871(k)(1)) received from a regulated investment company.

(B) Exception

Subparagraph (A) shall not apply—

(i) to any dividend referred to in section 871(k)(1)(B), and

(ii) to any interest-related dividend received by a controlled foreign corporation (within the meaning of section 957(a)) to the extent such dividend is attributable to interest received by the regulated investment company from a person who is a related person (within the meaning of section 864(d)(4)) with respect to such controlled foreign corporation.

(C) Treatment of dividends received by controlled foreign corporations

The rules of subsection (c)(5)(A) shall apply to any interest-related dividend re-

ceived by a controlled foreign corporation (within the meaning of section 957(a)) to the extent such dividend is attributable to interest received by the regulated investment company which is described in clause (ii) of section 871(k)(1)(E) (and not described in clause (i) or (iii) of such section).

(2) Short-term capital gain dividends

No tax shall be imposed under paragraph (1) of subsection (a) on any short-term capital gain dividend (as defined in section 871(k)(2)) received from a regulated investment company.

(f) Cross reference

For doubling of tax on corporations of certain foreign countries, see section 891.

For special rules for original issue discount, see section 871(g).

(Aug. 16, 1954, ch. 736, 68A Stat. 282; Pub. L. 89–809, title I, §104(a), Nov. 13, 1966, 80 Stat. 1555; Pub. L. 92–178, title III, §313(a), (c), Dec. 10, 1971, 85 Stat. 526, 527; Pub. L. 92–606, §1(e)(1), Oct. 31, 1972, 86 Stat. 1497; Pub. L. 94–455, title XIX, §1901(b)(3)(I), Oct. 4, 1976, 90 Stat. 1793; Pub. L. 98–369, div. A, title I, §§42(a)(10), 127(b), 128(b), 130(a), July 18, 1984, 98 Stat. 557, 650, 654, 660; Pub. L. 99–514, title XII, §§1211(b)(6), 1214(c)(2), 1223(b)(2), 1273(b)(1), (2)(A), title XVIII, §§1810(d)(1)(B), (3)(C), (e)(2)(B), 1899A(22), (23), (68), Oct. 22, 1986, 100 Stat. 2536, 2542, 2558, 2595, 2596, 2825, 2826, 2959, 2962; Pub. L. 100–647, title I, §1012(i)(17), Nov. 10, 1988, 102 Stat. 3510; Pub. L. 103–66, title XIII, §13237(a)(2), (c)(2), (3), Aug. 10, 1993, 107 Stat. 507, 508; Pub. L. 108–357, title IV, §§411(a)(2), 420(a), (c), Oct. 22, 2004, 118 Stat. 1503, 1513, 1514; Pub. L. 109–135, title IV, §412(jj), Dec. 21, 2005, 119 Stat. 2639; Pub. L. 111–147, title V, §502(b)(2)(B), Mar. 18, 2010, 124 Stat. 107.)

REFERENCES IN TEXT

The date of the enactment of this paragraph, referred to in subsec. (b)(2)(B), is the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

AMENDMENTS

2010—Subsec. (c)(2). Pub. L. 111–147 amended par. (2) generally. Prior to amendment, par. (2) defined portfolio interest to also include interest on certain obligations not in registered form.

2005—Subsec. (e)(1)(C). Pub. L. 109–135 inserted ''interest-related dividend received by a controlled foreign corporation'' after ''shall apply to any''.

2004—Subsec. (b). Pub. L. 108–357, §420(c)(1), substituted ''possessions'' for ''Guam and Virgin Islands corporations'' in heading.

Subsec. (b)(1). Pub. L. 108–357, §420(c)(2), substituted ''Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands'' for ''In general'' in heading.

Subsec. (b)(2), (3). Pub. L. 108–357, §420(a), added par. (2) and redesignated former par. (2) as (3).

Subsec. (e), (f). Pub. L. 108–357, §411(a)(2), added subsec. (e) and redesignated former subsec. (e) as (f).

1993—Subsec. (c)(2)(B)(ii). Pub. L. 103–66, §13237(c)(2), substituted ''section 871(h)(5)'' for ''section 871(h)(4)''.

Subsec. (c)(4), (5). Pub. L. 103–66, §13237(a)(2), added par. (4) and redesignated former par. (4) as (5). Former par. (5) redesignated (6).

Subsec. (c)(6). Pub. L. 103–66, §13237(a)(2), (c)(3), redesignated par. (5) as (6) and substituted ''section 871(h)(6)'' for ''section 871(h)(5)'' in two places. Former par. (6) redesignated (7).

Subsec. (c)(7). Pub. L. 103–66, §13237(a)(2), redesignated par. (6) as (7).

1988—Subsec. (c)(4)(A)(ii) to (v). Pub. L. 100–647 added cls. (ii) and (iii) and struck out former cls. (ii) to (v), which read as follows:

''(ii) Paragraph (4) of section 954(b) (relating to corporations not formed or availed of to avoid tax).

''(iii) Subparagraph (B) of section 954(c)(3) (relating to certain income derived in active conduct of trade or business).

''(iv) Subparagraph (C) of section 954(c)(3) (relating to certain income derived by an insurance company).

''(v) Subparagraphs (A) and (B) of section 954(c)(4) (relating to exception for certain income received from related persons).''

1986—Subsec. (a)(3)(A). Pub. L. 99–514, §1810(e)(2)(B), amended subpar. (A) generally, striking out ''any gain not in excess of'' before ''the original issue discount''.

Subsec. (a)(3)(B). Pub. L. 99–514, §1810(e)(2)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''the payment of interest on an original issue discount obligation, an amount equal to the original issue discount accrued on such obligation since the last payment of interest thereon (except that such original issue discount shall be taken into account under this subparagraph only to the extent that the tax thereon does not exceed the interest payment less the tax imposed by paragraph (1) thereon), and''.

Subsec. (a)(4). Pub. L. 99–514, §1211(b)(6), struck out ''or from payments which are treated as being so contingent under section 871(e),'' after ''sold or exchanged,''.

Subsec. (b)(1). Pub. L. 99–514, §1273(b)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''For purposes of this section, a corporation created or organized in Guam or the Virgin Islands or under the law of Guam or the Virgin Islands shall not be treated as a foreign corporation for any taxable year if—

''(A) at all times during such taxable year less than 25 percent in value of the stock of such corporation is owned (directly or indirectly) by foreign persons, and

''(B) at least 20 percent of the gross income of such corporation is shown to the satisfaction of the Secretary to have been derived from sources within Guam or the Virgin Islands (as the case may be) for the 3-year period ending with the close of the preceding taxable year of such corporation (or for such part of such period as the corporation has been in existence).''

Subsec. (b)(2). Pub. L. 99–514, §1273(b)(1), (2)(A), redesignated par. (3) as (2) and struck out former par. (2) which provided that par. (1) of this subsection not apply with respect to income tax liability incurred to Guam.

Subsec. (b)(2)(A). Pub. L. 99–514, §1899A(22), substituted ''paragraph'' for ''Paragraph''.

Subsec. (b)(3), (4). Pub. L. 99–514, §1273(b)(2)(A), redesignated par. (3) as (2) and struck out par. (4) which provided a cross reference to sections 934 and 934A.

Subsec. (c). Pub. L. 99–514, §1899A(68), made clarifying amendment to directory language of Pub. L. 98–369, §127(b)(1). See 1984 Amendment note below.

Subsec. (c)(2). Pub. L. 99–514, §1810(d)(1)(B), (3)(C), inserted ''which would be subject to tax under subsection (a) but for this subsection and'' in introductory provisions and substituted ''receives a statement'' for ''has received a statement'' in subpar. (B)(ii).

Subsec. (c)(3)(C). Pub. L. 99–514, §1899A(23), inserted a closing parenthesis following ''section 864(d)(4)''.

Subsec. (c)(4)(A)(i). Pub. L. 99–514, §1223(b)(2), substituted ''less than 5 percent or $1,000,000'' for ''less than 10 percent''.

Subsecs. (d), (e). Pub. L. 99–514, §1214(c)(2), added subsec. (d) and redesignated former subsec. (d) as (e).

1984—Subsec. (a). Pub. L. 98–369, §127(b)(2), substituted ''Except as provided in subsection (c), there'' for ''There'' in introductory provision.

Subsec. (a)(1). Pub. L. 98–369, §42(a)(10), substituted ''section 1273'' for ''section 1232(b)''.

Subsec. (a)(3). Pub. L. 98–369, §128(b)(1), amended par. (3) generally, substituting in subpar. (A), ''a sale or ex-

change of an original issue discount obligation, the amount of any gain not in excess of the original issue discount accruing while such obligation was held by the foreign corporation (to the extent such discount was not theretofore taken into account under subparagraph (B)), and'' for ''bonds or other evidences of indebtedness issued after September 28, 1965, and before April 1, 1972, amounts which under section 1232(a)(2)(B) are considered as ordinary income, and, in the case of corporate obligations issued after May 27, 1969, and before April 1, 1972, amounts which would be so considered but for the fact the obligations were issued after May 27, 1969,'', substituting in subpar. (B), ''the payment of interest on an original issue discount obligation, an amount equal to the original issue discount accrued on such obligation since the last payment of interest thereon (except that such original issue discount shall be taken into account under this subparagraph only to the extent that the tax thereon does not exceed the interest payment less the tax imposed by paragraph (1) thereon), and'' for ''bonds or other evidences of indebtedness issued after March 31, 1972, and payable more than 6 months from the date of original issue (without regard to the period held by the taxpayer), amounts which under section 1232(a)(2)(B) would be considered as ordinary income but for the fact such obligations were issued after May 27, 1969, and'', and striking out subpar. (C) which required that in the case of the payment of interest on an obligation described in subpar. (B), an amount equal to the original issue discount, but not in excess of such interest less the tax imposed by par. (1) thereon, accrued on such obligation since the last payment of interest thereon, be included for purpose of the 30 percent tax.

Subsec. (b). Pub. L. 98–369, § 130(a), amended subsec. (b) generally, substituting provision establishing an exception for certain Guam and Virgin Islands corporations for provision establishing an exception for Guam corporations.

Subsec. (c). Pub. L. 98–369, § 127(b)(1), as amended by Pub. L. 99–514, § 1899A(68), added subsec. (c). Former subsec. (c) redesignated (d).

Pub. L. 98–369, § 128(b)(2), amended subsec. (c) generally, substituting in heading ''Cross reference'' for ''Doubling of tax'' and inserting provision directing that for special rules for original issue discount, see section 871(g).

Subsec. (d). Pub. L. 98–369, § 127(b)(1), as amended by Pub. L. 99–514, § 1899A(68), redesignated subsec. (c) as (d).

1976—Subsec. (a)(3)(A), (B). Pub. L. 94–455 substituted ''ordinary income'' for ''gain from the sale or exchange of property which is not a capital asset''.

1972—Subsecs. (b), (c). Pub. L. 92–606 added subsec. (b) and redesignated former subsec. (b) as (c).

1971—Subsec. (a)(1). Pub. L. 92–178, § 313(a), inserted ''(other than original issue discount as defined in section 1232(b))'' after ''interest''.

Subsec. (a)(3). Pub. L. 92–178, § 313(c), designated existing provisions as subpar. (A), inserted ''and before April 1, 1972,'' after ''September 28, 1965,'', substituted ''section 1232(a)(2)(B)'' for ''section 1232'', and inserted '', in the case of corporate obligations issued after May 27, 1969, and before April 1, 1972, amounts which would be so considered but for the fact that the obligations were issued after May 27, 1969,'', and added subpars. (B) and (C).

1966—Subsec. (a). Pub. L. 89–809 substantially revised the income tax treatment of foreign corporations, substituted the concept of amounts received from sources within the United States by foreign corporations but not effectively connected with the conduct of a trade or business within the United States for the concept of amounts received from sources within the United States by foreign corporations not engaged in trade or business within the United States as the amount upon which the existing 30 percent levy should be imposed, and added contingent income received from the sale of patents and other intangibles and amounts of original issue discount which are treated as ordinary income received on retirement or sale or exchange of bonds or other evidences of indebtedness issued after Sept. 28, 1965, to the specified types of fixed or determinable income.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–147 applicable to obligations issued after the date which is 2 years after Mar. 18, 2010, see section 502(f) of Pub. L. 111–147, set out as a note under section 149 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 411(a)(2) of Pub. L. 108–357 applicable to dividends with respect to taxable years of regulated investment companies beginning after Dec. 31, 2004, see section 411(d)(1) of Pub. L. 108–357, set out as a note under section 871 of this title.

Pub. L. 108–357, title IV, § 420(d), Oct. 22, 2004, 118 Stat. 1514, provided that: ''The amendments made by this section [amending this section and section 1442 of this title] shall apply to dividends paid after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to interest received after Dec. 31, 1993, see section 13237(d) of Pub. L. 103–66, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1211(b)(6) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, except as otherwise provided, see section 1211(c) of Pub. L. 99–514, set out as an Effective Date note under section 865 of this title.

Amendment by section 1214(c)(2) of Pub. L. 99–514 applicable to payments made in taxable year of payor beginning after Dec. 31, 1986, except as otherwise provided, see section 1214(d) of Pub. L. 99–514, as amended, set out as a note under section 861 of this title.

Amendment by section 1223(b)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1223(c) of Pub. L. 99–514, set out as a note under section 864 of this title.

Amendment by section 1273(b)(1), (2)(A) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as a note under section 931 of this title.

Amendment by section 1810(d)(1)(B), (3)(C), (e)(2)(B) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 42(a)(10) of Pub. L. 98–369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98–369, set out as an Effective Date note under section 1271 of this title.

Amendment by section 127(b) of Pub. L. 98–369 applicable to interest received after July 18, 1984, with respect to obligations issued after such date, in taxable years after such date, see section 127(g)(1) of Pub. L. 98–369, set out as a note under section 871 of this title.

Amendment by section 128(b) of Pub. L. 98–369 applicable to payments made on or after the 60th day after July 18, 1984, with respect to obligations issued after Mar. 31, 1972, see section 128(d)(1) of Pub. L. 98–369, set out as a note under section 871 of this title.

Pub. L. 98–369, div. A, title I, §130(d), July 18, 1984, 98 Stat. 661, provided that: ''The amendments made by this section [amending this section and sections 1442 and 7651 of this title] shall apply to payments made after March 1, 1984, in taxable years ending after such date.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Pub. L. 92–606, §2, Oct. 31, 1972, 86 Stat. 1497, provided in part that: ''The amendments made by section 1(e)(1) [amending this section] shall apply with respect to taxable years beginning after December 31, 1971.''

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–178 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 313(f) of Pub. L. 92–178, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendments by sections 1211(b)(6) and 1214(c)(2) of Pub. L. 99–514 to the extent application of such amendments would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(3), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 882. Tax on income of foreign corporations connected with United States business

(a) Imposition of tax

(1) In general

A foreign corporation engaged in trade or business within the United States during the taxable year shall be taxable as provided in section 11 or 59A,[1] on its taxable income which is effectively connected with the conduct of a trade or business within the United States.

(2) Determination of taxable income

In determining taxable income for purposes of paragraph (1), gross income includes only gross income which is effectively connected with the conduct of a trade or business within the United States.

(3) [Cross reference [2]]

For special tax treatment of gain or loss from the disposition by a foreign corporation of a United States real property interest, see section 897.

(b) Gross income

In the case of a foreign corporation, except where the context clearly indicates otherwise, gross income includes only—

(1) gross income which is derived from sources within the United States and which is not effectively connected with the conduct of a trade or business within the United States, and

(2) gross income which is effectively connected with the conduct of a trade or business within the United States.

(c) Allowance of deductions and credits

(1) Allocation of deductions

(A) General rule

In the case of a foreign corporation, the deductions shall be allowed only for purposes of subsection (a) and (except as provided by subparagraph (B)) only if and to the extent that they are connected with income which is effectively connected with the conduct of a trade or business within the United States; and the proper apportionment and allocation of the deductions for this purpose shall be determined as provided in regulations prescribed by the Secretary.

(B) Charitable contributions

The deduction for charitable contributions and gifts provided by section 170 shall be allowed whether or not connected with income which is effectively connected with the conduct of a trade or business within the United States.

(2) Deductions and credits allowed only if return filed

A foreign corporation shall receive the benefit of the deductions and credits allowed to it in this subtitle only by filing or causing to be filed with the Secretary a true and accurate return, in the manner prescribed in subtitle F, including therein all the information which the Secretary may deem necessary for the calculation of such deductions and credits. The preceding sentence shall not apply for purposes of the tax imposed by section 541 (relating to personal holding company tax), and shall not be construed to deny the credit provided by section 33 for tax withheld at source or the credit provided by section 34 for certain uses of gasoline.

(3) Foreign tax credit

Except as provided by section 906, foreign corporations shall not be allowed the credit against the tax for taxes of foreign countries and possessions of the United States allowed by section 901.

(4) Cross reference

For rule that certain foreign taxes are not to be taken into account in determining deduction or credit, see section 906(b)(1).

[1] So in original. The comma probably should not appear.

[2] Par. (3) heading editorially supplied.

(d) Election to treat real property income as income connected with United States business

(1) In general

A foreign corporation which during the taxable year derives any income—

(A) from real property located in the United States, or from any interest in such real property, including (i) gains from the sale or exchange of real property or an interest therein, (ii) rents or royalties from mines, wells, or other natural deposits, and (iii) gains described in section 631(b) or (c), and

(B) which, but for this subsection, would not be treated as income effectively connected with the conduct of a trade or business within the United States,

may elect for such taxable year to treat all such income as income which is effectively connected with the conduct of a trade or business within the United States. In such case, such income shall be taxable as provided in subsection (a)(1) whether or not such corporation is engaged in trade or business within the United States during the taxable year. An election under this paragraph for any taxable year shall remain in effect for all subsequent taxable years, except that it may be revoked with the consent of the Secretary with respect to any taxable year.

(2) Election after revocation, etc.

Paragraphs (2) and (3) of section 871(d) shall apply in respect of elections under this subsection in the same manner and to the same extent as they apply in respect of elections under section 871(d).

(e) Interest on United States obligations received by banks organized in possessions

In the case of a corporation created or organized in, or under the law of, a possession of the United States which is carrying on the banking business in a possession of the United States, interest on obligations of the United States which is not portfolio interest (as defined in section 881(c)(2)) shall—

(1) for purposes of this subpart, be treated as income which is effectively connected with the conduct of a trade or business within the United States, and

(2) shall be taxable as provided in subsection (a)(1) whether or not such corporation is engaged in trade or business within the United States during the taxable year.

(f) Returns of tax by agent

If any foreign corporation has no office or place of business in the United States but has an agent in the United States, the return required under section 6012 shall be made by the agent.

(Aug. 16, 1954, ch. 736, 68A Stat. 282; Pub. L. 89–809, title I, § 104(b)(1), Nov. 13, 1966, 80 Stat. 1555; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–600, title III, § 301(b)(13), Nov. 6, 1978, 92 Stat. 2822; Pub. L. 96–499, title XI, § 1122(c)(2), Dec. 5, 1980, 94 Stat. 2687; Pub. L. 97–424, title V, § 515(b)(6)(F), Jan. 6, 1983, 96 Stat. 2182; Pub. L. 98–369, div. A, title IV, § 474(r)(19), July 18, 1984, 98 Stat. 843; Pub. L. 99–514, title VII, § 701(e)(4)(F), title XII, § 1236(a), Oct. 22, 1986, 100 Stat. 2343, 2576; Pub. L. 100–647, title I, § 1012(s)(2)(B), title II, § 2001(c)(2), title VI, § 6133(a), Nov. 10, 1988, 102 Stat. 3527, 3594, 3721; Pub. L. 113–295, div. A, title II, § 221(a)(12)(F), Dec. 19, 2014, 128 Stat. 4038; Pub. L. 115–97, title I, §§ 12001(b)(14), 13001(b)(2)(L), 14401(d)(2), Dec. 22, 2017, 131 Stat. 2094, 2097, 2233.)

AMENDMENTS

2017—Subsec. (a)(1). Pub. L. 115–97, § 14401(d)(2), which directed insertion of ''or 59A,'' after ''section 11,'', was executed by making the insertion after ''section 11'' to reflect the probable intent of Congress and the amendment by Pub. L. 115–97, § 12001(b)(14). See below.

Pub. L. 115–97, § 13001(b)(2)(L), struck out ''or 1201(a)'' before ''on its taxable income''.

Pub. L. 115–97, § 12001(b)(14), struck out '', 55,'' after ''section 11''.

2014—Subsec. (a)(1). Pub. L. 113–295 struck out '', 59A'' after ''section 11, 55''.

1988—Subsec. (a)(1). Pub. L. 100–647, § 2001(c)(2), inserted reference to section 59A.

Subsec. (b). Pub. L. 100–647, § 1012(s)(2)(B), inserted '', except where the context clearly indicates otherwise'' after ''foreign corporation''.

Subsec. (e). Pub. L. 100–647, § 6133(a), substituted ''interest on obligations of the United States which is not portfolio interest (as defined in section 881(c)(2))'' for ''interest on obligations of the United States'', and struck out at end ''The preceding sentence shall not apply to any Guam corporation which is treated as not being a foreign corporation by section 881(b)(1) for the taxable year.''

1986—Subsec. (a)(1). Pub. L. 99–514, § 701(e)(4)(F), inserted reference to section 55.

Subsec. (e). Pub. L. 99–514, § 1236(a), inserted ''The preceding sentence shall not apply to any Guam corporation which is treated as not being a foreign corporation by section 881(b)(1) for the taxable year.''

1984—Subsec. (c)(2). Pub. L. 98–369 substituted reference to section ''33'' for ''32'' and ''34'' for ''39''.

1983—Subsec. (c)(2). Pub. L. 97–424 struck out ''and lubricating oil'' after ''gasoline''.

1980—Subsec. (a)(3). Pub. L. 96–499 added par. (3).

1978—Subsec. (a). Pub. L. 95–600 substituted in subsec. (a) heading ''Imposition of tax'' for ''Normal tax and surtax'' and in par. (1) heading ''In general'' for ''Imposition of tax''.

1976—Subsecs. (c)(1)(A), (2), (d). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

1966—Pub. L. 89–809 substantially revised the income tax treatment of foreign corporations, introduced the concept of taxable income effectively connected with the conduct of a trade or business within the United States into provisions dealing with the imposition of tax, substituted a concept of gross income that included gross income derived from sources within the United States not effectively connected with the conduct of a trade or business within the United States and gross income effectively connected with the conduct of a trade or business within the United States for a concept of gross income that included only gross income from sources within the United States, and inserted provisions for an election to treat real property income as income connected with United States business, treatment of interest on United States obligations received by banks organized in possessions, and the returns of tax by agents, and inserted cross reference to section 906(b)(1).

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 12001(b)(14) of Pub. L. 115–97 applicable to taxable years beginning after Dec. 31, 2017, see section 12001(c) of Pub. L. 115–97, set out as a note under section 11 of this title.

Amendment by section 13001(b)(2)(L) of Pub. L. 115–97 applicable to taxable years beginning after Dec. 31,

2017, see section 13001(c)(1) of Pub. L. 115–97, set out as a note under section 11 of this title.

Amendment by section 14401(d)(2) of Pub. L. 115–97 applicable to base erosion payments (as defined in section 59A(d) of this title) paid or accrued in taxable years beginning after Dec. 31, 2017, see section 14401(e) of Pub. L. 115–97, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113–295, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 701(e)(4)(F) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Superfund Revenue Act of 1986, Pub. L. 99–499, title V, to which it relates, see section 2001(e) of Pub. L. 100–647, set out as a note under section 56 of this title.

Pub. L. 100–647, title VI, §6133(c), Nov. 10, 1988, 102 Stat. 3721, provided that: ''The amendments made by this subsection [probably means 'this section', which amended sections 882 and 884 of this title] shall apply to taxable years beginning after December 31, 1988.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 701(e)(4)(F) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

Pub. L. 99–514, title XII, §1236(b), Oct. 22, 1986, 100 Stat. 2576, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after November 16, 1985.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–424 applicable with respect to articles sold after Jan. 6, 1983, see section 515(c) of Pub. L. 97–424, set out as a note under section 34 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–499 applicable to disposition after June 18, 1980, see section 1125(a) of Pub. L. 96–499, set out as an Effective Date note under section 897 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95–600, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(e)(4)(F) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

§ 883. Exclusions from gross income

(a) Income of foreign corporations from ships and aircraft

The following items shall not be included in gross income of a foreign corporation, and shall be exempt from taxation under this subtitle:

(1) Ships operated by certain foreign corporations

Gross income derived by a corporation organized in a foreign country from the international operation of a ship or ships if such foreign country grants an equivalent exemption to corporations organized in the United States.

(2) Aircraft operated by certain foreign corporations

Gross income derived by a corporation organized in a foreign country from the international operation of aircraft if such foreign country grants an equivalent exemption to corporations organized in the United States.

(3) Railroad rolling stock of foreign corporations

Earnings derived from payments by a common carrier for the use on a temporary basis (not expected to exceed a total of 90 days in any taxable year) of railroad rolling stock owned by a corporation of a foreign country which grants an equivalent exemption to corporations organized in the United States.

(4) Special rules

The rules of paragraphs (6), (7), and (8) of section 872(b) shall apply for purposes of this subsection.

(5) Special rule for countries which tax on residence basis

For purposes of this subsection, there shall not be taken into account any failure of a foreign country to grant an exemption to a corporation organized in the United States if such corporation is subject to tax by such foreign country on a residence basis pursuant to provisions of foreign law which meets such standards (if any) as the Secretary may prescribe.

(b) Earnings derived from communications satellite system

The earnings derived from the ownership or operation of a communications satellite system by a foreign entity designated by a foreign government to participate in such ownership or operation shall be exempt from taxation under this subtitle, if the United States, through its designated entity, participates in such system pursuant to the Communications Satellite Act of 1962 (47 U.S.C. 701 and following).

(c) Treatment of certain foreign corporations

(1) In general

Paragraph (1) or (2) of subsection (a) (as the case may be) shall not apply to any foreign

corporation if 50 percent or more of the value of the stock of such corporation is owned by individuals who are not residents of such foreign country or another foreign country meeting the requirements of such paragraph.

(2) Treatment of controlled foreign corporations

Paragraph (1) shall not apply to any foreign corporation which is a controlled foreign corporation (as defined in section 957(a)).

(3) Special rules for publicly traded corporations

(A) Exception

Paragraph (1) shall not apply to any corporation which is organized in a foreign country meeting the requirements of paragraph (1) or (2) of subsection (a) (as the case may be) and the stock of which is primarily and regularly traded on an established securities market in such foreign country, another foreign country meeting the requirements of such paragraph, or the United States.

(B) Treatment of stock owned by publicly traded corporation

Any stock in another corporation which is owned (directly or indirectly) by a corporation meeting the requirements of subparagraph (A) shall be treated as owned by individuals who are residents of the foreign country in which the corporation meeting the requirements of subparagraph (A) is organized.

(4) Stock ownership through entities

For purposes of paragraph (1), stock owned (directly or indirectly) by or for a corporation, partnership, trust, or estate shall be treated as being owned proportionately by its shareholders, partners, or beneficiaries. Stock considered to be owned by a person by reason of the application of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned by such person.

(Aug. 16, 1954, ch. 736, 68A Stat. 283; Pub. L. 90–622, § 1(a), Oct. 22, 1968, 82 Stat. 1311; Pub. L. 94–164, § 6(a), Dec. 23, 1975, 89 Stat. 975; Pub. L. 99–514, title XII, § 1212(c)(3)–(5), Oct. 22, 1986, 100 Stat. 2538; Pub. L. 100–647, title I, § 1012(e)(1), (2)(A), (5), Nov. 10, 1988, 102 Stat. 3499, 3500; Pub. L. 101–239, title VII, § 7811(i)(8)(D), (10), Dec. 19, 1989, 103 Stat. 2411; Pub. L. 108–357, title IV, § 419(b), Oct. 22, 2004, 118 Stat. 1513.)

REFERENCES IN TEXT

The Communications Satellite Act of 1962, referred to in subsec. (b), is Pub. L. 87–624, Aug. 31, 1962, 76 Stat. 419, as amended, which is classified generally to chapter 6 (§ 701 et seq.) of Title 47, Telecommunications. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 47 and Tables.

AMENDMENTS

2004—Subsec. (a)(4). Pub. L. 108–357 substituted ''(6), (7), and (8)'' for ''(5), (6), and (7)''.

1989—Subsec. (a)(4). Pub. L. 101–239, § 7811(i)(8)(D), substituted ''(5), (6), and (7)'' for ''(5) and (6)''.

Subsec. (a)(5). Pub. L. 101–239, § 7811(i)(10), added par. (5).

1988—Subsec. (a)(1), (2). Pub. L. 100–647, § 1012(e)(2)(A), (5), struck out ''to citizens of the United States and'' after ''exemption'' and substituted ''international operation'' for ''operation''.

Subsec. (c)(1). Pub. L. 100–647, § 1012(e)(1)(B), substituted ''Paragraph (1) or (2) of subsection (a) (as the case may be)'' for ''Paragraphs (1) and (2) of subsection (a)'' and ''such paragraph'' for ''such paragraphs (1) and (2)''.

Subsec. (c)(3). Pub. L. 100–647, § 1012(e)(1)(A), substituted ''Special rules'' for ''Exception'' in heading and amended text generally. Prior to amendment, text read as follows: ''Paragraph (1) shall not apply to any foreign corporation—

''(A) the stock of which is primarily and regularly traded on an established securities market in the foreign country in which such corporation is organized, or

''(B) which is wholly owned (either directly or indirectly) by another corporation meeting the requirements of subparagraph (A) and is organized in the same foreign country as such other corporation.''

1986—Subsec. (a)(1). Pub. L. 99–514, § 1212(c)(3), added par. (1) and struck out former par. (1), ships under foreign flag, which read as follows: ''Earnings derived from the operation of a ship or ships documented under the laws of a foreign country which grants an equivalent exemption to citizens of the United States and to corporations organized in the United States.''

Subsec. (a)(2). Pub. L. 99–514, § 1212(c)(3), added par. (2) and struck out former par. (2), aircraft of foreign registry, which read as follows: ''Earnings derived from the operation of aircraft registered under the laws of a foreign country which grants an equivalent exemption to citizens of the United States and to corporations organized in the United States.''

Subsec. (a)(4). Pub. L. 99–514, § 1212(c)(4), added par. (4).

Subsec. (c). Pub. L. 99–514, § 1212(c)(5), added subsec. (c).

1975—Subsec. (a)(3). Pub. L. 94–164 added par. (3).

1968—Pub. L. 90–622 designated existing provisions as subsec. (a), added subsec. (a) heading, and added subsec. (b).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to wagers made after Oct. 22, 2004, see section 419(c) of Pub. L. 108–357, set out as a note under section 872 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1212(f) of Pub. L. 99–514, set out as a note under section 863 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 94–164, § 6(b), Dec. 23, 1975, 89 Stat. 976, provided that: ''The amendment made by this section [amending this section] shall apply to payments made after November 18, 1974.''

EFFECTIVE DATE OF 1968 AMENDMENT

Pub. L. 90–622, § 1(b), Oct. 22, 1968, 82 Stat. 1311, provided that: ''The amendment made by subsection (a)

[amending this section] shall apply with respect to taxable years beginning after December 31, 1966.''

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendment by section 1212(c)(3)–(5) of Pub. L. 99–514 to the extent application of such amendment would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(3), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

§ 884. Branch profits tax

(a) Imposition of tax

In addition to the tax imposed by section 882 for any taxable year, there is hereby imposed on any foreign corporation a tax equal to 30 percent of the dividend equivalent amount for the taxable year.

(b) Dividend equivalent amount

For purposes of subsection (a), the term ''dividend equivalent amount'' means the foreign corporation's effectively connected earnings and profits for the taxable year adjusted as provided in this subsection:

(1) Reduction for increase in U.S. net equity

If—

(A) the U.S. net equity of the foreign corporation as of the close of the taxable year, exceeds

(B) the U.S. net equity of the foreign corporation as of the close of the preceding taxable year,

the effectively connected earnings and profits for the taxable year shall be reduced (but not below zero) by the amount of such excess.

(2) Increase for decrease in net equity

(A) In general

If—

(i) the U.S. net equity of the foreign corporation as of the close of the preceding taxable year, exceeds

(ii) the U.S. net equity of the foreign corporation as of the close of the taxable year,

the effectively connected earnings and profits for the taxable year shall be increased by the amount of such excess.

(B) Limitation

(i) In general

The increase under subparagraph (A) for any taxable year shall not exceed the accumulated effectively connected earnings and profits as of the close of the preceding taxable year.

(ii) Accumulated effectively connected earnings and profits

For purposes of clause (i), the term ''accumulated effectively connected earnings and profits'' means the excess of—

(I) the aggregate effectively connected earnings and profits for preceding taxable years beginning after December 31, 1986, over

(II) the aggregate dividend equivalent amounts determined for such preceding taxable years.

(c) U.S. net equity

For purposes of this section—

(1) In general

The term ''U.S. net equity'' means—

(A) U.S. assets, reduced (including below zero) by

(B) U.S. liabilities.

(2) U.S. assets and U.S. liabilities

For purposes of paragraph (1)—

(A) U.S. assets

The term ''U.S. assets'' means the money and aggregate adjusted bases of property of the foreign corporation treated as connected with the conduct of a trade or business in the United States under regulations prescribed by the Secretary. For purposes of the preceding sentence, the adjusted basis of any property shall be its adjusted basis for purposes of computing earnings and profits.

(B) U.S. liabilities

The term ''U.S. liabilities'' means the liabilities of the foreign corporation treated as connected with the conduct of a trade or business in the United States under regulations prescribed by the Secretary.

(C) Regulations to be consistent with allocation of deductions

The regulations prescribed under subparagraphs (A) and (B) shall be consistent with the allocation of deductions under section 882(c)(1).

(d) Effectively connected earnings and profits

For purposes of this section—

(1) In general

The term ''effectively connected earnings and profits'' means earnings and profits (without diminution by reason of any distributions made during the taxable year) which are attributable to income which is effectively connected (or treated as effectively connected) with the conduct of a trade or business within the United States.

(2) Exception for certain income

The term ''effectively connected earnings and profits'' shall not include any earnings and profits attributable to—

(A) income not includible in gross income under paragraph (1) or (2) of section 883(a),

(B) income treated as effectively connected with the conduct of a trade or business within the United States under section 921(d) or 926(b) (as in effect before their repeal by the FSC Repeal and Extraterritorial Income Exclusion Act of 2000),

(C) gain on the disposition of a United States real property interest described in section 897(c)(1)(A)(ii),

(D) income treated as effectively connected with the conduct of a trade or business within the United States under section 953(c)(3)(C), or

(E) income treated as effectively connected with the conduct of a trade or business within the United States under section 882(e).

Property and liabilities of the foreign corporation treated as connected with such income under regulations prescribed by the Secretary shall not be taken into account in determining the U.S. assets or U.S. liabilities of the foreign corporation.

(e) Coordination with income tax treaties; etc.

(1) Limitation on treaty exemption

No treaty between the United States and a foreign country shall exempt any foreign corporation from the tax imposed by subsection (a) (or reduce the amount thereof) unless—

(A) such treaty is an income tax treaty, and

(B) such foreign corporation is a qualified resident of such foreign country.

(2) Treaty modifications

If a foreign corporation is a qualified resident of a foreign country with which the United States has an income tax treaty—

(A) the rate of tax under subsection (a) shall be the rate of tax specified in such treaty—

(i) on branch profits if so specified, or

(ii) if not so specified, on dividends paid by a domestic corporation to a corporation resident in such country which wholly owns such domestic corporation, and

(B) any other limitations under such treaty on the tax imposed by subsection (a) shall apply.

(3) Coordination with withholding tax

(A) In general

If a foreign corporation is subject to the tax imposed by subsection (a) for any taxable year (determined after the application of any treaty), no tax shall be imposed by section 871(a), 881(a), 1441, or 1442 on any dividends paid by such corporation out of its earnings and profits for such taxable year.

(B) Limitation on certain treaty benefits

If—

(i) any dividend described in section 861(a)(2)(B) is received by a foreign corporation, and

(ii) subparagraph (A) does not apply to such dividend,

rules similar to the rules of subparagraphs (A) and (B) of subsection (f)(3) shall apply to such dividend.

(4) Qualified resident

For purposes of this subsection—

(A) In general

Except as otherwise provided in this paragraph, the term ''qualified resident'' means, with respect to any foreign country, any foreign corporation which is a resident of such foreign country unless—

(i) 50 percent or more (by value) of the stock of such foreign corporation is owned (within the meaning of section 883(c)(4)) by individuals who are not residents of such foreign country and who are not United States citizens or resident aliens, or

(ii) 50 percent or more of its income is used (directly or indirectly) to meet liabilities to persons who are not residents of such foreign country or citizens or residents of the United States.

(B) Special rule for publicly traded corporations

A foreign corporation which is a resident of a foreign country shall be treated as a qualified resident of such foreign country if—

(i) the stock of such corporation is primarily and regularly traded on an established securities market in such foreign country, or

(ii) such corporation is wholly owned (either directly or indirectly) by another foreign corporation which is organized in such foreign country and the stock of which is so traded.

(C) Corporations owned by publicly traded domestic corporations

A foreign corporation which is a resident of a foreign country shall be treated as a qualified resident of such foreign country if—

(i) such corporation is wholly owned (directly or indirectly) by a domestic corporation, and

(ii) the stock of such domestic corporation is primarily and regularly traded on an established securities market in the United States.

(D) Secretarial authority

The Secretary may, in his sole discretion, treat a foreign corporation as being a qualified resident of a foreign country if such corporation establishes to the satisfaction of the Secretary that such corporation meets such requirements as the Secretary may establish to ensure that individuals who are not residents of such foreign country do not use the treaty between such foreign country and the United States in a manner inconsistent with the purposes of this subsection.

(5) Exception for international organizations

This section shall not apply to an international organization (as defined in section 7701(a)(18)).

(f) Treatment of interest allocable to effectively connected income

(1) In general

In the case of a foreign corporation engaged in a trade or business in the United States (or having gross income treated as effectively connected with the conduct of a trade or business in the United States), for purposes of this subtitle—

(A) any interest paid by such trade or business in the United States shall be treated as if it were paid by a domestic corporation, and

(B) to the extent that the allocable interest exceeds the interest described in sub-

paragraph (A), such foreign corporation shall be liable for tax under section 881(a) in the same manner as if such excess were interest paid to such foreign corporation by a wholly owned domestic corporation on the last day of such foreign corporation's taxable year.

To the extent provided in regulations, subparagraph (A) shall not apply to interest in excess of the amounts reasonably expected to be allocable interest.

(2) Allocable interest

For purposes of this subsection, the term ''allocable interest'' means any interest which is allocable to income which is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States.

(3) Coordination with treaties

(A) Payor must be qualified resident

In the case of any interest described in paragraph (1) which is paid or accrued by a foreign corporation, no benefit under any treaty between the United States and the foreign country of which such corporation is a resident shall apply unless—

(i) such treaty is an income tax treaty, and

(ii) such foreign corporation is a qualified resident of such foreign country.

(B) Recipient must be qualified resident

In the case of any interest described in paragraph (1) which is received or accrued by any corporation, no benefit under any treaty between the United States and the foreign country of which such corporation is a resident shall apply unless—

(i) such treaty is an income tax treaty, and

(ii) such foreign corporation is a qualified resident of such foreign country.

(g) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations providing for appropriate adjustments in the determination of the dividend equivalent amount in connection with the distribution to shareholders or transfer to a controlled corporation of the taxpayer's U.S. assets and other adjustments in such determination as are necessary or appropriate to carry out the purposes of this section.

(Added Pub. L. 99–514, title XII, §1241(a), Oct. 22, 1986, 100 Stat. 2576; amended Pub. L. 100–647, title I, §1012(q)(1)(A), (2)–(6), (14), title VI, §6133(b), Nov. 10, 1988, 102 Stat. 3522–3525, 3721; Pub. L. 104–188, title I, §1704(f)(3)(A), Aug. 20, 1996, 110 Stat. 1879; Pub. L. 110–172, §11(g)(8), Dec. 29, 2007, 121 Stat. 2490.)

REFERENCES IN TEXT

The FSC Repeal and Extraterritorial Income Exclusion Act of 2000, referred to in subsec. (d)(2)(B), is Pub. L. 106–519, Nov. 15, 2000, 114 Stat. 2423. For complete classification of this Act to the Code, see Short Title of 2000 Amendments note set out under section 1 of this title and Tables.

PRIOR PROVISIONS

A prior section 884 was renumbered section 885 of this title.

AMENDMENTS

2007—Subsec. (d)(2)(B). Pub. L. 110–172 inserted ''(as in effect before their repeal by the FSC Repeal and Extraterritorial Income Exclusion Act of 2000)'' before comma at end.

1996—Subsec. (f)(1). Pub. L. 104–188, §1704(f)(3)(A)(ii), substituted ''reasonably expected to be allocable interest'' for ''reasonably expected to be deductible under section 882 in computing the effectively connected taxable income of such foreign corporation'' in closing provisions.

Subsec. (f)(1)(B). Pub. L. 104–188, §1704(f)(3)(A)(i), substituted ''to the extent that the allocable interest exceeds the interest described in subparagraph (A)'' for ''to the extent the amount of interest allowable as a deduction under section 882 in computing the effectively connected taxable income of such foreign corporation exceeds the interest described in subparagraph (A)''.

Subsec. (f)(2). Pub. L. 104–188, §1704(f)(3)(A)(iii), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''EFFECTIVELY CONNECTED TAXABLE INCOME.—For purposes of this subsection, the term 'effectively connected taxable income' means taxable income which is effectively connected (or treated as effectively connected) with the conduct of a trade or business within the United States.''

1988—Subsec. (b)(2)(B). Pub. L. 100–647, §1012(q)(1)(A), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''The increase under subparagraph (A) for any taxable year shall not exceed the aggregate reductions under paragraph (1) for prior taxable years to the extent not previously taken into account under subparagraph (A).''

Subsec. (d)(2)(E). Pub. L. 100–647, §6133(b), added subpar. (E).

Subsec. (e)(1). Pub. L. 100–647, §1012(q)(2)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''No income tax treaty between the United States and a foreign country shall exempt any foreign corporation from the tax imposed by subsection (a) (or reduce the amount thereof) unless—

''(A) such foreign corporation is a qualified resident of such foreign country, or

''(B) such foreign corporation is not a qualified resident of such foreign country but such income tax treaty permits a withholding tax on dividends described in section 861(a)(2)(B) which are paid by such foreign corporation.''

Subsec. (e)(3). Pub. L. 100–647, §1012(q)(2)(B), substituted ''withholding tax'' for ''2nd tier withholding tax'' in heading and amended text generally. Prior to amendment, text read as follows:

''(A) IN GENERAL.—If a foreign corporation is not exempt for any taxable year from the tax imposed by subsection (a) by reason of a treaty, no tax shall be imposed by section 871(a), 881(a), 1441, or 1442 on any dividends paid by such corporation during the taxable year.

''(B) LIMITATION ON CERTAIN TREATY BENEFITS.—No foreign corporation which is not a qualified resident of a foreign country shall be entitled to claim benefits under any income tax treaty between the United States and such foreign country with respect to dividends—

''(i) which are paid by such foreign corporation and with respect to which such foreign corporation is otherwise required to deduct and withhold tax under section 1441 or 1442, or

''(ii) which are received by such foreign corporation and are described in section 861(a)(2)(B).''

Subsec. (e)(4)(A)(i), (ii). Pub. L. 100–647, §1012(q)(5), substituted ''50 percent or more'' for ''more than 50 percent'' in cl. (i) and ''citizens or residents of the United States'' for ''the United States'' in cl. (ii).

Subsec. (e)(4)(C), (D). Pub. L. 100–647, §1012(q)(4), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (e)(5). Pub. L. 100–647, § 1012(q)(6), added par. (5).

Subsec. (f)(1). Pub. L. 100–647, § 1012(f)(3)(A), (14), substituted ''this subtitle'' for ''sections 871, 881, 1441, and 1442'' and inserted ''(or having gross income treated as effectively connected with the conduct of a trade or business in the United States)'' after ''United States''.

Pub. L. 100–647, § 1012(q)(2)(C)(i), (3)(B), inserted sentence at end and struck out former last sentence which read as follows: ''Rules similar to the rules of subsection (e)(3)(B) shall apply to interest described in the preceding sentence.''

Subsec. (f)(3). Pub. L. 100–647, § 1012(q)(2)(C)(ii), added par. (3).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1704(f)(3)(B) of Pub. L. 104–188 provided that: ''The amendments made by subparagraph (A) [amending this section] shall take effect as if included in the amendments made by section 1241(a) of the Tax Reform Act of 1986 [Pub. L. 99–514].''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1012(q)(1)(A), (2)–(6), (14) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 6133(b) of Pub. L. 100–647 applicable to taxable years beginning after Dec. 31, 1988, see section 6133(c) of Pub. L. 100–647, set out as a note under section 882 of this title.

EFFECTIVE DATE

Section 1241(e) of Pub. L. 99–514 provided that: ''The amendments made by this section [enacting section 884 of this title, renumbering former section 884 as section 885 of this title, and amending sections 861 and 906 of this title] shall apply to taxable years beginning after December 31, 1986.''

DETERMINATION OF EARNINGS AND PROFITS OF FOREIGN CORPORATIONS

Section 1012(q)(1)(B) of Pub. L. 100–647, as amended by Pub. L. 101–239, title VII, § 7811(i)(5), Dec. 19, 1989, 103 Stat. 2410, provided that: ''For purposes of applying section 884 of the 1986 Code, the earnings and profits of any corporation shall be determined without regard to any increase in earnings and profits under sections 1023(e)(3)(C) [section 1023(e)(3)(C) of Pub. L. 99–514, set out as an Effective Date note under section 846 of this title] and 1021(c)(2)(C) of the Reform Act [Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 832 of this title] or arising from section 832(b)(4)(C) of the 1986 Code.''

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendment by section 1241(a) of Pub. L. 99–514 (enacting this section) to the extent application of such amendment would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(3), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

§ 885. Cross references

(1) For special provisions relating to foreign corporations carrying on an insurance business within the United States, see section 842.

(2) For rules applicable in determining whether any foreign corporation is engaged in trade or business within the United States, see section 864(b).

(3) For adjustment of tax in case of corporations of certain foreign countries, see section 896.

(4) For allowance of credit against the tax in case of a foreign corporation having income effectively connected with the conduct of a trade or business within the United States, see section 906.

(5) For withholding at source of tax on income of foreign corporations, see section 1442.

(Aug. 16, 1954, ch. 736, 68A Stat. 283, § 884; Pub. L. 89–809, title I, § 104(m)(1), Nov. 13, 1966, 80 Stat. 1563; Pub. L. 91–172, title I, § 101(j)(21), Dec. 30, 1969, 83 Stat. 528; renumbered § 885, Pub. L. 99–514, title XII, § 1241(a), Oct. 22, 1986, 100 Stat. 2576.)

AMENDMENTS

1986—Pub. L. 99–514 renumbered section 884 of this title as this section.

1969—Pub. L. 91–172 redesignated pars. (2) to (6) as (1) to (5), respectively. Former par. (1), referring to section 512(a), was struck out.

1966—Par. (1). Pub. L. 89–809 redesignated par. (4) as (1). Former par. (1) redesignated (6).

Par. (2). Pub. L. 89–809 redesignated par. (3) as (2) and substituted ''foreign corporations carrying on an insurance business within the United States, see section 842'' for ''foreign insurance companies, see subchapter L (sec. 801 and following)''. Former par. (2) redesignated (3).

Par. (3). Pub. L. 89–809 redesignated former par. (2) as (3) and, in par. (3) as so redesignated, substituted ''section 864(b)'' for ''section 871(c)''. Former par. (3) redesignated (2).

Pars. (4), (5). Pub. L. 89–809 added pars. (4) and (5). Former par. (4) redesignated (1).

Par. (6). Pub. L. 89–809 redesignated former par. (1) as (6).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 101(k)(2)(B) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

SUBPART C—TAX ON GROSS TRANSPORTATION INCOME

Sec.
887. Imposition of tax on gross transportation income of nonresident aliens and foreign corporations.

§ 887. Imposition of tax on gross transportation income of nonresident aliens and foreign corporations

(a) Imposition of tax

In the case of any nonresident alien individual or foreign corporation, there is hereby imposed for each taxable year a tax equal to 4 percent of such individual's or corporation's United States source gross transportation income for such taxable year.

(b) United States source gross transportation income

(1) In general

Except as provided in paragraphs (2) and (3), the term ''United States source gross transportation income'' means any gross income

which is transportation income (as defined in section 863(c)(3)) to the extent such income is treated as from sources in the United States under section 863(c)(2). To the extent provided in regulations, such term does not include any income of a kind to which an exemption under paragraph (1) or (2) of section 883(a) would not apply.

(2) Exception for certain income effectively connected with business in the United States

The term ''United States source gross transportation income'' shall not include any income taxable under section 871(b) or 882.

(3) Exception for certain income taxable in possessions

The term ''United States source gross transportation income'' does not include any income taxable in a possession of the United States under the provisions of this title as made applicable in such possession.

(4) Determination of effectively connected income

For purposes of this chapter, United States source gross transportation income of any taxpayer shall not be treated as effectively connected with the conduct of a trade or business in the United States unless—

(A) the taxpayer has a fixed place of business in the United States involved in the earning of United States source gross transportation income, and

(B) substantially all of the United States source gross transportation income (determined without regard to paragraph (2)) of the taxpayer is attributable to regularly scheduled transportation (or, in the case of income from the leasing of a vessel or aircraft, is attributable to a fixed place of business in the United States).

(c) Coordination with other provisions

Any income taxable under this section shall not be taxable under section 871, 881, or 882.

(Added Pub. L. 99–514, title XII, §1212(b)(1), Oct. 22, 1986, 100 Stat. 2537; amended Pub. L. 100–647, title I, §1012(e)(6), Nov. 10, 1988, 102 Stat. 3500; Pub. L. 101–239, title VII, §7811(i)(8)(A), (B), (9), Dec. 19, 1989, 103 Stat. 2410, 2411.)

AMENDMENTS

1989—Subsec. (b)(1). Pub. L. 101–239, §7811(i)(8)(B), substituted ''paragraphs (2) and (3)'' for ''paragraph (2)''.

Subsec. (b)(3). Pub. L. 101–239, §7811(i)(8)(A), added par. (3). Former par. (3) redesignated (4).

Subsec. (b)(4). Pub. L. 101–239, §7811(i)(8)(A), (9), redesignated former par. (3) as (4) and substituted ''United States source gross transportation income'' for ''transportation income'' in introductory provisions and in subpar. (A).

1988—Subsec. (b)(1). Pub. L. 100–647 substituted ''under section 863(c)(2)'' for ''under section 863(c)'' and inserted at end ''To the extent provided in regulations, such term does not include any income of a kind to which an exemption under paragraph (1) or (2) of section 883(a) would not apply.''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1986, see section 1212(f) of Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 863 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendment by section 1212(b)(1) of Pub. L. 99–514 (enacting this section) to the extent application of such amendment would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(3), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

SUBPART D—MISCELLANEOUS PROVISIONS

Sec.

AMENDMENTS

1989—Pub. L. 101–239, title VII, §7401(c), Dec. 19, 1989, 103 Stat. 2357, added item 898.

1986—Pub. L. 99–514, title XII, §1212(b)(1), Oct. 22, 1986, 100 Stat. 2537, redesignated former subpart (C) as (D).

1980—Pub. L. 96–499, title XI, §1122(b), Dec. 5, 1980, 94 Stat. 2687, added item 897.

1966—Pub. L. 89–809, title I, §§102(a)(4)(B), 105(c), Nov. 13, 1966, 80 Stat. 1543, 1565, substituted ''affected by treaty'' for ''exempt under treaty'' in item 894, inserted ''or from bank deposits'' in item 895, and added item 896.

1961—Pub. L. 87–29, §1(b), May 4, 1961, 75 Stat. 64, added item 895.

§ 891. Doubling of rates of tax on citizens and corporations of certain foreign countries

Whenever the President finds that, under the laws of any foreign country, citizens or corporations of the United States are being subjected to discriminatory or extraterritorial taxes, the President shall so proclaim and the rates of tax imposed by sections 1, 3, 11, 801, 831, 852, 871, and 881 shall, for the taxable year during which such proclamation is made and for each taxable year thereafter, be doubled in the case of each citizen

and corporation of such foreign country; but the tax at such doubled rate shall be considered as imposed by such sections as the case may be. In no case shall this section operate to increase the taxes imposed by such sections (computed without regard to this section) to an amount in excess of 80 percent of the taxable income of the taxpayer (computed without regard to the deductions allowable under section 151 and under part VIII of subchapter B). Whenever the President finds that the laws of any foreign country with respect to which the President has made a proclamation under the preceding provisions of this section have been modified so that discriminatory and extraterritorial taxes applicable to citizens and corporations of the United States have been removed, he shall so proclaim, and the provisions of this section providing for doubled rates of tax shall not apply to any citizen or corporation of such foreign country with respect to any taxable year beginning after such proclamation is made.

(Aug. 16, 1954, ch. 736, 68A Stat. 283; Mar. 13, 1956, ch. 83, § 5(6), 70 Stat. 49; Pub. L. 86–69, § 3(f)(1), June 25, 1959, 73 Stat. 140; Pub. L. 98–369, div. A, title II, § 211(b)(12), July 18, 1984, 98 Stat. 755; Pub. L. 99–514, title X, § 1024(c)(13), Oct. 22, 1986, 100 Stat. 2408.)

AMENDMENTS

1986—Pub. L. 99–514 struck out reference to section 821.

1984—Pub. L. 98–369 substituted ''801'' for ''802''.

1959—Pub. L. 86–69 struck out reference to section 811.

1956—Act Mar. 13, 1956, inserted reference to section 811.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1024(e) of Pub. L. 99–514, set out as a note under section 831 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–69 applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 4 of Pub. L. 86–69, set out an Effective Date note under section 381 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Mar. 13, 1956, applicable only to taxable years beginning after Dec. 31, 1954, see section 6 of act Mar. 13, 1956, set out as a note under section 316 of this title.

§ 892. Income of foreign governments and of international organizations

(a) Foreign governments

(1) In general

The income of foreign governments received from—

(A) investments in the United States in—

(i) stocks, bonds, or other domestic securities owned by such foreign governments, or

(ii) financial instruments held in the execution of governmental financial or monetary policy, or

(B) interest on deposits in banks in the United States of moneys belonging to such foreign governments,

shall not be included in gross income and shall be exempt from taxation under this subtitle.

(2) Income received directly or indirectly from commercial activities

(A) In general

Paragraph (1) shall not apply to any income—

(i) derived from the conduct of any commercial activity (whether within or outside the United States),

(ii) received by a controlled commercial entity or received (directly or indirectly) from a controlled commercial entity, or

(iii) derived from the disposition of any interest in a controlled commercial entity.

(B) Controlled commercial entity

For purposes of subparagraph (A), the term ''controlled commercial entity'' means any entity engaged in commercial activities (whether within or outside the United States) if the government—

(i) holds (directly or indirectly) any interest in such entity which (by value or voting interest) is 50 percent or more of the total of such interests in such entity, or

(ii) holds (directly or indirectly) any other interest in such entity which provides the foreign government with effective control of such entity.

For purposes of the preceding sentence, a central bank of issue shall be treated as a controlled commercial entity only if engaged in commercial activities within the United States.

(3) Treatment as resident

For purposes of this title, a foreign government shall be treated as a corporate resident of its country. A foreign government shall be so treated for purposes of any income tax treaty obligation of the United States if such government grants equivalent treatment to the Government of the United States.

(b) International organizations

The income of international organizations received from investments in the United States in stocks, bonds, or other domestic securities owned by such international organizations, or from interest on deposits in banks in the United States of moneys belonging to such international organizations, or from any other source within the United States, shall not be included in gross income and shall be exempt from taxation under this subtitle.

(c) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

(Aug. 16, 1954, ch. 736, 68A Stat. 284; Pub. L. 99–514, title XII, § 1247(a), Oct. 22, 1986, 100 Stat. 2583; Pub. L. 100–647, title I, § 1012(t)(1)–(3), Nov. 10, 1988, 102 Stat. 3527; Pub. L. 101–508, title XI, § 11704(a)(35), Nov. 5, 1990, 104 Stat. 1388–519.)

AMENDMENTS

1990—Subsec. (a)(2)(A). Pub. L. 101–508 made clarifying amendment to Pub. L. 100–647, §1012(t)(1). See 1988 Amendment note below.

1988—Subsec. (a)(2)(A). Pub. L. 100–647, §1012(t)(1), (2), as amended by Pub. L. 101–508, amended cl. (ii) generally and added cl. (iii). Prior to amendment, cl. (ii) read as follows: ''received from or by a controlled commercial entity.''

Subsec. (a)(3). Pub. L. 100–647, §1012(t)(3), added par. (3).

1986—Pub. L. 99–514 amended section generally. Prior to amendment, section read as follows: ''The income of foreign governments or international organizations received from investments in the United States in stocks, bonds, or other domestic securities, owned by such foreign governments or by international organizations, or from interest on deposits in banks in the United States of moneys belonging to such foreign governments or international organizations, or from any other source within the United States, shall not be included in gross income and shall be exempt from taxation under this subtitle.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XII, §1247(b), Oct. 22, 1986, 100 Stat. 2584, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to amounts received on or after July 1, 1986, except that no amount shall be required to be deducted and withheld by reason of the amendment made by subsection (a) from any payment made before the date of the enactment of this Act [Oct. 22, 1986].''

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendment by section 1247(a) of Pub. L. 99–514 to the extent application of such amendment would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(3), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

§ 893. Compensation of employees of foreign governments or international organizations

(a) Rule for exclusion

Wages, fees, or salary of any employee of a foreign government or of an international organization (including a consular or other officer, or a nondiplomatic representative), received as compensation for official services to such government or international organization shall not be included in gross income and shall be exempt from taxation under this subtitle if—

(1) such employee is not a citizen of the United States, or is a citizen of the Republic of the Philippines (whether or not a citizen of the United States); and

(2) in the case of an employee of a foreign government, the services are of a character similar to those performed by employees of the Government of the United States in foreign countries; and

(3) in the case of an employee of a foreign government, the foreign government grants an equivalent exemption to employees of the Government of the United States performing similar services in such foreign country.

(b) Certificate by Secretary of State

The Secretary of State shall certify to the Secretary of the Treasury the names of the foreign countries which grant an equivalent exemption to the employees of the Government of the United States performing services in such foreign countries, and the character of the services performed by employees of the Government of the United States in foreign countries.

(c) Limitation on exclusion

Subsection (a) shall not apply to—

(1) any employee of a controlled commercial entity (as defined in section 892(a)(2)(B)), or

(2) any employee of a foreign government whose services are primarily in connection with a commercial activity (whether within or outside the United States) of the foreign government.

(Aug. 16, 1954, ch. 736, 68A Stat. 284; Pub. L. 100–647, title I, §1012(t)(4), Nov. 10, 1988, 102 Stat. 3527.)

AMENDMENTS

1988—Subsec. (c). Pub. L. 100–647 added subsec. (c).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

§ 894. Income affected by treaty

(a) Treaty provisions

(1) In general

The provisions of this title shall be applied to any taxpayer with due regard to any treaty obligation of the United States which applies to such taxpayer.

(2) Cross reference

For relationship between treaties and this title, see section 7852(d).

(b) Permanent establishment in United States

For purposes of applying any exemption from, or reduction of, any tax provided by any treaty to which the United States is a party with respect to income which is not effectively connected with the conduct of a trade or business within the United States, a nonresident alien individual or a foreign corporation shall be deemed not to have a permanent establishment in the United States at any time during the taxable year. This subsection shall not apply in respect of the tax computed under section 877(b).

(c) Denial of treaty benefits for certain payments through hybrid entities

(1) Application to certain payments

A foreign person shall not be entitled under any income tax treaty of the United States with a foreign country to any reduced rate of any withholding tax imposed by this title on an item of income derived through an entity which is treated as a partnership (or is otherwise treated as fiscally transparent) for purposes of this title if—

(A) such item is not treated for purposes of the taxation laws of such foreign country as an item of income of such person,

(B) the treaty does not contain a provision addressing the applicability of the treaty in the case of an item of income derived through a partnership, and

(C) the foreign country does not impose tax on a distribution of such item of income from such entity to such person.

(2) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to determine the extent to which a taxpayer to which paragraph (1) does not apply shall not be entitled to benefits under any income tax treaty of the United States with respect to any payment received by, or income attributable to any activities of, an entity organized in any jurisdiction (including the United States) that is treated as a partnership or is otherwise treated as fiscally transparent for purposes of this title (including a common investment trust under section 584, a grantor trust, or an entity that is disregarded for purposes of this title) and is treated as fiscally nontransparent for purposes of the tax laws of the jurisdiction of residence of the taxpayer.

(Aug. 16, 1954, ch. 736, 68A Stat. 284; Pub. L. 89–809, title I, § 105(a), Nov. 13, 1966, 80 Stat. 1563; Pub. L. 100–647, title I, § 1012(aa)(6), Nov. 10, 1988, 102 Stat. 3533; Pub. L. 105–34, title X, § 1054(a), Aug. 5, 1997, 111 Stat. 943.)

AMENDMENTS

1997—Subsec. (c). Pub. L. 105–34 added subsec. (c).

1988—Subsec. (a). Pub. L. 100–647 substituted ''Treaty provisions'' for ''Income affected by treaty'' in heading and amended text generally. Prior to amendment, text read as follows: ''Income of any kind, to the extent required by any treaty obligation of the United States, shall not be included in gross income and shall be exempt from taxation under this subtitle.''

1966—Pub. L. 89–809 designated existing provisions as subsec. (a), added subsec. (b), and substituted ''affected by treaty'' for ''exempt under treaty'' in section catchline.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title X, § 1054(b), Aug. 5, 1997, 111 Stat. 944, provided that: ''The amendments made by this section [amending this section] shall apply upon the date of enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89–809, title I, § 105(d), Nov. 13, 1966, 80 Stat. 1565, provided that: ''The amendments made by this section (other than subsections (d) and (f)) [amending this section and enacting section 896 of this title] shall apply with respect to taxable years beginning after December 31, 1966.''

§ 895. Income derived by a foreign central bank of issue from obligations of the United States or from bank deposits

Income derived by a foreign central bank of issue from obligations of the United States or of any agency or instrumentality thereof (including beneficial interests, participations, and other instruments issued under section 302(c) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717)) which are owned by such foreign central bank of issue, or derived from interest on deposits with persons carrying on the banking business, shall not be included in gross income and shall be exempt from taxation under this subtitle unless such obligations or deposits are held for, or used in connection with, the conduct of commercial banking functions or other commercial activities. For purposes of the preceding sentence the Bank for International Settlements shall be treated as a foreign central bank of issue.

(Added Pub. L. 87–29, § 1(a), May 4, 1961, 75 Stat. 64; amended Pub. L. 89–809, title I, § 102(a)(4)(A), Nov. 13, 1966, 80 Stat. 1543.)

AMENDMENTS

1966—Pub. L. 89–809 exempted income derived from obligations of agencies or instrumentalities of the United States and income derived from interest on deposits with persons carrying on the banking business, inserted ''(including beneficial interests, participations, and other instruments issued under section 302(c) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717)),'' and inserted sentence requiring the Bank for International Settlements to be treated as a foreign central bank of issue.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, except that in applying section 864(c)(4)(B)(iii) of this title with respect to a binding contract entered into on or before Feb. 24, 1966, activities in the United States on or before such date in negotiating or carrying out such contract shall not be taken into account, see section 102(e)(1) of Pub. L. 89–809, set out as a note under section 861 of this title.

EFFECTIVE DATE

Pub. L. 87–29, § 1(c), May 4, 1961, 75 Stat. 64, provided that: ''The amendments made by subsections (a) and (b) [enacting this section and amending analysis preceding section 891 of this title] shall be effective with respect to income received in taxable years beginning after December 31, 1960.''

§ 896. Adjustment of tax on nationals, residents, and corporations of certain foreign countries

(a) Imposition of more burdensome taxes by foreign country

Whenever the President finds that—

(1) under the laws of any foreign country, considering the tax system of such foreign country, citizens of the United States not residents of such foreign country or domestic corporations are being subjected to more burdensome taxes, on any item of income received by such citizens or corporations from sources within such foreign country, than taxes imposed by the provisions of this subtitle on similar income derived from sources within the United States by residents or corporations of such foreign country,

(2) such foreign country, when requested by the United States to do so, has not acted to revise or reduce such taxes so that they are no more burdensome than taxes imposed by the provisions of this subtitle on similar income

derived from sources within the United States by residents or corporations of such foreign country, and

(3) it is in the public interest to apply pre-1967 tax provisions in accordance with the provisions of this subsection to residents or corporations of such foreign country,

the President shall proclaim that the tax on such similar income derived from sources within the United States by residents or corporations of such foreign country shall, for taxable years beginning after such proclamation, be determined under this subtitle without regard to amendments made to this subchapter and chapter 3 on or after the date of enactment of this section.

(b) Imposition of discriminatory taxes by foreign country

Whenever the President finds that—

(1) under the laws of any foreign country, citizens of the United States or domestic corporations (or any class of such citizens or corporations) are, with respect to any item of income, being subjected to a higher effective rate of tax than are nationals, residents, or corporations of such foreign country (or a similar class of such nationals, residents, or corporations) under similar circumstances;

(2) such foreign country, when requested by the United States to do so, has not acted to eliminate such higher effective rate of tax; and

(3) it is in the public interest to adjust, in accordance with the provisions of this subsection, the effective rate of tax imposed by this subtitle on similar income of nationals, residents, or corporations of such foreign country (or such similar class of such nationals, residents, or corporations),

the President shall proclaim that the tax on similar income of nationals, residents, or corporations of such foreign country (or such similar class of such nationals, residents, or corporations) shall, for taxable years beginning after such proclamation, be adjusted so as to cause the effective rate of tax imposed by this subtitle on such similar income to be substantially equal to the effective rate of tax imposed by such foreign country on such item of income of citizens of the United States or domestic corporations (or such class of citizens or corporations). In implementing a proclamation made under this subsection, the effective rate of tax imposed by this subtitle on an item of income may be adjusted by the disallowance, in whole or in part, of any deduction, credit, or exemption which would otherwise be allowed with respect to that item of income or by increasing the rate of tax otherwise applicable to that item of income.

(c) Alleviation of more burdensome or discriminatory taxes

Whenever the President finds that—

(1) the laws of any foreign country with respect to which the President has made a proclamation under subsection (a) have been modified so that citizens of the United States not residents of such foreign country or domestic corporations are no longer subject to more burdensome taxes on the item of income derived by such citizens or corporations from sources within such foreign country, or

(2) the laws of any foreign country with respect to which the President has made a proclamation under subsection (b) have been modified so that citizens of the United States or domestic corporations (or any class of such citizens or corporations) are no longer subject to a higher effective rate of tax on the item of income,

he shall proclaim that the tax imposed by this subtitle on the similar income of nationals, residents, or corporations of such foreign country shall, for any taxable year beginning after such proclamation, be determined under this subtitle without regard to such subsection.

(d) Notification of Congress required

No proclamation shall be issued by the President pursuant to this section unless, at least 30 days prior to such proclamation, he has notified the Senate and the House of Representatives of his intention to issue such proclamation.

(e) Implementation by regulations

The Secretary shall prescribe such regulations as he deems necessary or appropriate to implement this section.

(Added Pub. L. 89–809, title I, §105(b), Nov. 13, 1966, 80 Stat. 1563; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

REFERENCES IN TEXT

The date of enactment of this section, referred to in the provisions following subsec. (a)(3), is the date of enactment of Pub. L. 89–809, which was approved Nov. 13, 1966.

AMENDMENTS

1976—Subsec. (e). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE

Section applicable with respect to taxable years beginning after Dec. 31, 1966, see section 105(d) of Pub. L. 89–809, set out as an Effective Date of 1966 Amendment note under section 894 of this title.

§ 897. Disposition of investment in United States real property

(a) General rule

(1) Treatment as effectively connected with United States trade or business

For purposes of this title, gain or loss of a nonresident alien individual or a foreign corporation from the disposition of a United States real property interest shall be taken into account—

(A) in the case of a nonresident alien individual, under section 871(B)(1),[1] or

(B) in the case of a foreign corporation, under section 882(a)(1),

as if the taxpayer were engaged in a trade or business within the United States during the taxable year and as if such gain or loss were effectively connected with such trade or business.

[1] So in original. Probably should be ''871(b)(1),''.

(2) Minimum tax on nonresident alien individuals

(A) In general

In the case of any nonresident alien individual, the taxable excess for purposes of section 55(b)(1) shall not be less than the lesser of—

(i) the individual's alternative minimum taxable income (as defined in section 55(b)(2)) for the taxable year, or

(ii) the individual's net United States real property gain for the taxable year.

(B) Net United States real property gain

For purposes of subparagraph (A), the term ''net United States real property gain'' means the excess of—

(i) the aggregate of the gains for the taxable year from dispositions of United States real property interests, over

(ii) the aggregate of the losses for the taxable year from dispositions of such interests.

(b) Limitation on losses of individuals

In the case of an individual, a loss shall be taken into account under subsection (a) only to the extent such loss would be taken into account under section 165(c) (determined without regard to subsection (a) of this section).

(c) United States real property interest

For purposes of this section—

(1) United States real property interest

(A) In general

Except as provided in subparagraph (B) or subsection (k), the term ''United States real property interest'' means—

(i) an interest in real property (including an interest in a mine, well, or other natural deposit) located in the United States or the Virgin Islands, and

(ii) any interest (other than an interest solely as a creditor) in any domestic corporation unless the taxpayer establishes (at such time and in such manner as the Secretary by regulations prescribes) that such corporation was at no time a United States real property holding corporation during the shorter of—

(I) the period after June 18, 1980, during which the taxpayer held such interest, or

(II) the 5-year period ending on the date of the disposition of such interest.

(B) Exclusion for interest in certain corporations

The term ''United States real property interest'' does not include any interest in a corporation if—

(i) as of the date of the disposition of such interest, such corporation did not hold any United States real property interests,

(ii) all of the United States real property interests held by such corporation at any time during the shorter of the periods described in subparagraph (A)(ii)—

(I) were disposed of in transactions in which the full amount of the gain (if any) was recognized, or

(II) ceased to be United States real property interests by reason of the application of this subparagraph to 1 or more other corporations, and

(iii) neither such corporation nor any predecessor of such corporation was a regulated investment company or a real estate investment trust at any time during the shorter of the periods described in subparagraph (A)(ii).

(2) United States real property holding corporation

The term ''United States real property holding corporation'' means any corporation if—

(A) the fair market value of its United States real property interests equals or exceeds 50 percent of

(B) the fair market value of—

(i) its United States real property interests,

(ii) its interests in real property located outside the United States, plus

(iii) any other of its assets which are used or held for use in a trade or business.

(3) Exception for stock regularly traded on established securities markets

If any class of stock of a corporation is regularly traded on an established securities market, stock of such class shall be treated as a United States real property interest only in the case of a person who, at some time during the shorter of the periods described in paragraph (1)(A)(ii), held more than 5 percent of such class of stock.

(4) Interests held by foreign corporations and by partnerships, trusts, and estates

For purposes of determining whether any corporation is a United States real property holding corporation—

(A) Foreign corporations

Paragraph (1)(A)(ii) shall be applied by substituting ''any corporation (whether foreign or domestic)'' for ''any domestic corporation''.

(B) Assets held by partnerships, etc.

Under regulations prescribed by the Secretary, assets held by a partnership, trust, or estate shall be treated as held proportionately by its partners or beneficiaries. Any asset treated as held by a partner or beneficiary by reason of this subparagraph which is used or held for use by the partnership, trust, or estate in a trade or business shall be treated as so used or held by the partner or beneficiary. Any asset treated as held by a partner or beneficiary by reason of this subparagraph shall be so treated for purposes of applying this subparagraph successively to partnerships, trusts, or estates which are above the first partnership, trust, or estate in a chain thereof.

(5) Treatment of controlling interests

(A) In general

Under regulations, for purposes of determining whether any corporation is a United States real property holding corporation, if

any corporation (hereinafter in this paragraph referred to as the ''first corporation'') holds a controlling interest in a second corporation—

(i) the stock which the first corporation holds in the second corporation shall not be taken into account,

(ii) the first corporation shall be treated as holding a portion of each asset of the second corporation equal to the percentage of the fair market value of the stock of the second corporation represented by the stock held by the first corporation, and

(iii) any asset treated as held by the first corporation by reason of clause (ii) which is used or held for use by the second corporation in a trade or business shall be treated as so used or held by the first corporation.

Any asset treated as held by the first corporation by reason of the preceding sentence shall be so treated for purposes of applying the preceding sentence successively to corporations which are above the first corporation in a chain of corporations.

(B) Controlling interest

For purposes of subparagraph (A), the term ''controlling interest'' means 50 percent or more of the fair market value of all classes of stock of a corporation.

(6) Other special rules

(A) Interest in real property

The term ''interest in real property'' includes fee ownership and co-ownership of land or improvements thereon, leaseholds of land or improvements thereon, options to acquire land or improvements thereon, and options to acquire leaseholds of land or improvements thereon.

(B) Real property includes associated personal property

The term ''real property'' includes movable walls, furnishings, and other personal property associated with the use of the real property.

(C) Constructive ownership rules

For purposes of determining under paragraph (3) whether any person holds more than 5 percent of any class of stock and of determining under paragraph (5) whether a person holds a controlling interest in any corporation, section 318(a) shall apply (except that paragraphs (2)(C) and (3)(C) of section 318(a) shall be applied by substituting ''5 percent'' for ''50 percent'').

(d) Treatment of distributions by foreign corporations

(1) In general

Except to the extent otherwise provided in regulations, notwithstanding any other provision of this chapter, gain shall be recognized by a foreign corporation on the distribution (including a distribution in liquidation or redemption) of a United States real property interest in an amount equal to the excess of the fair market value of such interest (as of the time of the distribution) over its adjusted basis.

(2) Exceptions

Gain shall not be recognized under paragraph (1)—

(A) if—

(i) at the time of the receipt of the distributed property, the distributee would be subject to taxation under this chapter on a subsequent disposition of the distributed property, and

(ii) the basis of the distributed property in the hands of the distributee is no greater than the adjusted basis of such property before the distribution, increased by the amount of gain (if any) recognized by the distributing corporation, or

(B) if such nonrecognition is provided in regulations prescribed by the Secretary under subsection (e)(2).

(e) Coordination with nonrecognition provisions

(1) In general

Except to the extent otherwise provided in subsection (d) and paragraph (2) of this subsection, any nonrecognition provision shall apply for purposes of this section to a transaction only in the case of an exchange of a United States real property interest for an interest the sale of which would be subject to taxation under this chapter.

(2) Regulations

The Secretary shall prescribe regulations (which are necessary or appropriate to prevent the avoidance of Federal income taxes) providing—

(A) the extent to which nonrecognition provisions shall, and shall not, apply for purposes of this section, and

(B) the extent to which—

(i) transfers of property in reorganization, and

(ii) changes in interests in, or distributions from, a partnership, trust, or estate,

shall be treated as sales of property at fair market value.

(3) Nonrecognition provision defined

For purposes of this subsection, the term ''nonrecognition provision'' means any provision of this title for not recognizing gain or loss.

[(f) Repealed. Pub. L. 104–188, title I, § 1702(g)(2), Aug. 20, 1996, 110 Stat. 1873]

(g) Special rule for sales of interest in partnerships, trusts, and estates

Under regulations prescribed by the Secretary, the amount of any money, and the fair market value of any property, received by a nonresident alien individual or foreign corporation in exchange for all or part of its interest in a partnership, trust, or estate shall, to the extent attributable to United States real property interests, be considered as an amount received from the sale or exchange in the United States of such property.

(h) Special rules for certain investment entities

For purposes of this section—

(1) Look-through of distributions

Any distribution by a qualified investment entity to a nonresident alien individual, a for-

eign corporation, or other qualified investment entity shall, to the extent attributable to gain from sales or exchanges by the qualified investment entity of United States real property interests, be treated as gain recognized by such nonresident alien individual, foreign corporation, or other qualified investment entity from the sale or exchange of a United States real property interest. Notwithstanding the preceding sentence, any distribution by a qualified investment entity to a nonresident alien individual or a foreign corporation with respect to any class of stock which is regularly traded on an established securities market located in the United States shall not be treated as gain recognized from the sale or exchange of a United States real property interest if such individual or corporation did not own more than 5 percent of such class of stock at any time during the 1-year period ending on the date of such distribution.

(2) Sale of stock in domestically controlled entity not taxed

The term ''United States real property interest'' does not include any interest in a domestically controlled qualified investment entity.

(3) Distributions by domestically controlled qualified investment entities

In the case of a domestically controlled qualified investment entity, rules similar to the rules of subsection (d) shall apply to the foreign ownership percentage of any gain.

(4) Definitions and special rules

(A) Qualified investment entity

The term ''qualified investment entity'' means—

(i) any real estate investment trust, and

(ii) any regulated investment company which is a United States real property holding corporation or which would be a United States real property holding corporation if the exceptions provided in subsections (c)(3) and (h)(2) did not apply to interests in any real estate investment trust and for purposes of determining whether a real estate investment trust is a domestically controlled qualified investment entity under this subsection or regulated investment company.

(B) Domestically controlled

The term ''domestically controlled qualified investment entity'' means any qualified investment entity in which at all times during the testing period less than 50 percent in value of the stock was held directly or indirectly by foreign persons.

(C) Foreign ownership percentage

The term ''foreign ownership percentage'' means that percentage of the stock of the qualified investment entity which was held (directly or indirectly) by foreign persons at the time during the testing period during which the direct and indirect ownership of stock by foreign persons was greatest.

(D) Testing period

The term ''testing period'' means whichever of the following periods is the shortest:

(i) the period beginning on June 19, 1980, and ending on the date of the disposition or of the distribution, as the case may be,

(ii) the 5-year period ending on the date of the disposition or of the distribution, as the case may be, or

(iii) the period during which the qualified investment entity was in existence.

(E) Special ownership rules

For purposes of determining the holder of stock under subparagraphs (B) and (C)—

(i) in the case of any class of stock of the qualified investment entity which is regularly traded on an established securities market in the United States, a person holding less than 5 percent of such class of stock at all times during the testing period shall be treated as a United States person unless the qualified investment entity has actual knowledge that such person is not a United States person,

(ii) any stock in the qualified investment entity held by another qualified investment entity—

(I) any class of stock of which is regularly traded on an established securities market, or

(II) which is a regulated investment company which issues redeemable securities (within the meaning of section 2 of the Investment Company Act of 1940),

shall be treated as held by a foreign person, except that if such other qualified investment entity is domestically controlled (determined after application of this subparagraph), such stock shall be treated as held by a United States person, and

(iii) any stock in the qualified investment entity held by any other qualified investment entity not described in subclause (I) or (II) of clause (ii) shall only be treated as held by a United States person in proportion to the stock of such other qualified investment entity which is (or is treated under clause (ii) or (iii) as) held by a United States person.

(5) Treatment of certain wash sale transactions

(A) In general

If an interest in a domestically controlled qualified investment entity is disposed of in an applicable wash sale transaction, the taxpayer shall, for purposes of this section, be treated as having gain from the sale or exchange of a United States real property interest in an amount equal to the portion of the distribution described in subparagraph (B) with respect to such interest which, but for the disposition, would have been treated by the taxpayer as gain from the sale or exchange of a United States real property interest under paragraph (1).

(B) Applicable wash sales transaction

For purposes of this paragraph—

(i) In general

The term ''applicable wash sales transaction'' means any transaction (or series of transactions) under which a nonresident alien individual, foreign corporation, or qualified investment entity—

(I) disposes of an interest in a domestically controlled qualified investment entity during the 30-day period preceding the ex-dividend date of a distribution which is to be made with respect to the interest and any portion of which, but for the disposition, would have been treated by the taxpayer as gain from the sale or exchange of a United States real property interest under paragraph (1), and

(II) acquires, or enters into a contract or option to acquire, a substantially identical interest in such entity during the 61-day period beginning with the 1st day of the 30-day period described in subclause (I).

For purposes of subclause (II), a nonresident alien individual, foreign corporation, or qualified investment entity shall be treated as having acquired any interest acquired by a person related (within the meaning of section 267(b) or 707(b)(1)) to the individual, corporation, or entity, and any interest which such person has entered into any contract or option to acquire.

(ii) Application to substitute dividend and similar payments

Subparagraph (A) shall apply to—

(I) any substitute dividend payment (within the meaning of section 861), or

(II) any other similar payment specified in regulations which the Secretary determines necessary to prevent avoidance of the purposes of this paragraph.

The portion of any such payment treated by the taxpayer as gain from the sale or exchange of a United States real property interest under subparagraph (A) by reason of this clause shall be equal to the portion of the distribution such payment is in lieu of which would have been so treated but for the transaction giving rise to such payment.

(iii) Exception where distribution actually received

A transaction shall not be treated as an applicable wash sales transaction if the nonresident alien individual, foreign corporation, or qualified investment entity receives the distribution described in clause (i)(I) with respect to either the interest which was disposed of, or acquired, in the transaction.

(iv) Exception for certain publicly traded stock

A transaction shall not be treated as an applicable wash sales transaction if it involves the disposition of any class of stock in a qualified investment entity which is regularly traded on an established securities market within the United States but only if the nonresident alien individual, foreign corporation, or qualified investment entity did not own more than 5 percent of such class of stock at any time during the 1-year period ending on the date of the distribution described in clause (i)(I).

(i) Election by foreign corporation to be treated as domestic corporation

(1) In general

If—

(A) a foreign corporation holds a United States real property interest, and

(B) under any treaty obligation of the United States the foreign corporation is entitled to nondiscriminatory treatment with respect to that interest,

then such foreign corporation may make an election to be treated as a domestic corporation for purposes of this section, section 1445, and section 6039C.

(2) Revocation only with consent

Any election under paragraph (1), once made, may be revoked only with the consent of the Secretary.

(3) Making of election

An election under paragraph (1) may be made only—

(A) if all of the owners of all classes of interests (other than interests solely as a creditor) in the foreign corporation at the time of the election consent to the making of the election and agree that gain, if any, from the disposition of such interest after June 18, 1980, which would be taken into account under subsection (a) shall be taxable notwithstanding any provision to the contrary in a treaty to which the United States is a party, and

(B) subject to such other conditions as the Secretary may prescribe by regulations with respect to the corporation or its shareholders.

In the case of a class of interest (other than an interest solely as a creditor) which is regularly traded on an established securities market, the consent described in subparagraph (A) need only be made by any person if such person held more than 5 percent of such class of interest at some time during the shorter of the periods described in subsection (c)(1)(A)(ii). The constructive ownership rules of subsection (c)(6)(C) shall apply in determining whether a person held more than 5 percent of a class of interest.

(4) Exclusive method of claiming nondiscrimination

The election provided by paragraph (1) shall be the exclusive remedy for any person claiming discriminatory treatment with respect to this section, section 1445, and section 6039C.

(j) Certain contributions to capital

Except to the extent otherwise provided in regulations, gain shall be recognized by a nonresident alien individual or foreign corporation on the transfer of a United States real property interest to a foreign corporation if the transfer is made as paid in surplus or as a contribution to capital, in the amount of the excess of—

(1) the fair market value of such property transferred, over

(2) the sum of—

(A) the adjusted basis of such property in the hands of the transferor, plus

(B) the amount of gain, if any, recognized to the transferor under any other provision at the time of the transfer.

(k) Special rules relating to real estate investment trusts

(1) Increase in percentage ownership for exceptions for persons holding publicly traded stock

(A) Dispositions

In the case of any disposition of stock in a real estate investment trust, paragraphs (3) and (6)(C) of subsection (c) shall each be applied by substituting ''more than 10 percent'' for ''more than 5 percent''.

(B) Distributions

In the case of any distribution from a real estate investment trust, subsection (h)(1) shall be applied by substituting ''10 percent'' for ''5 percent''.

(2) Stock held by qualified shareholders not treated as USRPI

(A) In general

Except as provided in subparagraph (B)—

(i) stock of a real estate investment trust which is held directly (or indirectly through 1 or more partnerships) by a qualified shareholder shall not be treated as a United States real property interest, and

(ii) notwithstanding subsection (h)(1), any distribution to a qualified shareholder shall not be treated as gain recognized from the sale or exchange of a United States real property interest to the extent the stock of the real estate investment trust held by such qualified shareholder is not treated as a United States real property interest under clause (i).

(B) Exception

In the case of a qualified shareholder with 1 or more applicable investors—

(i) subparagraph (A)(i) shall not apply to so much of the stock of a real estate investment trust held by a qualified shareholder as bears the same ratio to the value of the interests (other than interests held solely as a creditor) held by such applicable investors in the qualified shareholder bears to value of all interests (other than interests held solely as a creditor) in the qualified shareholder, and

(ii) a percentage equal to the ratio determined under clause (i) of the amounts realized by the qualified shareholder with respect to any disposition of stock in the real estate investment trust or with respect to any distribution from the real estate investment trust attributable to gain from sales or exchanges of a United States real property interest shall be treated as amounts realized from the disposition of United States real property interests.

(C) Special rule for certain distributions treated as sale or exchange

If a distribution by a real estate investment trust is treated as a sale or exchange of stock under section 301(c)(3), 302, or 331 with respect to a qualified shareholder—

(i) in the case of an applicable investor, subparagraph (B) shall apply with respect to such distribution, and

(ii) in the case of any other person, such distribution shall be treated under section 857(b)(3)(F)[2] as a dividend from a real estate investment trust notwithstanding any other provision of this title.

(D) Applicable investor

For purposes of this paragraph, the term ''applicable investor'' means, with respect to any qualified shareholder holding stock in a real estate investment trust, a person (other than a qualified shareholder) which—

(i) holds an interest (other than an interest solely as a creditor) in such qualified shareholder, and

(ii) holds more than 10 percent of the stock of such real estate investment trust (whether or not by reason of the person's ownership interest in the qualified shareholder).

(E) Constructive ownership rules

For purposes of subparagraphs (B)(i) and (C) and paragraph (4), the constructive ownership rules under subsection (c)(6)(C) shall apply.

(3) Qualified shareholder

For purposes of this subsection—

(A) In general

The term ''qualified shareholder'' means a foreign person which—

(i)(I) is eligible for benefits of a comprehensive income tax treaty with the United States which includes an exchange of information program and the principal class of interests of which is listed and regularly traded on 1 or more recognized stock exchanges (as defined in such comprehensive income tax treaty), or

(II) is a foreign partnership that is created or organized under foreign law as a limited partnership in a jurisdiction that has an agreement for the exchange of information with respect to taxes with the United States and has a class of limited partnership units which is regularly traded on the New York Stock Exchange or Nasdaq Stock Market and such class of limited partnership units value is greater than 50 percent of the value of all the partnership units,

(ii) is a qualified collective investment vehicle, and

(iii) maintains records on the identity of each person who, at any time during the foreign person's taxable year, holds directly 5 percent or more of the class of interest described in subclause (I) or (II) of clause (i), as the case may be.

(B) Qualified collective investment vehicle

For purposes of this subsection, the term ''qualified collective investment vehicle'' means a foreign person—

(i) which, under the comprehensive income tax treaty described in subparagraph

[2] See References in Text note below.

(A)(i), is eligible for a reduced rate of withholding with respect to ordinary dividends paid by a real estate investment trust even if such person holds more than 10 percent of the stock of such real estate investment trust,

(ii) which—

(I) is a publicly traded partnership (as defined in section 7704(b)) to which subsection (a) of section 7704 does not apply,

(II) is a withholding foreign partnership for purposes of chapters 3, 4, and 61,

(III) if such foreign partnership were a United States corporation, would be a United States real property holding corporation (determined without regard to paragraph (1)) at any time during the 5-year period ending on the date of disposition of, or distribution with respect to, such partnership's interests in a real estate investment trust, or

(iii) which is designated as a qualified collective investment vehicle by the Secretary and is either—

(I) fiscally transparent within the meaning of section 894, or

(II) required to include dividends in its gross income, but entitled to a deduction for distributions to persons holding interests (other than interests solely as a creditor) in such foreign person.

(4) Partnership allocations

(A) In general

For the purposes of this subsection, in the case of an applicable investor who is a nonresident alien individual or a foreign corporation and is a partner in a partnership that is a qualified shareholder, if such partner's proportionate share of USRPI gain for the taxable year exceeds such partner's distributive share of USRPI gain for the taxable year, then

(i) such partner's distributive share of the amount of gain taken into account under subsection (a)(1) by the partner for the taxable year (determined without regard to this paragraph) shall be increased by the amount of such excess, and

(ii) such partner's distributive share of items of income or gain for the taxable year that are not treated as gain taken into account under subsection (a)(1) (determined without regard to this paragraph) shall be decreased (but not below zero) by the amount of such excess.

(B) USRPI gain

For the purposes of this paragraph, the term ''USRPI gain'' means the excess (if any) of—

(i) the sum of—

(I) any gain recognized from the disposition of a United States real property interest, and

(II) any distribution by a real estate investment trust that is treated as gain recognized from the sale or exchange of a United States real property interest, over

(ii) any loss recognized from the disposition of a United States real property interest.

(C) Proportionate share of USRPI gain

For purposes of this paragraph, an applicable investor's proportionate share of USRPI gain shall be determined on the basis of such investor's share of partnership items of income or gain (excluding gain allocated under section 704(c)), whichever results in the largest proportionate share. If the investor's share of partnership items of income or gain (excluding gain allocated under section 704(c)) may vary during the period such investor is a partner in the partnership, such share shall be the highest share such investor may receive.

***(l)* Exception for interests held by foreign pension funds**

(1) In general

This section shall not apply to any United States real property interest held directly (or indirectly through 1 or more partnerships) by, or to any distribution received from a real estate investment trust by—

(A) a qualified foreign pension fund, or

(B) any entity all of the interests of which are held by a qualified foreign pension fund.

(2) Qualified foreign pension fund

For purposes of this subsection, the term ''qualified foreign pension fund'' means any trust, corporation, or other organization or arrangement—

(A) which is created or organized under the law of a country other than the United States,

(B) which is established to provide retirement or pension benefits to participants or beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered,

(C) which does not have a single participant or beneficiary with a right to more than five percent of its assets or income,

(D) which is subject to government regulation and provides annual information reporting about its beneficiaries to the relevant tax authorities in the country in which it is established or operates, and

(E) with respect to which, under the laws of the country in which it is established or operates—

(i) contributions to such trust, corporation, organization, or arrangement which would otherwise be subject to tax under such laws are deductible or excluded from the gross income of such entity or taxed at a reduced rate, or

(ii) taxation of any investment income of such trust, corporation, organization or arrangement is deferred or such income is taxed at a reduced rate.

(3) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection.

(Added Pub. L. 96–499, title XI, § 1122(a), Dec. 5, 1980, 94 Stat. 2682; amended Pub. L. 97–34, title VIII, § 831(a)(1), (b)–(d), (f), (g), Aug. 13, 1981, 95 Stat. 352–354; Pub. L. 97–248, title II, § 201(d)(6),

formerly § 201(c)(6), Sept. 3, 1982, 96 Stat. 419, renumbered § 201(d)(6), Pub. L. 97–448, title III, § 306(a)(1)(A)(i), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 99–514, title VI, § 631(e)(12), title VII, § 701(e)(4)(G), title XVIII, § 1810(f)(1), Oct. 22, 1986, 100 Stat. 2275, 2343, 2826; Pub. L. 100–647, title I, § 1006(e)(19), Nov. 10, 1988, 102 Stat. 3403; Pub. L. 101–508, title XI, § 11801(a)(30), Nov. 5, 1990, 104 Stat. 1388–521; Pub. L. 103–66, title XIII, § 13203(c)(2), Aug. 10, 1993, 107 Stat. 462; Pub. L. 104–188, title I, § 1702(g)(2), Aug. 20, 1996, 110 Stat. 1873; Pub. L. 108–357, title IV, §§ 411(c), 418(a), Oct. 22, 2004, 118 Stat. 1504, 1512; Pub. L. 109–135, title IV, § 403(p)(1), Dec. 21, 2005, 119 Stat. 2626; Pub. L. 109–222, title V, §§ 504(a), 505(a), 506(a), May 17, 2006, 120 Stat. 355, 357; Pub. L. 110–343, div. C, title II, § 208(a), Oct. 3, 2008, 122 Stat. 3865; Pub. L. 111–312, title VII, § 749(a), Dec. 17, 2010, 124 Stat. 3320; Pub. L. 112–240, title III, § 321(a), Jan. 2, 2013, 126 Stat. 2332; Pub. L. 113–295, div. A, title I, § 133(a), Dec. 19, 2014, 128 Stat. 4018; Pub. L. 114–113, div. Q, title I, § 133(a), title III, §§ 322(a)(1), (2)(A), (b), 323(a), 325(a), Dec. 18, 2015, 129 Stat. 3055, 3098, 3101–3103; Pub. L. 115–97, title I, § 12001(b)(3)(D), Dec. 22, 2017, 131 Stat. 2093.)

REFERENCES IN TEXT

Section 2 of the Investment Company Act of 1940, referred to in subsec. (h)(4)(E)(ii)(II), is classified to section 80a–2 of Title 15, Commerce and Trade.

Section 857(b)(3)(F), referred to in subsec. (k)(2)(C)(ii), was redesignated section 857(b)(3)(E) and a new subsec. (b)(3)(F) added by Pub. L. 115–97, title I, § 13001(b)(2)(K)(i), (iv), Dec. 22, 2017, 131 Stat. 2096, 2097.

AMENDMENTS

2017—Subsec. (a)(2)(A). Pub. L. 115–97 substituted ''section 55(b)(1)'' for ''section 55(b)(1)(A)'' in introductory provisions.

2015—Subsec. (c)(1)(A). Pub. L. 114–113, § 322(a)(2)(A), inserted ''or subsection (k)'' after ''subparagraph (B)'' in introductory provisions.

Subsec. (c)(1)(B)(iii). Pub. L. 114–113, § 325(a), added cl. (iii).

Subsec. (h)(4). Pub. L. 114–113, § 322(b)(1)(B), inserted ''and special rules'' after ''Definitions'' in heading.

Subsec. (h)(4)(A). Pub. L. 114–113, § 133(a), struck out cl. (i) designation and heading before ''The term 'qualified investment entity' means—'', redesignated subcls. (I) and (II) of former cl. (i) as cls. (i) and (ii), respectively, and struck out former cl. (ii). Prior to amendment, text of cl. (ii) read as follows: ''Clause (i)(II) shall not apply after December 31, 2014. Notwithstanding the preceding sentence, an entity described in clause (i)(II) shall be treated as a qualified investment entity for purposes of applying paragraphs (1) and (5) and section 1445 with respect to any distribution by the entity to a nonresident alien individual or a foreign corporation which is attributable directly or indirectly to a distribution to the entity from a real estate investment trust.''

Subsec. (h)(4)(A)(ii). Pub. L. 114–113, § 322(b)(2), inserted ''and for purposes of determining whether a real estate investment trust is a domestically controlled qualified investment entity under this subsection'' after ''real estate investment trust''.

Subsec. (h)(4)(E). Pub. L. 114–113, § 322(b)(1)(A), added subpar. (E).

Subsec. (k). Pub. L. 114–113, § 322(a)(1), added subsec. (k).

Subsec. (*l*). Pub. L. 114–113, § 323(a), added subsec. (*l*).

2014—Subsec. (h)(4)(A)(ii). Pub. L. 113–295 substituted ''December 31, 2014'' for ''December 31, 2013''.

2013—Subsec. (h)(4)(A)(ii). Pub. L. 112–240 substituted ''December 31, 2013'' for ''December 31, 2011''.

2010—Subsec. (h)(4)(A)(ii). Pub. L. 111–312 substituted ''December 31, 2011'' for ''December 31, 2009''.

2008—Subsec. (h)(4)(A)(ii). Pub. L. 110–343 substituted ''December 31, 2009'' for ''December 31, 2007''.

2006—Subsec. (h)(1). Pub. L. 109–222, § 505(a)(1), in first sentence, substituted ''a nonresident alien individual, a foreign corporation, or other qualified investment entity'' for ''a nonresident alien individual or a foreign corporation'' and ''such nonresident alien individual, foreign corporation, or other qualified investment entity'' for ''such nonresident alien individual or foreign corporation'' and inserted second sentence and struck out former second sentence which read as follows: ''Notwithstanding the preceding sentence, any distribution by a real estate investment trust with respect to any class of stock which is regularly traded on an established securities market located in the United States shall not be treated as gain recognized from the sale or exchange of a United States real property interest if the shareholder did not own more than 5 percent of such class of stock at any time during the 1-year period ending on the date of the distribution.''

Subsec. (h)(4)(A)(i)(II). Pub. L. 109–222, § 504(a), inserted ''which is a United States real property holding corporation or which would be a United States real property holding corporation if the exceptions provided in subsections (c)(3) and (h)(2) did not apply to interests in any real estate investment trust or regulated investment company'' after ''any regulated investment company''.

Subsec. (h)(4)(A)(ii). Pub. L. 109–222, § 505(a)(2), inserted at end ''Notwithstanding the preceding sentence, an entity described in clause (i)(II) shall be treated as a qualified investment entity for purposes of applying paragraphs (1) and (5) and section 1445 with respect to any distribution by the entity to a nonresident alien individual or a foreign corporation which is attributable directly or indirectly to a distribution to the entity from a real estate investment trust.''

Subsec. (h)(5). Pub. L. 109–222, § 506(a), added par. (5).

2005—Subsec. (h)(1). Pub. L. 109–135 substituted ''any distribution by a real estate investment trust with respect to any class of stock'' for ''any distribution by a REIT with respect to any class of stock'' and ''the 1-year period ending on the date of the distribution'' for ''the taxable year''.

2004—Subsec. (h). Pub. L. 108–357, § 411(c)(5), substituted ''certain investment entities'' for ''REITS'' in heading.

Subsec. (h)(1). Pub. L. 108–357, § 418(a), inserted at end ''Notwithstanding the preceding sentence, any distribution by a REIT with respect to any class of stock which is regularly traded on an established securities market located in the United States shall not be treated as gain recognized from the sale or exchange of a United States real property interest if the shareholder did not own more than 5 percent of such class of stock at any time during the taxable year.''

Pub. L. 108–357, § 411(c)(1), substituted ''qualified investment entity'' for ''REIT'' in two places.

Subsec. (h)(2). Pub. L. 108–357, § 411(c)(2), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''The term 'United States real property interest' does not include any interest in a domestically-controlled REIT.''

Subsec. (h)(3). Pub. L. 108–357, § 411(c)(2), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: ''In the case of a domestically-controlled REIT, rules similar to the rules of subsection (d) shall apply to the foreign ownership percentage of any gain.''

Subsec. (h)(4)(A). Pub. L. 108–357, § 411(c)(3), amended heading and text of subpar. (A) generally. Prior to amendment, text read as follows: ''The term 'REIT' means a real estate investment trust.''

Subsec. (h)(4)(B). Pub. L. 108–357, § 411(c)(3), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: ''The term 'domestically-controlled REIT' means a REIT in which at all times during the testing period less than 50 percent in value of the stock was held directly or indirectly by foreign persons.''

Subsec. (h)(4)(C), (D)(iii). Pub. L. 108–357, §411(c)(4), substituted ''qualified investment entity'' for ''REIT''.

1996—Subsec. (f). Pub. L. 104–188 struck out subsec. (f) which read as follows:

''(f) DISTRIBUTIONS BY DOMESTIC CORPORATIONS TO FOREIGN SHAREHOLDERS.—If a domestic corporation distributes a United States real property interest to a nonresident alien individual or a foreign corporation in a distribution to which section 301 applies, notwithstanding any other provision of this chapter, the basis of such United States real property interest in the hands of such nonresident alien individual or foreign corporation shall not exceed—

''(1) the adjusted basis of such property before the distribution, increased by

''(2) the sum of—

''(A) any gain recognized by the distributing corporation on the distribution, and

''(B) any tax paid under this chapter by the distributee on such distribution.''

1993—Subsec. (a)(2). Pub. L. 103–66 substituted ''Minimum'' for ''21-percent minimum'' in heading and ''the taxable excess for purposes of section 55(b)(1)(A) shall not be less than'' for ''the amount determined under section 55(b)(1)(A) shall not be less than 21 percent of'' in subpar. (A).

1990—Subsec. (k). Pub. L. 101–508 struck out subsec. (k) which read as follows: ''If—

''(1) a foreign corporation adopts, or has adopted, a plan of liquidation described in section 334(b)(2)(A), and

''(2) the 12-month period described in section 334(b)(2)(B) for the acquisition by purchase of the stock of the foreign corporation, began after December 31, 1979, and before November 26, 1980,

then such foreign corporation may make an election to be treated, for the period following June 18, 1980, as a domestic corporation pursuant to section 897(i)(1). Notwithstanding an election under the preceding sentence, any selling shareholder of such corporation shall be considered to have sold the stock of a foreign corporation.''

1988—Subsec. (*l*). Pub. L. 100–647 struck out subsec. (*l*) which provided special rule for certain United States shareholders of liquidating foreign corporations.

1986—Subsec. (a)(2). Pub. L. 99–514, §701(e)(4)(G), substituted ''21-percent'' for ''20-percent'' in heading and amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''In the case of any nonresident alien individual, the amount determined under section 55(a)(1) for the taxable year shall not be less than 20 percent of the lesser of—

''(i) the individual's alternative minimum taxable income (as defined in section 55(b)) for the taxable year, or

''(ii) the individual's net United States real property gain for the taxable year.''

Subsec. (d). Pub. L. 99–514, §631(e)(12), in heading, struck out '', etc.,'' after ''distributions'', and in text, struck out heading and designation for par. (1), redesignated subpar. (A) as par. (1), redesignated subpar. (B) as par. (2) and substituted ''paragraph (1)'' for ''subparagraph (A)'' in introductory provisions, redesignated cl. (i) and its subcls. (I) and (II) as subpar. (A) and cls. (i) and (ii), respectively, redesignated cl. (ii) as subpar. (B), and struck out former par. (2) which provided that section 337 not apply to any sale or exchange of a United States real property interest by a foreign corporation.

Subsec. (i)(1), (4). Pub. L. 99–514, §1810(f)(1), inserted reference to section 1445.

1982—Subsec. (a)(2)(A). Pub. L. 97–248 substituted ''section 55(a)(1) for the taxable year shall not be less than 20 percent of the lesser of—'' for ''section 55(a)(1)(A) for the taxable year shall not be less than 20 percent of whichever of the following is the least:'' in introductory provisions, in cl. (i) struck out ''(1)'' after ''section 55(b)'' and inserted ''or'' at the end, in cl. (ii) substituted a period for a comma and struck out ''or'' at the end, and struck out former cl. (iii), which had provided for the amount of $60,000 as a third alternative.

1981—Subsec. (c)(1)(A)(i). Pub. L. 97–34, §831(a)(1), defined ''United States real property interest'' to also mean an interest in real property located in the Virgin Islands.

Subsec. (c)(4)(B). Pub. L. 97–34, §831(b), substituted ''Assets'' for ''Interests'' in heading and in first sentence ''Under regulations prescribed by the Secretary, assets held by a partnership, trust or estate shall be treated as held'' for ''United States real property interests held by a partnership, trust, or estate shall be treated as owned'' before ''proportionately by its partners or beneficiaries'', and inserted provisions respecting treatment of an asset as used or held for use in a trade or business by a partner or beneficiary when used or held by the partnership, trust, or estate in a trade or business and attributing chain treatment of such trade or business to partnership, trust, or estate which are above the first such entity.

Subsec. (d)(1)(B). Pub. L. 97–34, §831(c), substituted ''Exceptions'' for ''Exception where there is a carryover basis'' in heading, inserted introductory text ''Gain shall not be recognized under subparagraph (A)'', inserted cls. (i)(I) and (ii), and substituted cl. (i)(II) the basis of the distributed property in the hands of the distributee is no greater than the adjusted basis of such property before the distribution, increased by the amount of gain (if any) recognized by the distributing corporation'' for subpar. (B) provision ''Subparagraph (A) shall not apply if the basis of the distributed property in the hands of the distributee is the same as the adjusted basis of such property before the distribution increased by the amount of any gain recognized by the distributing corporation.''

Subsec. (i). Pub. L. 97–34, §831(d), in par. (1)(A) substituted ''holds a United States real property interest'' for ''has a permanent establishment in the United States'', in par. (1)(B) substituted ''treaty obligation of the United States the foreign corporation is entitled to nondiscriminatory treatment with respect to that interest'' for ''treaty, such permanent establishment may not be treated less favorably than domestic corporations carrying on the same activities'', in par. (3) inserted subpar. (A), designated existing provisions as subpar. (B), in subpar. (B) substituted ''such other conditions as the Secretary may prescribe by regulations with respect to the corporation or its shareholders'' for ''such conditions as may be prescribed by the Secretary'', and prescribed percentage interest required for making the requisite election and application of constructive ownership rules in determining existence of the required percentage of a class of interest.

Subsecs. (j) to (*l*). Pub. L. 97–34, §831(f), (g), added subsecs. (j) to (*l*).

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–97 applicable to taxable years beginning after Dec. 31, 2017, see section 12001(c) of Pub. L. 115–97, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114–113, div. Q, title I, §133(b), Dec. 18, 2015, 129 Stat. 3055, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall take effect on January 1, 2015. Notwithstanding the preceding sentence, such amendments shall not apply with respect to the withholding requirement under section 1445 of the Internal Revenue Code of 1986 for any payment made before the date of the enactment of this Act [Dec. 18, 2015].

''(2) AMOUNTS WITHHELD ON OR BEFORE DATE OF ENACTMENT.—In the case of a regulated investment company—

''(A) which makes a distribution after December 31, 2014, and before the date of the enactment of this Act, and

''(B) which would (but for the second sentence of paragraph (1)) have been required to withhold with respect to such distribution under section 1445 of such Code,

such investment company shall not be liable to any person to whom such distribution was made for any amount so withheld and paid over to the Secretary of the Treasury.''

Amendment by section 322(a)(1), (2)(A) of Pub. L. 114–113 effective Dec. 18, 2015, and applicable to any disposition on and after Dec. 18, 2015, and any distribution by a real estate investment trust on or after such date which is treated as a deduction for a taxable year of such trust ending after such date, see section 322(c)(1) of Pub. L. 114–113, set out as a note under section 857 of this title.

Pub. L. 114–113, div. Q, title III, § 322(c)(2), (3), Dec. 18, 2015, 129 Stat. 3102, provided that:

''(2) DETERMINATION OF DOMESTIC CONTROL.—The amendments made by subsection (b)(1) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 18, 2015].

''(3) TECHNICAL AMENDMENT.—The amendment made by subsection (b)(2) [amending this section] shall take effect on January 1, 2015.''

Pub. L. 114–113, div. Q, title III, § 323(c), Dec. 18, 2015, 129 Stat. 3103, provided that: ''The amendments made by this section [amending this section and section 1445 of this title] shall apply to dispositions and distributions after the date of the enactment of this Act [Dec. 18, 2015].''

Pub. L. 114–113, div. Q, title III, § 325(b), Dec. 18, 2015, 129 Stat. 3103, provided that: ''The amendment made by this section [amending this section] shall apply to dispositions on or after the date of the enactment of this Act [Dec. 18, 2015].''

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113–295, div. A, title I, § 133(b), Dec. 19, 2014, 128 Stat. 4018, provided that:

''(1) IN GENERAL.—The amendment made by this section [amending this section] shall take effect on January 1, 2014. Notwithstanding the preceding sentence, such amendment shall not apply with respect to the withholding requirement under section 1445 of the Internal Revenue Code of 1986 for any payment made before the date of the enactment of this Act [Dec. 19, 2014].

''(2) AMOUNTS WITHHELD ON OR BEFORE DATE OF ENACTMENT.—In the case of a regulated investment company—

''(A) which makes a distribution after December 31, 2013, and before the date of the enactment of this Act, and

''(B) which would (but for the second sentence of paragraph (1)) have been required to withhold with respect to such distribution under section 1445 of such Code,

such investment company shall not be liable to any person to whom such distribution was made for any amount so withheld and paid over to the Secretary of the Treasury.''

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title III, § 321(b), Jan. 2, 2013, 126 Stat. 2332, provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall take effect on January 1, 2012. Notwithstanding the preceding sentence, such amendment shall not apply with respect to the withholding requirement under section 1445 of the Internal Revenue Code of 1986 for any payment made before the date of the enactment of this Act [Jan. 2, 2013].

''(2) AMOUNTS WITHHELD ON OR BEFORE DATE OF ENACTMENT.—In the case of a regulated investment company—

''(A) which makes a distribution after December 31, 2011, and before the date of the enactment of this Act; and

''(B) which would (but for the second sentence of paragraph (1)) have been required to withhold with respect to such distribution under section 1445 of such Code,

such investment company shall not be liable to any person to whom such distribution was made for any amount so withheld and paid over to the Secretary of the Treasury.''

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, § 749(b), Dec. 17, 2010, 124 Stat. 3320, provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall take effect on January 1, 2010. Notwithstanding the preceding sentence, such amendment shall not apply with respect to the withholding requirement under section 1445 of the Internal Revenue Code of 1986 for any payment made before the date of the enactment of this Act [Dec. 17, 2010].

''(2) AMOUNTS WITHHELD ON OR BEFORE DATE OF ENACTMENT.—In the case of a regulated investment company—

''(A) which makes a distribution after December 31, 2009, and before the date of the enactment of this Act [Dec. 17, 2010]; and

''(B) which would (but for the second sentence of paragraph (1)) have been required to withhold with respect to such distribution under section 1445 of such Code,

such investment company shall not be liable to any person to whom such distribution was made for any amount so withheld and paid over to the Secretary of the Treasury.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title II, § 208(b), Oct. 3, 2008, 122 Stat. 3865, as amended by Pub. L. 113–295, div. A, title II, § 211(a), Dec. 19, 2014, 128 Stat. 4032, provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall take effect on January 1, 2008. Notwithstanding the preceding sentence, such amendment shall not apply with respect to the withholding requirement under section 1445 of the Internal Revenue Code of 1986 for any payment made before October 4, 2008.

''(2) AMOUNTS WITHHELD ON OR BEFORE DATE OF ENACTMENT.—In the case of a regulated investment company—

''(A) which makes a distribution after December 31, 2007, and before October 4, 2008, and

''(B) which would (but for the second sentence of paragraph (1)) have been required to withhold with respect to such distribution under section 1445 of such Code,

such investment company shall not be liable to any person to whom such distribution was made for any amount so withheld and paid over to the Secretary of the Treasury.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–222, title V, § 504(b), May 17, 2006, 120 Stat. 355, provided that: ''The amendment made by this section [amending this section] shall take effect as if included in the provisions of section 411 of the American Jobs Creation Act of 2004 [Pub. L. 108–357] to which it relates.''

Amendment by section 505(a) of Pub. L. 109–222 applicable to taxable years of qualified investment entities beginning after Dec. 31, 2005, except that no amount shall be required to be withheld under section 1441, 1442, or 1445 of the Internal Revenue Code of 1986 with respect to any distribution before May 17, 2006 if such amount was not otherwise required to be withheld under any such section as in effect before such amendments, see section 505(d) of Pub. L. 109–222, set out as a note under section 852 of this title.

Pub. L. 109–222, title V, § 506(c), May 17, 2006, 120 Stat. 358, provided that: ''The amendments made by this sec-

tion [amending this section and section 1445 of this title] shall apply to taxable years beginning after December 31, 2005, except that such amendments shall not apply to any distribution, or substitute dividend payment, occurring before the date that is 30 days after the date of the enactment of this Act [May 17, 2006].''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 411(c)(1) of Pub. L. 108–357 applicable to dividends with respect to taxable years of regulated investment companies beginning after Dec. 31, 2004, and amendment by section 411(c)(2)–(5) of Pub. L. 108–357 effective after Dec. 31, 2004, see section 411(d)(1), (3) of Pub. L. 108–357, set out as a note under section 871 of this title.

Amendment by section 418(a) of Pub. L. 108–357 applicable to any distribution by a real estate investment trust which is either treated as a deduction for a taxable year of such trust beginning after Oct. 22, 2004, or made after Oct. 22, 2004, and treated as a deduction under section 860 of this title for a taxable year of such trust beginning on or before Oct. 22, 2004, see section 418(c) of Pub. L. 108–357, as amended, set out as a note under section 857 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1992, see section 13203(d) of Pub. L. 103–66, set out as a note under section 55 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 631(e)(12) of Pub. L. 99–514 applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, set out as an Effective Date note under section 336 of this title.

Amendment by section 701(e)(4)(G) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

Amendment by section 1810(f)(1) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to taxable years beginning after Dec. 31, 1982, see section 201(e)(1) of Pub. L. 97–248, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title VIII, §831(i), Aug. 13, 1981, 95 Stat. 355, provided that: ''The amendments made by this section [amending this section and sections 862 and 6039C of this title and provisions set out as a note below] shall apply to dispositions after June 18, 1980, in taxable years ending after such date.''

EFFECTIVE DATE

Pub. L. 96–499, title XI, §1125(a), (b), Dec. 5, 1980, 94 Stat. 2690, provided that:

''(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this subtitle [subtitle C (§§1121–1125) of title XI of Pub. L. 96–499, enacting this section and provisions set out as notes under this section, and amending sections 861, 871, 882 of this title] shall apply to dispositions after June 18, 1980.

''(b) REPORTING.—The amendments made by section 1123 [enacting section 6039C of this title and amending section 6652 of this title] shall apply to 1980 and subsequent calendar years. In applying such amendments to 1980, such calendar year shall be treated as beginning on June 19, 1980, and ending on December 31, 1980.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(e)(4)(G) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

SPECIAL RULE FOR APPLYING SECTION 897

Pub. L. 99–514, title XII, §1228, Oct. 22, 1986, 100 Stat. 2560, as amended by Pub. L. 100–647, title I, §1012(m), Nov. 10, 1988, 102 Stat. 3513, provided that:

''(a) IN GENERAL.—For purposes of section 897 of the Internal Revenue Code of 1986, gain shall not be recognized on the transfer, sale, exchange, or other disposition, of shares of stock of a United States real property holding company, if—

''(1) such United States real property holding company is a Delaware corporation incorporated on January 17, 1984,

''(2) the transfer, sale, exchange, or other disposition is to any member of a qualified ownership group,

''(3) the recipient of the share of stock elects, for purposes of such section 897, a carryover basis in the transferred shares,

''(4) the transfer, sale, exchange, or other disposition is part of a single integrated plan, whereby the stock of the corporation described in paragraph (1) becomes owned directly by the 2 corporations specifically referred to in subsection (b) or by such 2 corporations and by 1 or both of their jointly owned direct subsidiaries,

''(5) within 20 days after each transfer, sale, exchange, or other disposition, the person making such transfer, sale, exchange, or other disposition notifies the Internal Revenue Service of the transaction, the date of the transaction, the basis of the stock involved, the holding period for such stock, and such other information as the Internal Revenue Service may require, and

''(6) the integrated plan is completed before the date 4 years after the date of the enactment of the Technical and Miscellaneous Revenue Act of 1988 [Nov. 10, 1988].

In the case of any underpayment attributable to a failure to meet any requirement of this subsection, the period during which such underpayment may be assessed shall in no event expire before the date 5 years after the date of the enactment of the Technical and Miscellaneous Revenue Act of 1988.

''(b) MEMBER OF A QUALIFIED OWNERSHIP GROUP.—For purposes of this section, the term 'member of a qualified ownership group' means a corporation incorporated on June 16, 1890, under the laws of the Netherlands or a corporation incorporated on October 18, 1897, under the laws of the United Kingdom or any corporation owned directly or indirectly by either or both such corporations.

''(c) [Repealed. Pub. L. 100–647, title I, §1012(m)(2), Nov. 10, 1988, 102 Stat. 3513.]

''(d) EFFECTIVE DATE.—The provisions of this section shall take effect on the date of the enactment of this section [Oct. 22, 1986].''

GAIN FROM DISPOSITION OF INVESTMENT IN UNITED STATES REAL PROPERTY BY NONRESIDENT ALIEN INDIVIDUALS AND FOREIGN CORPORATIONS

Pub. L. 96–499, title XI, §1125(c), Dec. 5, 1980, 94 Stat. 2690, as amended by Pub. L. 97–34, title VIII, §831(h), Aug. 13, 1981, 95 Stat. 355; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), after December 31, 1984, nothing in section 894(a) or 7852(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] or in any other provision of law shall be treated as requiring, by reason of any treaty obligation of the United States, an exemption from (or reduction of) any tax imposed by section 871 or 882 of such Code on a gain described in section 897 of such Code.

''(2) SPECIAL RULE FOR TREATIES RENEGOTIATED BEFORE 1985.—If—

''(A) any treaty (hereinafter in this paragraph referred to as the 'old treaty') is renegotiated to resolve conflicts between such treaty and the provisions of section 897 of the Internal Revenue Code of 1986, and

''(B) the new treaty is signed on or after January 1, 1981, and before January 1, 1985,

then paragraph (1) shall be applied with respect to obligations under the old treaty by substituting for 'December 31, 1984' the date (not later than 2 years after the new treaty was signed) specified in the new treaty (or accompanying exchange of notes).''

ADJUSTMENT IN BASIS FOR CERTAIN TRANSACTIONS BETWEEN RELATED PERSONS

Pub. L. 96–499, title XI, §1125(d), Dec. 5, 1980, 94 Stat. 2691, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—In the case of any disposition after December 31, 1979, of a United States real property interest (as defined in section 897(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) to a related person (within the meaning of section 453(f)(1) of such Code), the basis of the interest in the hands of the person acquiring it shall be reduced by the amount of any nontaxed gain.

''(2) NONTAXED GAIN.—For purposes of paragraph (1), the term 'nontaxed gain' means any gain which is not subject to tax under section 871(b)(1) or 882(a)(1) of such Code—

''(A) because the disposition occurred before June 19, 1980, or

''(B) because of any treaty obligation of the United States.''

§ 898. Taxable year of certain foreign corporations

(a) General rule

For purposes of this title, the taxable year of any specified foreign corporation shall be the required year determined under subsection (c).

(b) Specified foreign corporation

For purposes of this section—

(1) In general

The term ''specified foreign corporation'' means any foreign corporation—

(A) which is treated as a controlled foreign corporation for any purpose under subpart F of part III of this subchapter, and

(B) with respect to which the ownership requirements of paragraph (2) are met.

(2) Ownership requirements

(A) In general

The ownership requirements of this paragraph are met with respect to any foreign corporation if a United States shareholder owns, on each testing day, more than 50 percent of—

(i) the total voting power of all classes of stock of such corporation entitled to vote, or

(ii) the total value of all classes of stock of such corporation.

(B) Ownership

For purposes of subparagraph (A), the rules of subsections (a) and (b) of section 958 shall apply in determining ownership.

(3) United States shareholder

The term ''United States shareholder'' has the meaning given to such term by section 951(b), except that, in the case of a foreign corporation having related person insurance income (as defined in section 953(c)(2)), the Secretary may treat any person as a United States shareholder for purposes of this section if such person is treated as a United States shareholder under section 953(c)(1).

(c) Determination of required year

(1) In general

The required year is—

(A) the majority U.S. shareholder year, or

(B) if there is no majority U.S. shareholder year, the taxable year prescribed under regulations.

(2) 1-month deferral allowed

A specified foreign corporation may elect, in lieu of the taxable year under paragraph (1)(A), a taxable year beginning 1 month earlier than the majority U.S. shareholder year.

(3) Majority U.S. shareholder year

(A) In general

For purposes of this subsection, the term ''majority U.S. shareholder year'' means the

taxable year (if any) which, on each testing day, constituted the taxable year of—

(i) each United States shareholder described in subsection (b)(2)(A), and

(ii) each United States shareholder not described in clause (i) whose stock was treated as owned under subsection (b)(2)(B) by any shareholder described in such clause.

(B) Testing day

The testing days shall be—

(i) the first day of the corporation's taxable year (determined without regard to this section), or

(ii) the days during such representative period as the Secretary may prescribe.

(Added Pub. L. 101–239, title VII, §7401(a), Dec. 19, 1989, 103 Stat. 2355; amended Pub. L. 108–357, title IV, §413(c)(13), Oct. 22, 2004, 118 Stat. 1507.)

AMENDMENTS

2004—Subsec. (b)(1)(A). Pub. L. 108–357, §413(c)(13)(A), amended subpar. (A) generally. Prior to amendment, subpar (A) read as follows:

''(A) which is—

''(i) treated as a controlled foreign corporation for any purpose under subpart F of part III of this subchapter, or

''(ii) a foreign personal holding company (as defined in section 552), and''.

Subsec. (b)(2)(B). Pub. L. 108–357, §413(c)(13)(B), struck out ''and sections 551(f) and 554, whichever are applicable,'' after ''section 958''.

Subsec. (b)(3). Pub. L. 108–357, §413(c)(13)(C), reenacted heading without change, struck out ''(A) In general'' before ''The term'', and struck out heading and text of subpar. (B). Text read as follows: ''In the case of any foreign personal holding company (as defined in section 552) which is not a specified foreign corporation by reason of paragraph (1)(A)(i), the term 'United States shareholder' means any person who is treated as a United States shareholder under section 551.''

Subsec. (c). Pub. L. 108–357, §413(c)(13)(D), reenacted heading without change and amended text of subsec. (c) generally, substituting provisions stating general rule and relating to 1-month deferral and majority U.S. shareholder year, consisting of pars. (1) to (3), for provisions stating general rule and relating to 1-month deferral and majority U.S. shareholder year, consisting of par. (1), and provisions relating to required year in the case of a foreign personal holding company, consisting of par. (2).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE

Pub. L. 101–239, title VII, §7401(d), Dec. 19, 1989, 103 Stat. 2357, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section and amending section 563 of this title] shall apply to taxable years of foreign corporations beginning after July 10, 1989.

''(2) SPECIAL RULES.—If any foreign corporation is required by the amendments made by this section to change its taxable year for its first taxable year beginning after July 10, 1989—

''(A) such change shall be treated as initiated by the taxpayer,

''(B) such change shall be treated as having been made with the consent of the Secretary of the Treasury or his delegate, and

''(C) if, by reason of such change, any United States person is required to include in gross income for 1 taxable year amounts attributable to 2 taxable years of such foreign corporation, the amount which would otherwise be required to be included in gross income for such 1 taxable year by reason of the short taxable year of the foreign corporation resulting from such change shall be included in gross income ratably over the 4-taxable-year period beginning with such 1 taxable year.''

PART III—INCOME FROM SOURCES WITHOUT THE UNITED STATES

AMENDMENTS

2004—Pub. L. 108–357, title I, §101(b)(2), Oct. 22, 2004, 118 Stat. 1423, struck out item for subpart E ''Qualifying foreign trade income''.

2000—Pub. L. 106–519, §4(8), Nov. 15, 2000, 114 Stat. 2433, struck out item for subpart C ''Taxation of foreign sales corporations''.

Pub. L. 106–519, §4(7), Nov. 15, 2000, 114 Stat. 2433, added item for subpart E and directed that former item for subpart E be struck out, which could not be executed because the item for subpart E had previously been struck out by Pub. L. 94–455, §1053(d)(5). See 1976 Amendment note below.

1986—Pub. L. 99–514, title XII, §1261(d), Oct. 22, 1986, 100 Stat. 2591, added item for subpart J.

1984—Pub. L. 98–369, div. A, title VIII, §802(c)(4), July 18, 1984, 98 Stat. 999, added item for subpart C.

1982—Pub. L. 97–248, title III, §337(b), Sept. 3, 1982, 96 Stat. 630, added item for subpart I.

1978—Pub. L. 95–615, §202(g)(4), formerly §202(f)(4), Nov. 8, 1978, 92 Stat. 3100, renumbered Pub. L. 96–222, title I, §108(a)(1)(A), Apr. 1, 1980, 94 Stat. 223, inserted in item for subpart B ''or residents'' after ''citizens.''

1976—Pub. L. 94–455, title X, §1012(b)(3)(B), Oct. 4, 1976, 90 Stat. 1614, struck out item for subpart G ''Export Trade Corporation'' from analysis without a corresponding repeal of text in such subpart. The amendment probably should have struck out item for subpart H.

Pub. L. 94–455, title X, §§1052(c)(7), 1053(d)(5), Oct. 4, 1976, 90 Stat. 1648, 1649, struck out item for subpart C, relating to Western Hemisphere trade corporations, effective for taxable years beginning after Dec. 31, 1979, and item for subpart E, relating to China Trade Act corporations, effective for taxable years beginning after Dec. 31, 1977.

1966—Pub. L. 89–809, title I, §105(e)(2), Nov. 13, 1966, 80 Stat. 1567, added item for subpart H.

1962—Pub. L. 87–834, §12(b)(3), Oct. 16, 1962, 76 Stat. 1031, added items for subparts F and G.

SUBPART A—FOREIGN TAX CREDIT

[1] See 1976 Amendment note below.

AMENDMENTS

2017—Pub. L. 115–97, title I, § 14301(c)(38), Dec. 22, 2017, 131 Stat. 2225, struck out item 902 ''Deemed paid credit where domestic corporation owns 10 percent or more of voting stock of foreign corporation''.

2010—Pub. L. 111–226, title II, § 211(b), Aug. 10, 2010, 124 Stat. 2395, added item 909.

1986—Pub. L. 99–514, title XII, § 1202(d), Oct. 22, 1986, 100 Stat. 2531, substituted ''Deemed paid credit where domestic corporation owns 10 percent or more of voting stock of foreign corporation'' for ''Credit for corporate stockholder in foreign corporation'' in item 902.

1976—Pub. L. 94–455, title X, § 1061(b), Oct. 4, 1976, 90 Stat. 1650, added item 908.

1975—Pub. L. 94–12, title VI, § 601(c), Mar. 29, 1975, 89 Stat. 57, added item 907.

1966—Pub. L. 89–809, title I, § 106(a)(2), Nov. 13, 1966, 80 Stat. 1569, added item 906.

§ 901. Taxes of foreign countries and of possessions of United States

(a) Allowance of credit

If the taxpayer chooses to have the benefits of this subpart, the tax imposed by this chapter shall, subject to the limitation of section 904, be credited with the amounts provided in the applicable paragraph of subsection (b) plus, in the case of a corporation, the taxes deemed to have been paid under section 960. Such choice for any taxable year may be made or changed at any time before the expiration of the period prescribed for making a claim for credit or refund of the tax imposed by this chapter for such taxable year. The credit shall not be allowed against any tax treated as a tax not imposed by this chapter under section 26(b).

(b) Amount allowed

Subject to the limitation of section 904, the following amounts shall be allowed as the credit under subsection (a):

(1) Citizens and domestic corporations

In the case of a citizen of the United States and of a domestic corporation, the amount of any income, war profits, and excess profits taxes paid or accrued during the taxable year to any foreign country or to any possession of the United States; and

(2) Resident of the United States or Puerto Rico

In the case of a resident of the United States and in the case of an individual who is a bona fide resident of Puerto Rico during the entire taxable year, the amount of any such taxes paid or accrued during the taxable year to any possession of the United States; and

(3) Alien resident of the United States or Puerto Rico

In the case of an alien resident of the United States and in the case of an alien individual who is a bona fide resident of Puerto Rico during the entire taxable year, the amount of any such taxes paid or accrued during the taxable year to any foreign country; and

(4) Nonresident alien individuals and foreign corporations

In the case of any nonresident alien individual not described in section 876 and in the case of any foreign corporation, the amount determined pursuant to section 906; and

(5) Partnerships and estates

In the case of any person described in paragraph (1), (2), (3), or (4), who is a member of a partnership or a beneficiary of an estate or trust, the amount of his proportionate share of the taxes (described in such paragraph) of the partnership or the estate or trust paid or accrued during the taxable year to a foreign country or to any possession of the United States, as the case may be. Under rules or regulations prescribed by the Secretary, in the case of any foreign trust of which the settlor or another person would be treated as owner of any portion of the trust under subpart E but for section 672(f), the allocable amount of any income, war profits, and excess profits taxes imposed by any foreign country or possession of the United States on the settlor or such other person in respect of trust income.

(c) Similar credit required for certain alien residents

Whenever the President finds that—

(1) a foreign country, in imposing income, war profits, and excess profits taxes, does not allow to citizens of the United States residing in such foreign country a credit for any such taxes paid or accrued to the United States or any foreign country, as the case may be, similar to the credit allowed under subsection (b)(3),

(2) such foreign country, when requested by the United States to do so, has not acted to provide such a similar credit to citizens of the United States residing in such foreign country, and

(3) it is in the public interest to allow the credit under subsection (b)(3) to citizens or subjects of such foreign country only if it allows such a similar credit to citizens of the United States residing in such foreign country,

the President shall proclaim that, for taxable years beginning while the proclamation remains in effect, the credit under subsection (b)(3) shall be allowed to citizens or subjects of such foreign country only if such foreign country, in imposing income, war profits, and excess profits taxes, allows to citizens of the United States residing in such foreign country such a similar credit.

(d) Treatment of dividends from a DISC or former DISC

For purposes of this subpart, dividends from a DISC or former DISC (as defined in section 992(a)) shall be treated as dividends from a foreign corporation to the extent such dividends are treated under part I as income from sources without the United States.

(e) Foreign taxes on mineral income

(1) Reduction in amount allowed

Notwithstanding subsection (b), the amount of any income, war profits, and excess profits taxes paid or accrued during the taxable year to any foreign country or possession of the United States with respect to foreign mineral income from sources within such country or possession which would (but for this paragraph) be allowed under such subsection shall be reduced by the amount (if any) by which—

(A) the amount of such taxes (or, if smaller, the amount of the tax which would be computed under this chapter with respect to such income determined without the deduction allowed under section 613), exceeds

(B) the amount of the tax computed under this chapter with respect to such income.

(2) Foreign mineral income defined

For purposes of paragraph (1), the term ''foreign mineral income'' means income derived from the extraction of minerals from mines, wells, or other natural deposits, the processing of such minerals into their primary products, and the transportation, distribution, or sale of such minerals or primary products. Such term includes, but is not limited to[1] that portion of the taxpayer's distributive share of the income of partnerships attributable to foreign mineral income.

(f) Certain payments for oil or gas not considered as taxes

Notwithstanding subsection (b) and section 960, the amount of any income, or profits, and excess profits taxes paid or accrued during the taxable year to any foreign country in connection with the purchase and sale of oil or gas extracted in such country is not to be considered as tax for purposes of section 275(a) and this section if—

(1) the taxpayer has no economic interest in the oil or gas to which section 611(a) applies, and

(2) either such purchase or sale is at a price which differs from the fair market value for such oil or gas at the time of such purchase or sale.

(g) Certain taxes paid with respect to distributions from possessions corporations

(1) In general

For purposes of this chapter, any tax of a foreign country or possession of the United States which is paid or accrued with respect to any distribution from a corporation—

(A) to the extent that such distribution is attributable to periods during which such corporation is a possessions corporation, and

(B)(i) if a dividends received deduction is allowable with respect to such distribution under part VIII of subchapter B, or

(ii) to the extent that such distribution is received in connection with a liquidation or other transaction with respect to which gain or loss is not recognized,

shall not be treated as income, war profits, or excess profits taxes paid or accrued to a foreign country or possession of the United States, and no deduction shall be allowed under this title with respect to any amount so paid or accrued.

(2) Possessions corporation

For purposes of paragraph (1), a corporation shall be treated as a possessions corporation for any period during which an election under section 936 applied to such corporation, during which section 931 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1976) applied to such corporation, or during which section 957(c) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) applied to such corporation.

[(h) Repealed. Pub. L. 110–172, § 11(g)(9), Dec. 29, 2007, 121 Stat. 2490]

(i) Taxes used to provide subsidies

Any income, war profits, or excess profits tax shall not be treated as a tax for purposes of this title to the extent—

(1) the amount of such tax is used (directly or indirectly) by the country imposing such tax to provide a subsidy by any means to the taxpayer, a related person (within the meaning of section 482), or any party to the transaction or to a related transaction, and

(2) such subsidy is determined (directly or indirectly) by reference to the amount of such tax, or the base used to compute the amount of such tax.

(j) Denial of foreign tax credit, etc., with respect to certain foreign countries

(1) In general

Notwithstanding any other provision of this part—

(A) no credit shall be allowed under subsection (a) for any income, war profits, or excess profits taxes paid or accrued (or deemed paid under section 960) to any country if such taxes are with respect to income attributable to a period during which this subsection applies to such country, and

(B) subsections (a), (b), and (c) of section 904 and section 960 shall be applied separately with respect to income attributable to such a period from sources within such country.

(2) Countries to which subsection applies

(A) In general

This subsection shall apply to any foreign country—

(i) the government of which the United States does not recognize, unless such government is otherwise eligible to purchase defense articles or services under the Arms Export Control Act,

(ii) with respect to which the United States has severed diplomatic relations,

(iii) with respect to which the United States has not severed diplomatic relations but does not conduct such relations, or

(iv) which the Secretary of State has, pursuant to section 6(j) of the Export Administration Act of 1979, as amended, des-

[1] So in original. Probably should be followed by a comma.

ignated as a foreign country which repeatedly provides support for acts of international terrorisms.

(B) Period for which subsection applies

This subsection shall apply to any foreign country described in subparagraph (A) during the period—

(i) beginning on the later of—

(I) January 1, 1987, or

(II) 6 months after such country becomes a country described in subparagraph (A), and

(ii) ending on the date the Secretary of State certifies to the Secretary of the Treasury that such country is no longer described in subparagraph (A).

(3) Taxes allowed as a deduction, etc.

Sections 275 and 78 shall not apply to any tax which is not allowable as a credit under subsection (a) by reason of this subsection.

(4) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, including regulations which treat income paid through 1 or more entities as derived from a foreign country to which this subsection applies if such income was, without regard to such entities, derived from such country.

(5) Waiver of denial

(A) In general

Paragraph (1) shall not apply with respect to taxes paid or accrued to a country if the President—

(i) determines that a waiver of the application of such paragraph is in the national interest of the United States and will expand trade and investment opportunities for United States companies in such country; and

(ii) reports such waiver under subparagraph (B).

(B) Report

Not less than 30 days before the date on which a waiver is granted under this paragraph, the President shall report to Congress—

(i) the intention to grant such waiver; and

(ii) the reason for the determination under subparagraph (A)(i).

(k) Minimum holding period for certain taxes on dividends

(1) Withholding taxes

(A) In general

In no event shall a credit be allowed under subsection (a) for any withholding tax on a dividend with respect to stock in a corporation if—

(i) such stock is held by the recipient of the dividend for 15 days or less during the 31-day period beginning on the date which is 15 days before the date on which such share becomes ex-dividend with respect to such dividend, or

(ii) to the extent that the recipient of the dividend is under an obligation (whether pursuant to a short sale or otherwise) to make related payments with respect to positions in substantially similar or related property.

(B) Withholding tax

For purposes of this paragraph, the term ''withholding tax'' includes any tax determined on a gross basis; but does not include any tax which is in the nature of a prepayment of a tax imposed on a net basis.

(2) Deemed paid taxes

In the case of income, war profits, or excess profits taxes deemed paid under section 853 or 960 through a chain of ownership of stock in 1 or more corporations, no credit shall be allowed under subsection (a) for such taxes if—

(A) any stock of any corporation in such chain (the ownership of which is required to obtain credit under subsection (a) for such taxes) is held for less than the period described in paragraph (1)(A)(i), or

(B) the corporation holding the stock is under an obligation referred to in paragraph (1)(A)(ii).

(3) 45-day rule in the case of certain preference dividends

In the case of stock having preference in dividends and dividends with respect to such stock which are attributable to a period or periods aggregating in excess of 366 days, paragraph (1)(A)(i) shall be applied—

(A) by substituting ''45 days'' for ''15 days'' each place it appears, and

(B) by substituting ''91-day period'' for ''31-day period''.

(4) Exception for certain taxes paid by securities dealers

(A) In general

Paragraphs (1) and (2) shall not apply to any qualified tax with respect to any security held in the active conduct in a foreign country of a business as a securities dealer of any person—

(i) who is registered as a securities broker or dealer under section 15(a) of the Securities Exchange Act of 1934,

(ii) who is registered as a Government securities broker or dealer under section 15C(a) of such Act, or

(iii) who is licensed or authorized in such foreign country to conduct securities activities in such country and is subject to bona fide regulation by a securities regulating authority of such country.

(B) Qualified tax

For purposes of subparagraph (A), the term ''qualified tax'' means a tax paid to a foreign country (other than the foreign country referred to in subparagraph (A)) if—

(i) the dividend to which such tax is attributable is subject to taxation on a net basis by the country referred to in subparagraph (A), and

(ii) such country allows a credit against its net basis tax for the full amount of the tax paid to such other foreign country.

(C) Regulations

The Secretary may prescribe such regulations as may be appropriate to carry out this

paragraph, including regulations to prevent the abuse of the exception provided by this paragraph and to treat other taxes as qualified taxes.

(5) Certain rules to apply

For purposes of this subsection, the rules of paragraphs (3) and (4) of section 246(c) shall apply.

(6) Treatment of bona fide sales

If a person's holding period is reduced by reason of the application of the rules of section 246(c)(4) to any contract for the bona fide sale of stock, the determination of whether such person's holding period meets the requirements of paragraph (2) with respect to taxes deemed paid under section 960 shall be made as of the date such contract is entered into.

(7) Taxes allowed as deduction, etc.

Sections 275 and 78 shall not apply to any tax which is not allowable as a credit under subsection (a) by reason of this subsection.

***(l)* Minimum holding period for withholding taxes on gain and income other than dividends etc.**

(1) In general

In no event shall a credit be allowed under subsection (a) for any withholding tax (as defined in subsection (k)) on any item of income or gain with respect to any property if—

(A) such property is held by the recipient of the item for 15 days or less during the 31-day period beginning on the date which is 15 days before the date on which the right to receive payment of such item arises, or

(B) to the extent that the recipient of the item is under an obligation (whether pursuant to a short sale or otherwise) to make related payments with respect to positions in substantially similar or related property.

This paragraph shall not apply to any dividend to which subsection (k) applies.

(2) Exception for taxes paid by dealers

(A) In general

Paragraph (1) shall not apply to any qualified tax with respect to any property held in the active conduct in a foreign country of a business as a dealer in such property.

(B) Qualified tax

For purposes of subparagraph (A), the term ''qualified tax'' means a tax paid to a foreign country (other than the foreign country referred to in subparagraph (A)) if—

(i) the item to which such tax is attributable is subject to taxation on a net basis by the country referred to in subparagraph (A), and

(ii) such country allows a credit against its net basis tax for the full amount of the tax paid to such other foreign country.

(C) Dealer

For purposes of subparagraph (A), the term ''dealer'' means—

(i) with respect to a security, any person to whom paragraphs (1) and (2) of subsection (k) would not apply by reason of paragraph (4) thereof, and

(ii) with respect to any other property, any person with respect to whom such property is described in section 1221(a)(1).

(D) Regulations

The Secretary may prescribe such regulations as may be appropriate to carry out this paragraph, including regulations to prevent the abuse of the exception provided by this paragraph and to treat other taxes as qualified taxes.

(3) Exceptions

The Secretary may by regulation provide that paragraph (1) shall not apply to property where the Secretary determines that the application of paragraph (1) to such property is not necessary to carry out the purposes of this subsection.

(4) Certain rules to apply

Rules similar to the rules of paragraphs (5), (6), and (7) of subsection (k) shall apply for purposes of this subsection.

(5) Determination of holding period

Holding periods shall be determined for purposes of this subsection without regard to section 1235 or any similar rule.

(m) Denial of foreign tax credit with respect to foreign income not subject to United States taxation by reason of covered asset acquisitions

(1) In general

In the case of a covered asset acquisition, the disqualified portion of any foreign income tax determined with respect to the income or gain attributable to the relevant foreign assets—

(A) shall not be taken into account in determining the credit allowed under subsection (a), and

(B) in the case of a foreign income tax paid by a foreign corporation, shall not be taken into account for purposes of section 960.

(2) Covered asset acquisition

For purposes of this section, the term ''covered asset acquisition'' means—

(A) a qualified stock purchase (as defined in section 338(d)(3)) to which section 338(a) applies,

(B) any transaction which—

(i) is treated as an acquisition of assets for purposes of this chapter, and

(ii) is treated as the acquisition of stock of a corporation (or is disregarded) for purposes of the foreign income taxes of the relevant jurisdiction,

(C) any acquisition of an interest in a partnership which has an election in effect under section 754, and

(D) to the extent provided by the Secretary, any other similar transaction.

(3) Disqualified portion

For purposes of this section—

(A) In general

The term ''disqualified portion'' means, with respect to any covered asset acquisi-

tion, for any taxable year, the ratio (expressed as a percentage) of—

(i) the aggregate basis differences (but not below zero) allocable to such taxable year under subparagraph (B) with respect to all relevant foreign assets, divided by

(ii) the income on which the foreign income tax referred to in paragraph (1) is determined (or, if the taxpayer fails to substantiate such income to the satisfaction of the Secretary, such income shall be determined by dividing the amount of such foreign income tax by the highest marginal tax rate applicable to such income in the relevant jurisdiction).

(B) Allocation of basis difference

For purposes of subparagraph (A)(i)—

(i) In general

The basis difference with respect to any relevant foreign asset shall be allocated to taxable years using the applicable cost recovery method under this chapter.

(ii) Special rule for disposition of assets

Except as otherwise provided by the Secretary, in the case of the disposition of any relevant foreign asset—

(I) the basis difference allocated to the taxable year which includes the date of such disposition shall be the excess of the basis difference with respect to such asset over the aggregate basis difference with respect to such asset which has been allocated under clause (i) to all prior taxable years, and

(II) no basis difference with respect to such asset shall be allocated under clause (i) to any taxable year thereafter.

(C) Basis difference

(i) In general

The term ''basis difference'' means, with respect to any relevant foreign asset, the excess of—

(I) the adjusted basis of such asset immediately after the covered asset acquisition, over

(II) the adjusted basis of such asset immediately before the covered asset acquisition.

(ii) Built-in loss assets

In the case of a relevant foreign asset with respect to which the amount described in clause (i)(II) exceeds the amount described in clause (i)(I), such excess shall be taken into account under this subsection as a basis difference of a negative amount.

(iii) Special rule for section 338 elections

In the case of a covered asset acquisition described in paragraph (2)(A), the covered asset acquisition shall be treated for purposes of this subparagraph as occurring at the close of the acquisition date (as defined in section 338(h)(2)).

(4) Relevant foreign assets

For purposes of this section, the term ''relevant foreign asset'' means, with respect to any covered asset acquisition, any asset (including any goodwill, going concern value, or other intangible) with respect to such acquisition if income, deduction, gain, or loss attributable to such asset is taken into account in determining the foreign income tax referred to in paragraph (1).

(5) Foreign income tax

For purposes of this section, the term ''foreign income tax'' means any income, war profits, or excess profits tax paid or accrued to any foreign country or to any possession of the United States.

(6) Taxes allowed as a deduction, etc.

Sections 275 and 78 shall not apply to any tax which is not allowable as a credit under subsection (a) by reason of this subsection.

(7) Regulations

The Secretary may issue such regulations or other guidance as is necessary or appropriate to carry out the purposes of this subsection, including to exempt from the application of this subsection certain covered asset acquisitions, and relevant foreign assets with respect to which the basis difference is de minimis.

(n) Cross reference

(1) For deductions of income, war profits, and excess profits taxes paid to a foreign country or a possession of the United States, see sections 164 and 275.

(2) For right of each partner to make election under this section, see section 703(b).

(3) For right of estate or trust to the credit for taxes imposed by foreign countries and possessions of the United States under this section, see section 642(a).

(4) For reduction of credit for failure of a United States person to furnish certain information with respect to a foreign corporation or partnership controlled by him, see section 6038.

(Aug. 16, 1954, ch. 736, 68A Stat. 285; Pub. L. 86–780, § 3(a), (b), Sept. 14, 1960, 74 Stat. 1013; Pub. L. 87–834, §§ 9(d)(3), 12(b)(1), Oct. 16, 1962, 76 Stat. 1001, 1031; Pub. L. 88–272, title II, § 207(b)(7), Feb. 26, 1964, 78 Stat. 42; Pub. L. 89–384, § 1(c)(2), Apr. 8, 1966, 80 Stat. 102; Pub. L. 89–809, title I, § 106(a)(4), (5), (b)(1), (2), Nov. 13, 1966, 80 Stat. 1569; Pub. L. 91–172, title III, § 301(b)(9), title V, § 506(a), Dec. 30, 1969, 83 Stat. 585, 634; Pub. L. 92–178, title V, § 502(b)(1), Dec. 10, 1971, 85 Stat. 549; Pub. L. 93–406, title II, §§ 2001(g)(2)(C), 2002(g)(3), 2005(c)(5), Sept. 2, 1974, 88 Stat. 957, 968, 991; Pub. L. 94–12, title VI, § 601(b), Mar. 29, 1975, 89 Stat. 57; Pub. L. 94–455, title X, §§ 1031(b)(1), 1051(d), title XIX, § 1901(b)(1)(H)(iii), (37)(A), Oct. 4, 1976, 90 Stat. 1622, 1645, 1791, 1803; Pub. L. 95–600, title VII, § 701(u)(1)(A), (B), Nov. 6, 1978, 92 Stat. 2912; Pub. L. 97–248, title II, § 201(d)(8)(A), formerly § 201(c)(8)(A), § 265(b)(2)(A)(iv), Sept. 3, 1982, 96 Stat. 420, 547, renumbered § 201(d)(8)(A), Pub. L. 97–448, title III, § 306(a)(1)(A)(i), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 98–369, div. A, title IV, § 474(r)(20), title VI, § 612(e)(1), title VII, § 713(c)(1)(C), title VIII, § 801(d)(1), July 18, 1984, 98 Stat. 843, 912, 957, 995; Pub. L. 99–509, title VIII, § 8041(a), Oct. 21, 1986, 100 Stat. 1962; Pub. L. 99–514, title I, § 112(b)(3), title XII, § 1204(a), title XVIII, § 1876(p)(2), Oct. 22, 1986, 100 Stat. 2109, 2532, 2902; Pub. L. 100–203,

title X, §10231(a), (b), Dec. 22, 1987, 101 Stat. 1330–418, 1330–419; Pub. L. 100–647, title I, §1012(j), title II, §2003(c)(1), Nov. 10, 1988, 102 Stat. 3512, 3598; Pub. L. 103–149, §4(b)(8)(A), Nov. 23, 1993, 107 Stat. 1505; Pub. L. 104–188, title I, §1904(b)(2), Aug. 20, 1996, 110 Stat. 1912; Pub. L. 105–34, title X, §1053(a), title XI, §1142(e)(4), Aug. 5, 1997, 111 Stat. 941, 983; Pub. L. 105–206, title VI, §6010(k)(3), July 22, 1998, 112 Stat. 815; Pub. L. 106–200, title VI, §601(a), May 18, 2000, 114 Stat. 305; Pub. L. 108–311, title IV, §406(g), Oct. 4, 2004, 118 Stat. 1190; Pub. L. 108–357, title IV, §405(b), title VIII, §832(a), (b), Oct. 22, 2004, 118 Stat. 1498, 1587, 1588; Pub. L. 109–135, title IV, §403(aa)(2), Dec. 21, 2005, 119 Stat. 2630; Pub. L. 110–172, §11(g)(9), Dec. 29, 2007, 121 Stat. 2490; Pub. L. 111–226, title II, §212(a), Aug. 10, 2010, 124 Stat. 2396; Pub. L. 115–97, title I, §14301(c)(7)–(14), Dec. 22, 2017, 131 Stat. 2222, 2223.)

REFERENCES IN TEXT

The date of the enactment of the Tax Reform Act of 1976, referred to in subsec. (g)(2), is the date of enactment of Pub. L. 94–455, which was approved Oct. 4, 1976.

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (g)(2), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

The Arms Export Control Act, referred to in subsec. (j)(2)(A)(i), is Pub. L. 90–269, Oct. 22, 1968, 82 Stat. 1320, as amended, which is classified principally to chapter 39 (§2751 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.

Section 6(j) of the Export Administration Act of 1979, referred to in subsec. (j)(2)(A)(iv), is classified to section 4605(j) of Title 50, War and National Defense.

Sections 15(a) and 15C(a) of the Securities Exchange Act of 1934, referred to in subsec. (k)(4)(A)(i), (ii), are classified to sections 78*o*(a) and 78*o*–5(a), respectively, of Title 15, Commerce and Trade.

AMENDMENTS

2017—Subsec. (a). Pub. L. 115–97, §14301(c)(7), substituted ''section 960'' for ''sections 902 and 960''.

Subsec. (e)(2). Pub. L. 115–97, §14301(c)(8), substituted ''but is not limited to that portion'' for ''but is not limited to—

''(A) dividends received from a foreign corporation in respect of which taxes are deemed paid by the taxpayer under section 902, to the extent such dividends are attributable to foreign mineral income, and

''(B) that portion''.

Subsec. (f). Pub. L. 115–97, §14301(c)(9), substituted ''section 960'' for ''sections 902 and 960'' in introductory provisions.

Subsec. (j)(1)(A). Pub. L. 115–97, §14301(c)(10), struck out ''902 or'' after ''under section''.

Subsec. (j)(1)(B). Pub. L. 115–97, §14301(c)(11), substituted ''section 960'' for ''sections 902 and 960''.

Subsec. (k)(2). Pub. L. 115–97, §14301(c)(12), struck out '', 902,'' after ''under section 853'' in introductory provisions.

Subsec. (k)(6). Pub. L. 115–97, §14301(c)(13), struck out ''902 or'' after ''under section''.

Subsec. (m)(1)(B). Pub. L. 115–97, §14301(c)(14), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''in the case of a foreign income tax paid by a section 902 corporation (as defined in section 909(d)(5)), shall not be taken into account for purposes of section 902 or 960.''

2010—Subsecs. (m), (n). Pub. L. 111–226 added subsec. (m) and redesignated former subsec. (m) as (n).

2007—Subsec. (h). Pub. L. 110–172 struck out subsec. (h), which read as follows: ''No credit shall be allowed under this section for any income, war profits, and excess profits taxes paid or accrued with respect to the foreign trade income (within the meaning of section 923(b)) of a FSC, other than section 923(a)(2) non-exempt income (within the meaning of section 927(d)(6)).''

2005—Subsec. (*l*)(2)(C)(i). Pub. L. 109–135 struck out ''if such security were stock'' after ''paragraph (4) thereof''.

2004—Subsec. (b)(5). Pub. L. 108–357, §405(b), substituted ''any person'' for ''any individual''.

Subsec. (k). Pub. L. 108–357, §832(b), inserted ''on dividends'' after ''taxes'' in heading.

Subsec. (k)(1)(A)(i). Pub. L. 108–311, §406(g)(1), substituted ''31-day period'' for ''30-day period''.

Subsec. (k)(3)(B). Pub. L. 108–311, §406(g)(2), substituted ''91-day period'' for ''90-day period'' and ''31-day period'' for ''30-day period''.

Subsecs. (*l*), (m). Pub. L. 108–357, §832(a), added subsec. (*l*) and redesignated former subsec. (*l*) as (m).

2000—Subsec. (j)(5). Pub. L. 106–200 added par. (5).

1998—Subsec. (k)(4)(A). Pub. L. 105–206 substituted ''business as a securities dealer'' for ''securities business'' in introductory provisions.

1997—Subsec. (k). Pub. L. 105–34, §1053(a), added subsec. (k). Former subsec. (k) redesignated (*l*).

Subsec. (*l*). Pub. L. 105–34, §1053(a), redesignated subsec. (k) as (*l*).

Subsec. (*l*)(4). Pub. L. 105–34, §1142(e)(4), which directed amendment of subsec. (k)(4) by substituting ''foreign corporation or partnership'' for ''foreign corporation'', was executed to subsec. (*l*)(4) to reflect the probable intent of Congress and the redesignation of subsec. (k) as (*l*) by Pub. L. 105–34, §1053(a). See above.

1996—Subsec. (b)(5). Pub. L. 104–188 inserted at end ''Under rules or regulations prescribed by the Secretary, in the case of any foreign trust of which the settlor or another person would be treated as owner of any portion of the trust under subpart E but for section 672(f), the allocable amount of any income, war profits, and excess profits taxes imposed by any foreign country or possession of the United States on the settlor or such other person in respect of trust income.''

1993—Subsec. (j)(2)(C). Pub. L. 103–149 struck out heading and text of subpar. (C). Text read as follows:

''(i) IN GENERAL.—In addition to any period during which this subsection would otherwise apply to South Africa, this subsection shall apply to South Africa during the period—

''(I) beginning on January 1, 1988, and

''(II) ending on the date the Secretary of State certifies to the Secretary of the Treasury that South Africa meets the requirements of section 311(a) of the Comprehensive Anti-Apartheid Act of 1986 (as in effect on the date of the enactment of this subparagraph).

''(ii) SOUTH AFRICA DEFINED.—For purposes of clause (i), the term 'South Africa' has the meaning given to such term by paragraph (6) of section 3 of the Comprehensive Anti-Apartheid Act of 1986 (as so in effect).''

1988—Subsec. (g)(2). Pub. L. 100–647, §1012(j), inserted ''(as in effect on the day before the date of the enactment of the Tax Reform Act of 1986)'' after ''section 957(c)''.

Subsec. (j)(3). Pub. L. 100–647, §2003(c)(1), inserted '', etc.'' at end of heading and substituted ''Sections 275 and 78'' for ''Section 275'' in text.

1987—Subsec. (j)(1). Pub. L. 100–203, §10231(b), substituted ''during which'' for ''to which'' in subpar. (A) and ''such country'' for ''any country so identified'' in subpar. (B).

Subsec. (j)(2)(C). Pub. L. 100–203, §10231(a), added subpar. (C).

1986—Subsec. (h). Pub. L. 99–514, §1876(p)(2), inserted closing parenthesis after ''section 927(d)(6)''.

Subsec. (i). Pub. L. 99–514, §1204(a), added subsec. (i). Former subsec. (i) redesignated (j).

Subsec. (i)(3). Pub. L. 99–514, §112(b)(3), substituted ''section 642(a)'' for ''section 642(a)(1)''.

Subsec. (j). Pub. L. 99–509 added subsec. (j). Former subsec. (j) redesignated (k).

Pub. L. 99–514, §1204(a), redesignated former subsec. (i) as (j).

Subsec. (k). Pub. L. 99–509 redesignated former subsec. (j) as (k).

1984—Subsec. (a). Pub. L. 98–369, § 612(e)(1), substituted ''section 26(b)'' for ''section 25(b)''.

Pub. L. 98–369, § 474(r)(20), substituted ''The credit shall not be allowed against any tax treated as a tax not imposed by this chapter under section 25(b)'' for ''The credit shall not be allowed against the tax imposed by section 56 (relating to corporate minimum tax), against the tax imposed for the taxable year under section 72(m)(5)(B) (relating to 10 percent tax on premature distributions to owner-employees) section 72(q)(1) (relating to 5-percent tax on premature distributions under annuity contracts),, against the tax imposed by section 402(e) (relating to tax on lump sum distributions), against the tax imposed for the taxable year by section 408(f) (relating to additional tax on income from certain retirement accounts), against the tax imposed by section 531 (relating to the tax on accumulated earnings), against the additional tax imposed for the taxable year under section 1351 (relating to recoveries of foreign expropriation losses), or against the personal holding company tax imposed by section 541''.

Pub. L. 98–369, § 713(c)(1)(C), substituted ''premature distributions to key employees'' for ''premature distributions to owner-employees''.

Subsecs. (h), (i). Pub. L. 98–369, § 801(d)(1), added subsec. (h) and redesignated former subsec. (h) as (i).

1982—Subsec. (a). Pub. L. 97–248 substituted ''(relating to corporate minimum tax)'' for ''(relating to minimum tax for tax preferences)'' after ''section 56'', and inserted ''section 72(q)(1) (relating to 5-percent tax on premature distributions under annuity contracts),'' after ''owner employees)''.

1978—Subsec. (g)(1). Pub. L. 95–600, § 701(u)(1)(A), inserted provisions prohibiting a deduction for any tax of a foreign country or possession of the United States which is paid or accrued with respect to any distribution from a corporation if a dividends received deduction is allowable with respect to that distribution from a corporation under part VIII of subchapter B.

Subsec. (g)(2). Pub. L. 95–600, § 701(u)(1)(B), inserted provision relating to application of section 957(c) of this title.

1976—Subsec. (a). Pub. L. 94–455, §§ 1031(b)(1), 1901(b)(37)(A), struck out ''under section 1333 (relating to war loss recoveries) or'' after ''imposed for the taxable year'' and ''applicable'' after ''subject to the''.

Subsec. (b). Pub. L. 94–455, § 1031(b)(1), struck out ''applicable'' after ''Subject to the''.

Subsec. (d). Pub. L. 94–455, § 1051(d)(1), struck out provisions relating to corporations receiving a large percentage of their gross receipts from sources within a possession of the United States and a corporation organized under the China Trade Act, 1922 (15 U.S.C. chapter 4).

Subsecs. (g), (h). Pub. L. 94–455, §§ 1051(d)(2), 1901(b)(1)(H)(iii), added subsec. (g), redesignated former subsec. (g) as (h), and, as redesignated, substituted ''section 642(a)(1)'' for ''section 642(a)(2)'' in par. (3).

1975—Subsecs. (f), (g). Pub. L. 94–12 added subsec. (f) and redesignated former subsec. (f) as (g).

1974—Subsec. (a). Pub. L. 93–460 inserted references to the tax imposed for the taxable year under section 72(m)(5)(B) (relating to 10 percent tax on premature distributions to owner-employees), the tax imposed for the taxable year by section 408(f) (relating to additional tax on income from certain retirement accounts), and the tax imposed by section 402(e) (relating to tax on lump sum distributions).

1971—Subsec. (d). Pub. L. 92–178 inserted provision for treatment of dividends from a DISC or former DISC as dividends from a foreign corporation to the extent such dividends are treated under part I as income from sources without the United States.

1969—Subsec. (a). Pub. L. 91–172, § 301(b)(9), inserted ''against the tax imposed by section 56 (relating to minimum tax for tax preferences),'' after ''not be allowed'' in last sentence.

Subsecs. (e), (f). Pub. L. 91–172, § 506(a), added subsec. (e) and redesignated former subsec. (e) as (f).

1966—Subsec. (a). Pub. L. 89–384 added the additional tax imposed under section 1351 (relating to recoveries of foreign expropriation losses) to the list of taxes against which the foreign tax credit may not be allowed.

Subsec. (b)(3). Pub. L. 89–809, § 106(b)(1), struck out provisions which made the allowance of the credit dependent upon whether the foreign country of which the alien resident was a citizen or subject, in imposing such taxes, allowed a similar credit to citizens of the United States residing in such country.

Subsec. (b)(4), (5). Pub. L. 89–809, § 106(a)(4), (5), added par. (4), redesignated former par. (4) as (5) and inserted reference to par. (4).

Subsecs. (c) to (e). Pub. L. 89–809, § 106(b)(2), added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

1964—Subsec. (d)(1). Pub. L. 88–272 inserted reference to section 275.

1962—Subsec. (a). Pub. L. 87–834, § 12(b)(1), substituted ''sections 902 and 960'' for ''section 902''.

Subsec. (d)(4). Pub. L. 87–834, § 9(d)(3), added par. (4).

1960—Subsec. (a). Pub. L. 86–780, § 3(a), (b), inserted ''applicable'' before ''limitation'' and substituted ''Such choice for any taxable year may be made or changed at any time before the expiration of the period prescribed for making a claim for credit or refund of the tax imposed by this chapter for such taxable year'' for ''Such choice may be made or changed at any time prior to the expiration of the period prescribed for making a claim for credit or refund of the tax against which the credit is allowable.''

Subsec. (b). Pub. L. 86–780, § 3(b), inserted ''applicable'' before ''limitation''.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–97 applicable to taxable years of foreign corporations beginning after Dec. 31, 2017, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, see section 14301(d) of Pub. L. 115–97, set out as a note under section 78 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–226, title II, § 212(b), Aug. 10, 2010, 124 Stat. 2398, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to covered asset acquisitions (as defined in section 901(m)(2) of the Internal Revenue Code of 1986, as added by this section) after December 31, 2010.

''(2) TRANSITION RULE.—The amendments made by this section shall not apply to any covered asset acquisition (as so defined) with respect to which the transferor and the transferee are not related if such acquisition is—

''(A) made pursuant to a written agreement which was binding on January 1, 2011, and at all times thereafter,

''(B) described in a ruling request submitted to the Internal Revenue Service on or before July 29, 2010, or

''(C) described on or before January 1, 2011, in a public announcement or in a filing with the Securities and Exchange Commission.

''(3) RELATED PERSONS.—For purposes of this subsection, a person shall be treated as related to another person if the relationship between such persons is described in section 267 or 707(b) of the Internal Revenue Code of 1986.''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENTS

Pub. L. 108–357, title IV, § 405(c), Oct. 22, 2004, 118 Stat. 1498, provided that: ''The amendments made by this

section [amending this section and section 902 of this title] shall apply to taxes of foreign corporations for taxable years of such corporations beginning after the date of the enactment of this Act [Oct. 22, 2004].''

Pub. L. 108–357, title VIII, §832(c), Oct. 22, 2004, 118 Stat. 1588, provided that: ''The amendments made by this section [amending this section] shall apply to amounts paid or accrued more than 30 days after the date of the enactment of this Act [Oct. 22, 2004].''

Amendment by Pub. L. 108–311 effective as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 406(h) of Pub. L. 108–311, set out as a note under section 55 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–200, title VI, §601(b), May 18, 2000, 114 Stat. 305, provided that: ''The amendment made by this section [amending this section] shall apply on or after February 1, 2001.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 1053(a) of Pub. L. 105–34 applicable to dividends paid or accrued more than 30 days after Aug. 5, 1997, see section 1053(c) of Pub. L. 105–34, set out as a note under section 853 of this title.

Amendment by section 1142(e)(4) of Pub. L. 105–34 applicable to annual accounting periods beginning after Aug. 5, 1997, see section 1142(f) of Pub. L. 105–34, set out as a note under section 318 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective Aug. 20, 1996, with exception for certain trusts, see section 1904(d) of Pub. L. 104–188, set out as a note under section 643 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1012(j) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title II, §2003(c)(2), Nov. 10, 1988, 102 Stat. 3598, provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect on January 1, 1987.''

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title X, §10231(c), Dec. 22, 1987, 101 Stat. 1330–419, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1987.''

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 112(b)(3) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Pub. L. 99–514, title XII, §1204(b), Oct. 22, 1986, 100 Stat. 2532, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to foreign taxes paid or accrued in taxable years beginning after December 31, 1986.''

Amendment by section 1876(p)(2) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Pub. L. 99–509, title VIII, §8041(c), Oct. 21, 1986, 100 Stat. 1963, provided that: ''The amendments made by this section [amending this section and section 952 of this title] shall take effect on January 1, 1987.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(20) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 612(e)(1) of Pub. L. 98–369 applicable to interest paid or accrued after Dec. 31, 1984, on indebtedness incurred after Dec. 31, 1984, see section 612(g) of Pub. L. 98–369, set out as an Effective Date note under section 25 of this title.

Amendment by section 713(c)(1)(C) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

Amendment by section 801(d)(1) of Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 201(d)(8)(A) of Pub. L. 97–248 applicable to taxable years beginning after Dec. 31, 1982, see section 201(e)(1) of Pub. L. 97–248, set out as a note under section 5 of this title.

Amendment by section 265(b)(2)(A)(iv) of Pub. L. 97–248 applicable to distributions after Dec. 31, 1982, see section 265(c)(2) of Pub. L. 97–248, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title VII, §701(u)(1)(C), Nov. 6, 1978, 92 Stat. 2913, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply as if included in section 901(g) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] as added by section 1051(d)(2) of the Tax Reform Act of 1976 [section 1051(d)(2) of Pub. L. 94–455]. The amendments made by subparagraph (B) [amending this section] shall apply to distributions made after the date of the enactment of this Act [Nov. 6, 1978] in taxable years ending after such date.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1031(b)(1) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, with certain exceptions, see section 1031(c) of Pub. L. 94–455, set out as a note under section 904 of this title.

Amendment by section 1051(d)(1) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, with certain exceptions, and the provisions of subsec. (g) not to apply to any tax imposed by a possession of the United States with respect to the complete liquidation occurring before Jan. 1, 1979, of a corporation to the extent that such tax is attributable to earnings and profits accumulated by such corporation during periods ending before Jan. 1, 1976, see section 1051(i) of Pub. L. 94–455, set out as a note under section 27 of this title.

Amendment by section 1901(b)(1)(H)(iii), (37)(A) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–12 applicable to taxable years ending after Dec. 31, 1974, see section 601(d) of Pub. L. 94–12, set out as an Effective Date note under section 907 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by section 2001(g)(2)(C) of Pub. L. 93–406, which inserted reference to the tax imposed for the tax-

able year under section 72(m)(5)(B) (relating to 10 percent tax on premature distributions to owner-employees), applicable to distributions made in taxable years beginning after Dec. 31, 1975, see section 2001(i)(4) of Pub. L. 93–406, set out as a note under section 72 of this title.

Amendment by section 2002(g)(3) of Pub. L. 93–406, which inserted reference to the tax imposed for the taxable year by section 408(f) (relating to additional tax on income from certain retirement accounts), effective on Jan. 1, 1975, see section 2002(i)(2) of Pub. L. 93–406, set out as an Effective Date note under section 4973 of this title.

Amendment by section 2005(c)(5) of Pub. L. 93–406, which inserted reference to the tax imposed for the taxable year under section 402(e) (relating to tax on lump sum distributions), applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after Dec. 31, 1973, see section 2005(d) of Pub. L. 93–406, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–178 applicable with respect to taxable years ending after Dec. 31, 1971, except that a corporation may not be a DISC for any taxable year beginning before Jan. 1, 1972, see section 507 of Pub. L. 92–178, set out as an Effective Date note under section 991 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 301(b)(9) of Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1969, see section 301(c) of Pub. L. 91–172, set out as a note under section 5 of this title.

Pub. L. 91–172, title V, § 506(c), Dec. 30, 1969, 83 Stat. 635, provided that: ''The amendments made by this section [amending this section and section 904 of this title] shall apply with respect to taxable years beginning after December 31, 1969.''

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by section 106(a)(4), (5) of Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 106(a)(6) of Pub. L. 89–809, set out as a note under section 874 of this title.

Pub. L. 89–809, title I, § 106(b)(4), Nov. 13, 1966, 80 Stat. 1570, provided that: ''The amendments made by this subsection (other than paragraph (3)) [amending this section] shall apply with respect to taxable years beginning after December 31, 1966. The amendment made by paragraph (3) [amending section 2014 of this title] shall apply with respect to estates of decedents dying after the date of enactment of this Act [Nov. 13, 1966].''

Amendment by Pub. L. 89–384 applicable with respect to amounts received after December 31, 1964, in respect of foreign expropriation losses (as defined in section 1351(b) of this title) sustained after December 31, 1958, see section 2 of Pub. L. 89–384, set out as an Effective Date note under section 1351 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 207(c) of Pub. L. 88–272, set out as a note under section 164 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by section 9(d)(3) of Pub. L. 87–834 applicable in respect of any distribution received by a domestic corporation after Dec. 31, 1964, and in respect of any distribution received by a domestic corporation before Jan. 1, 1965, in a taxable year of such corporation beginning after Dec. 31, 1962, but only to the extent that such distribution is made out of the accumulated profits of a foreign corporation for a taxable year (of such foreign corporation) beginning after Dec. 31, 1962, see section 9(e) of Pub. L. 87–834, set out as an Effective Date note under section 78 of this title.

Amendment by section 12(b)(1) of Pub. L. 87–834 applicable with respect to taxable years of foreign corporations beginning after Dec. 31, 1962, and to taxable years of United States shareholders within which or with which such taxable years of such foreign corporations end, see section 12(c) of Pub. L. 87–834, set out as an Effective Date note under section 951 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by section 3(a) of Pub. L. 86–780 applicable to taxable years beginning after Dec. 31, 1960, and amendment by section 3(b) of Pub. L. 86–780 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 4 of Pub. L. 86–780, set out as a note under section 904 of this title.

EFFECT OF AMENDMENT BY PUB. L. 103–149 ON REVENUE RULING 92–62

Amendment by section 4(b)(8)(A) of Pub. L. 103–149 not to be construed as affecting any of the transitional rules contained in Revenue Ruling 92–62 which apply by reason of the termination of the period for which subsec. (j) of this section was applicable to South Africa, see section 4(b)(8)(B) of Pub. L. 103–149 set out in a Repeal of Chapter; South African Democratic Transition Support note under section 5001 of Title 22, Foreign Relations and Intercourse.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[§ 902. Repealed. Pub. L. 115–97, title I, § 14301(a), Dec. 22, 2017, 131 Stat. 2221]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 286; Pub. L. 86–780, § 6(b)(2), Sept. 14, 1960, 74 Stat. 1016; Pub. L. 87–834, § 9(a), Oct. 16, 1962, 76 Stat. 999; Pub. L. 91–684, §§ 1, 2, Jan. 12, 1971, 84 Stat. 2068, 2069; Pub. L. 94–12, title VI, § 602(c)(6), Mar. 29, 1975, 89 Stat. 59; Pub. L. 94–455, title X, § 1033(a), Oct. 4, 1976, 90 Stat. 1626; Pub. L. 99–514, title XII, § 1202(a), Oct. 22, 1986, 100 Stat. 2528; Pub. L. 100–647, title I, § 1012(b)(1), (2), Nov. 10, 1988, 102 Stat. 3496; Pub. L. 105–34, title XI, §§ 1113(a), 1163(a), Aug. 5, 1997, 111 Stat. 970, 987; Pub. L. 108–357, title IV, § 405(a), Oct. 22, 2004, 118 Stat. 1498, related to deemed paid credit where domestic corporation owns 10 percent or more of voting stock of foreign corporation.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years of foreign corporations beginning after Dec. 31, 2017, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, see section 14301(d) of Pub. L. 115–97, set out as an Effective Date of 2017 Amendment note under section 78 of this title.

§ 903. Credit for taxes in lieu of income, etc., taxes

For purposes of this part and of sections 164(a) and 275(a), the term ''income, war profits, and excess profits taxes'' shall include a tax paid in lieu of a tax on income, war profits, or excess profits otherwise generally imposed by any foreign country or by any possession of the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 287; Pub. L. 88–272, title II, § 207(b)(8), Feb. 26, 1964, 78 Stat. 42; Pub. L. 100–647, title I, § 1012(v)(9), Nov. 10,

1988, 102 Stat. 3530; Pub. L. 106–519, § 4(4), Nov. 15, 2000, 114 Stat. 2433; Pub. L. 108–357, title I, § 101(b)(7), Oct. 22, 2004, 118 Stat. 1423.)

AMENDMENTS

2004—Pub. L. 108–357 substituted ''164(a)'' for ''114, 164(a),''.

2000—Pub. L. 106–519 substituted ''114, 164(a),'' for ''164(a)''.

1988—Pub. L. 100–647 substituted ''this part'' for ''this subpart''.

1964—Pub. L. 88–272 substituted ''sections 164(a) and 275(a)'' for ''section 164(b)''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to transactions after Dec. 31, 2004, see section 101(c) of Pub. L. 108–357, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–519 applicable to transactions after Sept. 30, 2000, with special rules relating to existing foreign sales corporations, see section 5 of Pub. L. 106–519, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 207(c) of Pub. L. 88–272, set out as a note under section 164 of this title.

§ 904. Limitation on credit

(a) Limitation

The total amount of the credit taken under section 901(a) shall not exceed the same proportion of the tax against which such credit is taken which the taxpayer's taxable income from sources without the United States (but not in excess of the taxpayer's entire taxable income) bears to his entire taxable income for the same taxable year.

(b) Taxable income for purpose of computing limitation

(1) Personal exemptions

For purposes of subsection (a), the taxable income in the case of an individual, estate, or trust shall be computed without any deduction for personal exemptions under section 151 or 642(b).

(2) Capital gains

For purposes of this section—

(A) In general

Taxable income from sources outside the United States shall include gain from the sale or exchange of capital assets only to the extent of foreign source capital gain net income.

(B) Special rules where capital gain rate differential

In the case of any taxable year for which there is a capital gain rate differential—

(i) in lieu of applying subparagraph (A), the taxable income from sources outside the United States shall include gain from the sale or exchange of capital assets only in an amount equal to foreign source capital gain net income reduced by the rate differential portion of foreign source net capital gain,

(ii) the entire taxable income shall include gain from the sale or exchange of capital assets only in an amount equal to capital gain net income reduced by the rate differential portion of net capital gain, and

(iii) for purposes of determining taxable income from sources outside the United States, any net capital loss (and any amount which is a short-term capital loss under section 1212(a)) from sources outside the United States to the extent taken into account in determining capital gain net income for the taxable year shall be reduced by an amount equal to the rate differential portion of the excess of net capital gain from sources within the United States over net capital gain.

(C) Coordination with capital gains rates

The Secretary may by regulations modify the application of this paragraph and paragraph (3) to the extent necessary to properly reflect any capital gain rate differential under section 1(h) and the computation of net capital gain.

(3) Definitions

For purposes of this subsection—

(A) Foreign source capital gain net income

The term ''foreign source capital gain net income'' means the lesser of—

(i) capital gain net income from sources without the United States, or

(ii) capital gain net income.

(B) Foreign source net capital gain

The term ''foreign source net capital gain'' means the lesser of—

(i) net capital gain from sources without the United States, or

(ii) net capital gain.

(C) Section 1231 gains

The term ''gain from the sale or exchange of capital assets'' includes any gain so treated under section 1231.

(D) Capital gain rate differential

There is a capital gain rate differential for any year if subsection (h) of section 1 applies to such taxable year.

(E) Rate differential portion

The rate differential portion of foreign source net capital gain, net capital gain, or the excess of net capital gain from sources within the United States over net capital gain, as the case may be, is the same proportion of such amount as—

(i) the excess of—

(I) the highest rate of tax set forth in subsection (a), (b), (c), (d), or (e) of section 1 (whichever applies), over

(II) the alternative rate of tax determined under section 1(h), bears to

(ii) that rate referred to in subclause (I).

(4) Coordination with section 936

For purposes of subsection (a), in the case of a corporation, the taxable income shall not include any portion thereof taken into account for purposes of the credit (if any) allowed by section 936 (without regard to subsections (a)(4) and (i) thereof).

(5) Treatment of dividends for which deduction is allowed under section 245A

For purposes of subsection (a), in the case of a domestic corporation which is a United States shareholder with respect to a specified 10-percent owned foreign corporation, such shareholder's taxable income from sources without the United States (and entire taxable income) shall be determined without regard to—

(A) the foreign-source portion of any dividend received from such foreign corporation, and

(B) any deductions properly allocable or apportioned to—

(i) income (other than amounts includible under section 951(a)(1) or 951A(a)) with respect to stock of such specified 10-percent owned foreign corporation, or

(ii) such stock to the extent income with respect to such stock is other than amounts includible under section 951(a)(1) or 951A(a).

Any term which is used in section 245A and in this paragraph shall have the same meaning for purposes of this paragraph as when used in such section.

(c) Carryback and carryover of excess tax paid

Any amount by which all taxes paid or accrued to foreign countries or possessions of the United States for any taxable year for which the taxpayer chooses to have the benefits of this subpart exceed the limitation under subsection (a) shall be deemed taxes paid or accrued to foreign countries or possessions of the United States in the first preceding taxable year and in any of the first 10 succeeding taxable years, in that order and to the extent not deemed taxes paid or accrued in a prior taxable year, in the amount by which the limitation under subsection (a) for such preceding or succeeding taxable year exceeds the sum of the taxes paid or accrued to foreign countries or possessions of the United States for such preceding or succeeding taxable year and the amount of the taxes for any taxable year earlier than the current taxable year which shall be deemed to have been paid or accrued in such preceding or subsequent taxable year (whether or not the taxpayer chooses to have the benefits of this subpart with respect to such earlier taxable year). Such amount deemed paid or accrued in any year may be availed of only as a tax credit and not as a deduction and only if the taxpayer for such year chooses to have the benefits of this subpart as to taxes paid or accrued for that year to foreign countries or possessions of the United States. This subsection shall not apply to taxes paid or accrued with respect to amounts described in subsection (d)(1)(A).

(d) Separate application of section with respect to certain categories of income

(1) In general

The provisions of subsections (a), (b), and (c) and sections 902,[1] 907, and 960 shall be applied separately with respect to—

(A) any amount includible in gross income under section 951A (other than passive category income),

(B) foreign branch income,

(C) passive category income, and

(D) general category income.

(2) Definitions and special rules

For purposes of this subsection—

(A) Categories

(i) Passive category income

The term ''passive category income'' means passive income and specified passive category income.

(ii) General category income

The term ''general category income'' means income other than income described in paragraph (1)(A), foreign branch income, and passive category income.

(B) Passive income

(i) In general

Except as otherwise provided in this subparagraph, the term ''passive income'' means any income received or accrued by any person which is of a kind which would be foreign personal holding company income (as defined in section 954(c)).

(ii) Certain amounts included

Except as provided in clause (iii), the term ''passive income'' includes, except as provided in subparagraph (E)(iii)[1] or paragraph (3)(I)[1], any amount includible in gross income under section 1293 (relating to certain passive foreign investment companies).

(iii) Exceptions

The term ''passive income'' shall not include—

(I) any export financing interest, and

(II) any high-taxed income.

(iv) Clarification of application of section 864(d)(6)

In determining whether any income is of a kind which would be foreign personal holding company income, the rules of section 864(d)(6) shall apply only in the case of income of a controlled foreign corporation.

(v) Specified passive category income

The term ''specified passive category income'' means—

(I) dividends from a DISC or former DISC (as defined in section 992(a)) to the extent such dividends are treated as income from sources without the United States, and

(II) distributions from a former FSC (as defined in section 922) out of earnings

[1] See References in Text note below.

and profits attributable to foreign trade income (within the meaning of section 923(b)) or interest or carrying charges (as defined in section 927(d)(1)) derived from a transaction which results in foreign trade income (as defined in section 923(b)).

Any reference in subclause (II) to section 922, 923, or 927 shall be treated as a reference to such section as in effect before its repeal by the FSC Repeal and Extraterritorial Income Exclusion Act of 2000.

(C) Treatment of financial services income and companies

(i) In general

Financial services income shall be treated as general category income in the case of—

(I) a member of a financial services group, and

(II) any other person if such person is predominantly engaged in the active conduct of a banking, insurance, financing, or similar business.

(ii) Financial services group

The term ''financial services group'' means any affiliated group (as defined in section 1504(a) without regard to paragraphs (2) and (3) of section 1504(b)) which is predominantly engaged in the active conduct of a banking, insurance, financing, or similar business. In determining whether such a group is so engaged, there shall be taken into account only the income of members of the group that are—

(I) United States corporations, or

(II) controlled foreign corporations in which such United States corporations own, directly or indirectly, at least 80 percent of the total voting power and value of the stock.

(iii) Pass-thru entities

The Secretary shall by regulation specify for purposes of this subparagraph the treatment of financial services income received or accrued by partnerships and by other pass-thru entities which are not members of a financial services group.

(D) Financial services income

(i) In general

Except as otherwise provided in this subparagraph, the term ''financial services income'' means any income which is received or accrued by any person predominantly engaged in the active conduct of a banking, insurance, financing, or similar business, and which is—

(I) described in clause (ii), or

(II) passive income (determined without regard to subparagraph (B)(iii)(II)).

(ii) General description of financial services income

Income is described in this clause if such income is—

(I) derived in the active conduct of a banking, financing, or similar business,

(II) derived from the investment by an insurance company of its unearned premiums or reserves ordinary and necessary for the proper conduct of its insurance business, or

(III) of a kind which would be insurance income as defined in section 953(a) determined without regard to those provisions of paragraph (1)(A) of such section which limit insurance income to income from countries other than the country in which the corporation was created or organized.

(E) Noncontrolled section 902 corporation

(i) Noncontrolled 10-percent owned foreign corporation

The term ''noncontrolled 10-percent owned foreign corporation'' means any foreign corporation which is—

(I) a specified 10-percent owned foreign corporation (as defined in section 245A(b)), or

(II) a passive foreign investment company (as defined in section 1297(a)) with respect to which the taxpayer meets the stock ownership requirements of section 902(a) (or, for purposes of applying paragraphs (3) and (4), the requirements of section 902(b)).

A controlled foreign corporation shall not be treated as a noncontrolled 10-percent owned foreign corporation with respect to any distribution out of its earnings and profits for periods during which it was a controlled foreign corporation. Any reference to section 902 in this clause shall be treated as a reference to such section as in effect before its repeal.

(ii) Treatment of inclusions under section 1293

If any foreign corporation is a noncontrolled 10-percent owned foreign corporation with respect to the taxpayer, any inclusion under section 1293 with respect to such corporation shall be treated as a dividend from such corporation.

(F) High-taxed income

The term ''high-taxed income'' means any income which (but for this subparagraph) would be passive income if the sum of—

(i) the foreign income taxes paid or accrued by the taxpayer with respect to such income, and

(ii) the foreign income taxes deemed paid by the taxpayer with respect to such income under section 902[1] or 960,

exceeds the highest rate of tax specified in section 1 or 11 (whichever applies) multiplied by the amount of such income (determined with regard to section 78). For purposes of the preceding sentence, the term ''foreign income taxes'' means any income, war profits, or excess profits tax imposed by any foreign country or possession of the United States.

(G) Export financing interest

For purposes of this paragraph, the term ''export financing interest'' means any interest derived from financing the sale (or

other disposition) for use or consumption outside the United States of any property—

(i) which is manufactured, produced, grown, or extracted in the United States by the taxpayer or a related person, and

(ii) not more than 50 percent of the fair market value of which is attributable to products imported into the United States.

For purposes of clause (ii), the fair market value of any property imported into the United States shall be its appraised value, as determined by the Secretary under section 402 of the Tariff Act of 1930 (19 U.S.C. 1401a) in connection with its importation.

(H) Treatment of income tax base differences

(i) In general

In the case of taxable years beginning after December 31, 2006, tax imposed under the law of a foreign country or possession of the United States on an amount which does not constitute income under United States tax principles shall be treated as imposed on income described in paragraph (1)(B).

(ii) Special rule for years before 2007

(I) In general

In the case of taxes paid or accrued in taxable years beginning after December 31, 2004, and before January 1, 2007, a taxpayer may elect to treat tax imposed under the law of a foreign country or possession of the United States on an amount which does not constitute income under United States tax principles as tax imposed on income described in subparagraph (C) or (I) of paragraph (1).

(II) Election irrevocable

Any such election shall apply to the taxable year for which made and all subsequent taxable years described in subclause (I) unless revoked with the consent of the Secretary.

(I) Related person

For purposes of this paragraph, the term ''related person'' has the meaning given such term by section 954(d)(3), except that such section shall be applied by substituting ''the person with respect to whom the determination is being made'' for ''controlled foreign corporation'' each place it appears.

(J) Foreign branch income

(i) In general

The term ''foreign branch income'' means the business profits of such United States person which are attributable to 1 or more qualified business units (as defined in section 989(a)) in 1 or more foreign countries. For purposes of the preceding sentence, the amount of business profits attributable to a qualified business unit shall be determined under rules established by the Secretary.

(ii) Exception

Such term shall not include any income which is passive category income.

(K) Transitional rules for 2007 changes

For purposes of paragraph (1)—

(i) taxes carried from any taxable year beginning before January 1, 2007, to any taxable year beginning on or after such date, with respect to any item of income, shall be treated as described in the subparagraph of paragraph (1) in which such income would be described were such taxes paid or accrued in a taxable year beginning on or after such date, and

(ii) the Secretary may by regulations provide for the allocation of any carryback of taxes with respect to income from a taxable year beginning on or after January 1, 2007, to a taxable year beginning before such date for purposes of allocating such income among the separate categories in effect for the taxable year to which carried.

(3) Look-thru in case of controlled foreign corporations

(A) In general

Except as otherwise provided in this paragraph, dividends, interest, rents, and royalties received or accrued by the taxpayer from a controlled foreign corporation in which the taxpayer is a United States shareholder shall not be treated as passive category income.

(B) Subpart F inclusions

Any amount included in gross income under section 951(a)(1)(A) shall be treated as passive category income to the extent the amount so included is attributable to passive category income.

(C) Interest, rents, and royalties

Any interest, rent, or royalty which is received or accrued from a controlled foreign corporation in which the taxpayer is a United States shareholder shall be treated as passive category income to the extent it is properly allocable (under regulations prescribed by the Secretary) to passive category income of the controlled foreign corporation.

(D) Dividends

Any dividend paid out of the earnings and profits of any controlled foreign corporation in which the taxpayer is a United States shareholder shall be treated as passive category income in proportion to the ratio of—

(i) the portion of the earnings and profits attributable to passive category income, to

(ii) the total amount of earnings and profits.

(E) Look-thru applies only where subpart F applies

If a controlled foreign corporation meets the requirements of section 954(b)(3)(A) (relating to de minimis rule) for any taxable year, for purposes of this paragraph, none of its foreign base company income (as defined in section 954(a) without regard to section 954(b)(5)) and none of its gross insurance income (as defined in section 954(b)(3)(C)) for such taxable year shall be treated as passive category income, except that this sentence

shall not apply to any income which (without regard to this sentence) would be treated as financial services income. Solely for purposes of applying subparagraph (D), passive income of a controlled foreign corporation shall not be treated as passive category income if the requirements of section 954(b)(4) are met with respect to such income.

(F) Coordination with high-taxed income provisions

(i) In determining whether any income of a controlled foreign corporation is passive category income, subclause (II) of paragraph (2)(B)(iii) shall not apply.

(ii) Any income of the taxpayer which is treated as passive category income under this paragraph shall be so treated notwithstanding any provision of paragraph (2); except that the determination of whether any amount is high-taxed income shall be made after the application of this paragraph.

(G) Dividend

For purposes of this paragraph, the term ''dividend'' includes any amount included in gross income in section 951(a)(1)(B). Any amount included in gross income under section 78 to the extent attributable to amounts included in gross income in section 951(a)(1)(A) shall not be treated as a dividend but shall be treated as included in gross income under section 951(a)(1)(A).

(H) Look-thru applies to passive foreign investment company inclusion

If—

(i) a passive foreign investment company is a controlled foreign corporation, and

(ii) the taxpayer is a United States shareholder in such controlled foreign corporation,

any amount included in gross income under section 1293 shall be treated as income in a separate category to the extent such amount is attributable to income in such category.

(4) Look-thru applies to dividends from noncontrolled 10-percent owned foreign corporations

(A) In general

For purposes of this subsection, any dividend from a noncontrolled 10-percent owned foreign corporation with respect to the taxpayer shall be treated as income described in a subparagraph of paragraph (1) in proportion to the ratio of—

(i) the portion of earnings and profits attributable to income described in such subparagraph, to

(ii) the total amount of earnings and profits.

(B) Earnings and profits of controlled foreign corporations

In the case of any distribution from a controlled foreign corporation to a United States shareholder, rules similar to the rules of subparagraph (A) shall apply in determining the extent to which earnings and profits of the controlled foreign corporation which are attributable to dividends received from a noncontrolled 10-percent owned foreign corporation may be treated as income in a separate category.

(C) Special rules

For purposes of this paragraph—

(i) Earnings and profits

(I) In general

The rules of section 316 shall apply.

(II) Regulations

The Secretary may prescribe regulations regarding the treatment of distributions out of earnings and profits for periods before the taxpayer's acquisition of the stock to which the distributions relate.

(ii) Inadequate substantiation

If the Secretary determines that the proper subparagraph of paragraph (1) in which a dividend is described has not been substantiated, such dividend shall be treated as income described in paragraph (1)(A).

(iii) Coordination with high-taxed income provisions

Rules similar to the rules of paragraph (3)(F) shall apply for purposes of this paragraph.

(iv) Look-thru with respect to carryover of credit

Rules similar to subparagraph (A) also shall apply to any carryforward under subsection (c) from a taxable year beginning before January 1, 2003, of tax allocable to a dividend from a noncontrolled 10-percent owned foreign corporation with respect to the taxpayer. The Secretary may by regulations provide for the allocation of any carryback of tax allocable to a dividend from a noncontrolled 10-percent owned foreign corporation from a taxable year beginning on or after January 1, 2003, to a taxable year beginning before such date for purposes of allocating such dividend among the separate categories in effect for the taxable year to which carried.

(5) Controlled foreign corporation; United States shareholder

For purposes of this subsection—

(A) Controlled foreign corporation

The term ''controlled foreign corporation'' has the meaning given such term by section 957 (taking into account section 953(c)).

(B) United States shareholder

The term ''United States shareholder'' has the meaning given such term by section 951(b) (taking into account section 953(c)).

(6) Separate application to items resourced under treaties

(A) In general

If—

(i) without regard to any treaty obligation of the United States, any item of income would be treated as derived from sources within the United States,

(ii) under a treaty obligation of the United States, such item would be treated as arising from sources outside the United States, and

(iii) the taxpayer chooses the benefits of such treaty obligation,

subsections (a), (b), and (c) of this section and sections 907 and 960 shall be applied separately with respect to each such item.

(B) Coordination with other provisions

This paragraph shall not apply to any item of income to which subsection (h)(10) or section 865(h) applies.

(C) Regulations

The Secretary may issue such regulations or other guidance as is necessary or appropriate to carry out the purposes of this paragraph, including regulations or other guidance which provides that related items of income may be aggregated for purposes of this paragraph.

(7) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate for the purposes of this subsection, including regulations—

(A) for the application of paragraph (3) and subsection (f)(5) in the case of income paid (or loans made) through 1 or more entities or between 2 or more chains of entities,

(B) preventing the manipulation of the character of income the effect of which is to avoid the purposes of this subsection, and

(C) providing that rules similar to the rules of paragraph (3)(C) shall apply to interest, rents, and royalties received or accrued from entities which would be controlled foreign corporations if they were foreign corporations.

[(e) Repealed. Pub. L. 101–508, title XI, § 11801(a)(31), Nov. 5, 1990, 104 Stat. 1388–521]

(f) Recapture of overall foreign loss

(1) General rule

For purposes of this subpart and section 936, in the case of any taxpayer who sustains an overall foreign loss for any taxable year, that portion of the taxpayer's taxable income from sources without the United States for each succeeding taxable year which is equal to the lesser of—

(A) the amount of such loss (to the extent not used under this paragraph in prior taxable years), or

(B) 50 percent (or such larger percent as the taxpayer may choose) of the taxpayer's taxable income from sources without the United States for such succeeding taxable year,

shall be treated as income from sources within the United States (and not as income from sources without the United States).

(2) Overall foreign loss defined

For purposes of this subsection, the term ''overall foreign loss'' means the amount by which the gross income for the taxable year from sources without the United States (whether or not the taxpayer chooses the benefits of this subpart for such taxable year) for such year is exceeded by the sum of the deductions properly apportioned or allocated thereto, except that there shall not be taken into account—

(A) any net operating loss deduction allowable for such year under section 172(a), and

(B) any—

(i) foreign expropriation loss for such year, as defined in section 172(h) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990), or

(ii) loss for such year which arises from fire, storm, shipwreck, or other casualty, or from theft,

to the extent such loss is not compensated for by insurance or otherwise.

(3) Dispositions

(A) In general

For purposes of this chapter, if property which has been used predominantly without the United States in a trade or business is disposed of during any taxable year—

(i) the taxpayer, notwithstanding any other provision of this chapter (other than paragraph (1)), shall be deemed to have received and recognized taxable income from sources without the United States in the taxable year of the disposition, by reason of such disposition, in an amount equal to the lesser of the excess of the fair market value of such property over the taxpayer's adjusted basis in such property or the remaining amount of the overall foreign losses which were not used under paragraph (1) for such taxable year or any prior taxable year, and

(ii) paragraph (1) shall be applied with respect to such income by substituting ''100 percent'' for ''50 percent''.

In determining for purposes of this subparagraph whether the predominant use of any property has been without the United States, there shall be taken into account use during the 3-year period ending on the date of the disposition (or, if shorter, the period during which the property has been used in the trade or business).

(B) Disposition defined and special rules

(i) For purposes of this subsection, the term ''disposition'' includes a sale, exchange, distribution, or gift of property whether or not gain or loss is recognized on the transfer.

(ii) Any taxable income recognized solely by reason of subparagraph (A) shall have the same characterization it would have had if the taxpayer had sold or exchanged the property.

(iii) The Secretary shall prescribe such regulations as he may deem necessary to provide for adjustments to the basis of property to reflect taxable income recognized solely by reason of subparagraph (A).

(C) Exceptions

Notwithstanding subparagraph (B), the term ''disposition'' does not include—

(i) a disposition of property which is not a material factor in the realization of income by the taxpayer, or

(ii) a disposition of property to a domestic corporation in a distribution or transfer described in section 381(a).

(D) Application to certain dispositions of stock in controlled foreign corporation

(i) In general

This paragraph shall apply to an applicable disposition in the same manner as if it were a disposition of property described in subparagraph (A), except that the exception contained in subparagraph (C)(i) shall not apply.

(ii) Applicable disposition

For purposes of clause (i), the term ''applicable disposition'' means any disposition of any share of stock in a controlled foreign corporation in a transaction or series of transactions if, immediately before such transaction or series of transactions, the taxpayer owned more than 50 percent (by vote or value) of the stock of the controlled foreign corporation. Such term shall not include a disposition described in clause (iii) or (iv), except that clause (i) shall apply to any gain recognized on any such disposition.

(iii) Exception for certain exchanges where ownership percentage retained

A disposition shall not be treated as an applicable disposition under clause (ii) if it is part of a transaction or series of transactions—

(I) to which section 351 or 721 applies, or under which the transferor receives stock in a foreign corporation in exchange for the stock in the controlled foreign corporation and the stock received is exchanged basis property (as defined in section 7701(a)(44)), and

(II) immediately after which, the transferor owns (by vote or value) at least the same percentage of stock in the controlled foreign corporation (or, if the controlled foreign corporation is not in existence after such transaction or series of transactions, in another foreign corporation stock in[2] which was received by the transferor in exchange for stock in the controlled foreign corporation) as the percentage of stock in the controlled foreign corporation which the taxpayer owned immediately before such transaction or series of transactions.

(iv) Exception for certain asset acquisitions

A disposition shall not be treated as an applicable disposition under clause (ii) if it is part of a transaction or series of transactions in which the taxpayer (or any member of an affiliated group of corporations filing a consolidated return under section 1501 which includes the taxpayer) acquires the assets of a controlled foreign corporation in exchange for the shares of the controlled foreign corporation in a liquidation described in section 332 or a reorganization described in section 368(a)(1).

(v) Controlled foreign corporation

For purposes of this subparagraph, the term ''controlled foreign corporation'' has the meaning given such term by section 957.

(vi) Stock ownership

For purposes of this subparagraph, ownership of stock shall be determined under the rules of subsections (a) and (b) of section 958.

(4) Accumulation distributions of foreign trust

For purposes of this chapter, in the case of amounts of income from sources without the United States which are treated under section 666 (without regard to subsections (b) and (c) thereof if the taxpayer chose to take a deduction with respect to the amounts described in such subsections under section 667(d)(1)(B)) as having been distributed by a foreign trust in a preceding taxable year, that portion of such amounts equal to the amount of any overall foreign loss sustained by the beneficiary in a year prior to the taxable year of the beneficiary in which such distribution is received from the trust shall be treated as income from sources within the United States (and not income from sources without the United States) to the extent that such loss was not used under this subsection in prior taxable years, or in the current taxable year, against other income of the beneficiary.

(5) Treatment of separate limitation losses

(A) In general

The amount of the separate limitation losses for any taxable year shall reduce income from sources within the United States for such taxable year only to the extent the aggregate amount of such losses exceeds the aggregate amount of the separate limitation incomes for such taxable year.

(B) Allocation of losses

The separate limitation losses for any taxable year (to the extent such losses do not exceed the separate limitation incomes for such year) shall be allocated among (and operate to reduce) such incomes on a proportionate basis.

(C) Recharacterization of subsequent income

If—

(i) a separate limitation loss from any income category (hereinafter in this subparagraph referred to as ''the loss category'') was allocated to income from any other category under subparagraph (B), and

(ii) the loss category has income for a subsequent taxable year,

such income (to the extent it does not exceed the aggregate separate limitation losses from the loss category not previously recharacterized under this subparagraph) shall be recharacterized as income from such other category in proportion to the prior re-

[2] So in original.

ductions under subparagraph (B) in such other category not previously taken into account under this subparagraph. Nothing in the preceding sentence shall be construed as recharacterizing any tax.

(D) Special rules for losses from sources in the United States

Any loss from sources in the United States for any taxable year (to the extent such loss does not exceed the separate limitation incomes from such year) shall be allocated among (and operate to reduce) such incomes on a proportionate basis. This subparagraph shall be applied after subparagraph (B).

(E) Definitions

For purposes of this paragraph—

(i) Income category

The term ''income category'' means each separate category of income described in subsection (d)(1).

(ii) Separate limitation income

The term ''separate limitation income'' means, with respect to any income category, the taxable income from sources outside the United States, separately computed for such category.

(iii) Separate limitation loss

The term ''separate limitation loss'' means, with respect to any income category, the loss from such category determined under the principles of section 907(c)(4)(B).

(F) Dispositions

If any separate limitation loss for any taxable year is allocated against any separate limitation income for such taxable year, except to the extent provided in regulations, rules similar to the rules of paragraph (3) shall apply to any disposition of property if gain from such disposition would be in the income category with respect to which there was such separate limitation loss.

(g) Recharacterization of overall domestic loss

(1) General rule

For purposes of this subpart and section 936, in the case of any taxpayer who sustains an overall domestic loss for any taxable year beginning after December 31, 2006, that portion of the taxpayer's taxable income from sources within the United States for each succeeding taxable year which is equal to the lesser of—

(A) the amount of such loss (to the extent not used under this paragraph in prior taxable years), or

(B) 50 percent of the taxpayer's taxable income from sources within the United States for such succeeding taxable year,

shall be treated as income from sources without the United States (and not as income from sources within the United States).

(2) Overall domestic loss

For purposes of this subsection—

(A) In general

The term ''overall domestic loss'' means—

(i) with respect to any qualified taxable year, the domestic loss for such taxable year to the extent such loss offsets taxable income from sources without the United States for the taxable year or for any preceding qualified taxable year by reason of a carryback, and

(ii) with respect to any other taxable year, the domestic loss for such taxable year to the extent such loss offsets taxable income from sources without the United States for any preceding qualified taxable year by reason of a carryback.

(B) Domestic loss

For purposes of subparagraph (A), the term ''domestic loss'' means the amount by which the gross income for the taxable year from sources within the United States is exceeded by the sum of the deductions properly apportioned or allocated thereto (determined without regard to any carryback from a subsequent taxable year).

(C) Qualified taxable year

For purposes of subparagraph (A), the term ''qualified taxable year'' means any taxable year for which the taxpayer chose the benefits of this subpart.

(3) Characterization of subsequent income

(A) In general

Any income from sources within the United States that is treated as income from sources without the United States under paragraph (1) shall be allocated among and increase the income categories in proportion to the loss from sources within the United States previously allocated to those income categories.

(B) Income category

For purposes of this paragraph, the term ''income category'' has the meaning given such term by subsection (f)(5)(E)(i).

(4) Coordination with subsection (f)

The Secretary shall prescribe such regulations as may be necessary to coordinate the provisions of this subsection with the provisions of subsection (f).

(5) Election to increase percentage of taxable income treated as foreign source

(A) In general

If any pre-2018 unused overall domestic loss is taken into account under paragraph (1) for any applicable taxable year, the taxpayer may elect to have such paragraph applied to such loss by substituting a percentage greater than 50 percent (but not greater than 100 percent) for 50 percent in subparagraph (B) thereof.

(B) Pre-2018 unused overall domestic loss

For purposes of this paragraph, the term ''pre-2018 unused overall domestic loss'' means any overall domestic loss which—

(i) arises in a qualified taxable year beginning before January 1, 2018, and

(ii) has not been used under paragraph (1) for any taxable year beginning before such date.

(C) Applicable taxable year

For purposes of this paragraph, the term ''applicable taxable year'' means any taxable year of the taxpayer beginning after December 31, 2017, and before January 1, 2028.

(h) Source rules in case of United States-owned foreign corporations

(1) In general

The following amounts which are derived from a United States-owned foreign corporation and which would be treated as derived from sources outside the United States without regard to this subsection shall, for purposes of this section, be treated as derived from sources within the United States to the extent provided in this subsection:

(A) Any amount included in gross income under—

(i) section 951(a) (relating to amounts included in gross income of United States shareholders), or

(ii) section 1293 (relating to current taxation of income from qualified funds).

(B) Interest.

(C) Dividends.

(2) Subpart F and passive foreign investment company inclusions

Any amount described in subparagraph (A) of paragraph (1) shall be treated as derived from sources within the United States to the extent such amount is attributable to income of the United States-owned foreign corporation from sources within the United States.

(3) Certain interest allocable to United States source income

Any interest which—

(A) is paid or accrued by a United States-owned foreign corporation during any taxable year,

(B) is paid or accrued to a United States shareholder (as defined in section 951(b)) or a related person (within the meaning of section 267(b)) to such a shareholder, and

(C) is properly allocable (under regulations prescribed by the Secretary) to income of such foreign corporation for the taxable year from sources within the United States,

shall be treated as derived from sources within the United States.

(4) Dividends

(A) In general

The United States source ratio of any dividend paid or accrued by a United States-owned foreign corporation shall be treated as derived from sources within the United States.

(B) United States source ratio

For purposes of subparagraph (A), the term ''United States source ratio'' means, with respect to any dividend paid out of the earnings and profits for any taxable year, a fraction—

(i) the numerator of which is the portion of the earnings and profits for such taxable year from sources within the United States, and

(ii) the denominator of which is the total amount of earnings and profits for such taxable year.

(5) Exception where United States-owned foreign corporation has small amount of United States source income

Paragraph (3) shall not apply to interest paid or accrued during any taxable year (and paragraph (4) shall not apply to any dividends paid out of the earnings and profits for such taxable year) if—

(A) the United States-owned foreign corporation has earnings and profits for such taxable year, and

(B) less than 10 percent of such earnings and profits is attributable to sources within the United States.

For purposes of the preceding sentence, earnings and profits shall be determined without any reduction for interest described in paragraph (3) (determined without regard to subparagraph (C) thereof).

(6) United States-owned foreign corporation

For purposes of this subsection, the term ''United States-owned foreign corporation'' means any foreign corporation if 50 percent or more of—

(A) the total combined voting power of all classes of stock of such corporation entitled to vote, or

(B) the total value of the stock of such corporation,

is held directly (or indirectly through applying paragraphs (2) and (3) of section 958(a) and paragraph (4) of section 318(a)) by United States persons (as defined in section 7701(a)(30)).

(7) Dividend

For purposes of this subsection, the term ''dividend'' includes any gain treated as a dividend under section 1248.

(8) Coordination with subsection (f)

This subsection shall be applied before subsection (f).

(9) Treatment of certain domestic corporations

In the case of any dividend treated as not from sources within the United States under section 861(a)(2)(A), the corporation paying such dividend shall be treated for purposes of this subsection as a United States-owned foreign corporation.

(10) Coordination with treaties

(A) In general

If—

(i) any amount derived from a United States-owned foreign corporation would be treated as derived from sources within the United States under this subsection by reason of an item of income of such United States-owned foreign corporation,

(ii) under a treaty obligation of the United States (applied without regard to this subsection and by treating any amount included in gross income under section 951(a)(1) as a dividend), such amount would be treated as arising from sources outside the United States, and

(iii) the taxpayer chooses the benefits of this paragraph,

this subsection shall not apply to such amount to the extent attributable to such item of income (but subsections (a), (b), and (c) of this section and sections 907 and 960 shall be applied separately with respect to such amount to the extent so attributable).

(B) Special rule

Amounts included in gross income under section 951(a)(1) shall be treated as a dividend under subparagraph (A)(ii) only if dividends paid by each corporation (the stock in which is taken into account in determining whether the shareholder is a United States shareholder in the United States-owned foreign corporation), if paid to the United States shareholder, would be treated under a treaty obligation of the United States as arising from sources outside the United States (applied without regard to this subsection).

(11) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate for purposes of this subsection, including—

(A) regulations for the application of this subsection in the case of interest or dividend payments through 1 or more entities, and

(B) regulations providing that this subsection shall apply to interest paid or accrued to any person (whether or not a United States shareholder).

(i) Limitation on use of deconsolidation to avoid foreign tax credit limitations

If 2 or more domestic corporations would be members of the same affiliated group if—

(1) section 1504(b) were applied without regard to the exceptions contained therein, and

(2) the constructive ownership rules of section 1563(e) applied for purposes of section 1504(a),

the Secretary may by regulations provide for resourcing the income of any of such corporations or for modifications to the consolidated return regulations to the extent that such resourcing or modifications are necessary to prevent the avoidance of the provisions of this subpart.

(j) Certain individuals exempt

(1) In general

In the case of an individual to whom this subsection applies for any taxable year—

(A) the limitation of subsection (a) shall not apply,

(B) no taxes paid or accrued by the individual during such taxable year may be deemed paid or accrued under subsection (c) in any other taxable year, and

(C) no taxes paid or accrued by the individual during any other taxable year may be deemed paid or accrued under subsection (c) in such taxable year.

(2) Individuals to whom subsection applies

This subsection shall apply to an individual for any taxable year if—

(A) the entire amount of such individual's gross income for the taxable year from sources without the United States consists of qualified passive income,

(B) the amount of the creditable foreign taxes paid or accrued by the individual during the taxable year does not exceed $300 ($600 in the case of a joint return), and

(C) such individual elects to have this subsection apply for the taxable year.

(3) Definitions

For purposes of this subsection—

(A) Qualified passive income

The term ''qualified passive income'' means any item of gross income if—

(i) such item of income is passive income (as defined in subsection (d)(2)(B) without regard to clause (iii) thereof), and

(ii) such item of income is shown on a payee statement furnished to the individual.

(B) Creditable foreign taxes

The term ''creditable foreign taxes'' means any taxes for which a credit is allowable under section 901; except that such term shall not include any tax unless such tax is shown on a payee statement furnished to such individual.

(C) Payee statement

The term ''payee statement'' has the meaning given to such term by section 6724(d)(2).

(D) Estates and trusts not eligible

This subsection shall not apply to any estate or trust.

(k) Cross references

For increase of limitation under subsection (a) for taxes paid with respect to amounts received which were included in the gross income of the taxpayer for a prior taxable year as a United States shareholder with respect to a controlled foreign corporation, see section 960(c).

(Aug. 16, 1954, ch. 736, 68A Stat. 287; Pub. L. 85–866, title I, § 42(a), Sept. 2, 1958, 72 Stat. 1639; Pub. L. 86–780, § 1, Sept. 14, 1960, 74 Stat. 1010; Pub. L. 87–834, §§ 10(a), 12(b)(2), Oct. 16, 1962, 76 Stat. 1002, 1031; Pub. L. 88–272, title II, § 234(b)(6), Feb. 26, 1964, 78 Stat. 116; Pub. L. 89–809, title I, § 106(c)(1), Nov. 13, 1966, 80 Stat. 1570; Pub. L. 91–172, title V, § 506(b), Dec. 30, 1969, 83 Stat. 635; Pub. L. 92–178, title V, § 502(b)(2)–(4), Dec. 10, 1971, 85 Stat. 549; Pub. L. 94–455, title V, § 503(b)(1), title X, §§ 1031(a), 1032(a), 1034(a), 1051(e), title XIX, § 1901(b)(10)(B), Oct. 4, 1976, 90 Stat. 1562, 1620, 1624, 1629, 1646, 1795; Pub. L. 95–30, title I, § 102(b)(11), May 23, 1977, 91 Stat. 138; Pub. L. 95–600, title IV, §§ 403(c)(4), 421(e)(6), title VII, § 701(q)(2), (u)(2)(A)–(C), (3)(A), (4)(A), (B), (8)(C), Nov. 6, 1978, 92 Stat. 2868, 2876, 2910, 2913, 2916; Pub. L. 96–222, title I, § 104(a)(3)(D), Apr. 1, 1980, 94 Stat. 215; Pub. L. 97–248, title II, § 211(c)(2), Sept. 3, 1982, 96 Stat. 449; Pub. L. 98–21, title I, § 122(c)(1), Apr. 20, 1983, 97 Stat. 87; Pub. L. 98–369, div. A, title I, §§ 121(a), 122(a), title IV, § 474(r)(21), title VIII, § 801(d)(2), July 18, 1984, 98 Stat. 638, 643, 843, 995; Pub. L. 99–514, title I, § 104(b)(13), title VII, § 701(e)(4)(H), title XII, §§ 1201(a), (b), (d)(1)–(3), 1203(a), 1211(b)(3), 1235(f)(4), title XVIII, §§ 1810(a)(1)(A),

(b)(1)–(4)(A), 1876(d)(2), 1899A(24), Oct. 22, 1986, 100 Stat. 2105, 2343, 2520, 2525, 2531, 2536, 2575, 2821, 2823, 2899, 2959; Pub. L. 100–647, title I, §§1003(b)(2), 1012(a)(1)(A), (2)–(4), (6)–(11), (c), (p)(11), (29), (q)(12), (bb)(4)(A), title II, §2004(*l*), Nov. 10, 1988, 102 Stat. 3383, 3493–3497, 3517, 3521, 3525, 3534, 3606; Pub. L. 101–239, title VII, §§7402(a), 7811(i)(1), Dec. 19, 1989, 103 Stat. 2357, 2409; Pub. L. 101–508, title XI, §§11101(d)(5), 11801(a)(31), Nov. 5, 1990, 104 Stat. 1388–405, 1388–521; Pub. L. 103–66, title XIII, §§13227(d), 13235(a)(2), Aug. 10, 1993, 107 Stat. 494, 504; Pub. L. 104–188, title I, §§1501(b)(1), (12), 1703(i)(1), 1704(t)(36), Aug. 20, 1996, 110 Stat. 1825, 1826, 1876, 1889; Pub. L. 105–34, title III, §311(c)(3), title XI, §§1101(a), 1105(a), (b), 1111(b), 1163(b), Aug. 5, 1997, 111 Stat. 835, 963, 967, 969, 987; Pub. L. 106–170, title V, §501(b)(2), Dec. 17, 1999, 113 Stat. 1919; Pub. L. 107–16, title II, §§201(b)(2)(G), 202(f)(2)(C), title VI, §618(b)(2)(D), June 7, 2001, 115 Stat. 46, 49, 108; Pub. L. 107–147, title IV, §417(23)(B), title VI, §601(b)(1), Mar. 9, 2002, 116 Stat. 57, 59; Pub. L. 108–311, title III, §312(b)(1), Oct. 4, 2004, 118 Stat. 1181; Pub. L. 108–357, title IV, §§402(a), 403(a)–(b)(5), 404(a)–(f), 413(c)(14), (15), 417(a), title VIII, §895(a), Oct. 22, 2004, 118 Stat. 1491–1495, 1508, 1512, 1647; Pub. L. 109–135, title IV, §§402(i)(3)(G), 403(k), (*o*), Dec. 21, 2005, 119 Stat. 2614, 2625, 2626; Pub. L. 110–172, §11(f)(3), (g)(10), Dec. 29, 2007, 121 Stat. 2489, 2490; Pub. L. 111–5, div. B, title I, §§1004(b)(5), 1142(b)(1)(E), 1144(b)(1)(E), Feb. 17, 2009, 123 Stat. 314, 330, 332; Pub. L. 111–148, title X, §10909(b)(2)(K), (c), Mar. 23, 2010, 124 Stat. 1023; Pub. L. 111–226, title II, §§213(a), 217(c)(2), Aug. 10, 2010, 124 Stat. 2398, 2402; Pub. L. 111–312, title I, §101(b)(1), Dec. 17, 2010, 124 Stat. 3298; Pub. L. 112–240, title I, §104(c)(2)(K), Jan. 2, 2013, 126 Stat. 2322; Pub. L. 113–295, div. A, title II, §§219(c), 221(a)(72), Dec. 19, 2014, 128 Stat. 4035, 4049; Pub. L. 115–97, title I, §§13001(b)(2)(M), 14101(d), 14201(b)(2), 14301(c)(15)–(19), 14302(a), (b), 14304(a), Dec. 22, 2017, 131 Stat. 2097, 2191, 2212, 2223, 2225.)

REFERENCES IN TEXT

Section 902, referred to in subsec. (d)(1), (2)(E)(i), (F)(ii), was repealed by Pub. L. 115–97, title I, §14301(a), (d), Dec. 22, 2017, 131 Stat. 2221, 2225, applicable to taxable years of foreign corporations beginning after Dec. 31, 2017, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end.

Subparagraph (E)(iii) of subsection (d)(2) of this section, referred to in subsec. (d)(2)(B)(ii), was redesignated as subparagraph (E)(ii) by Pub. L. 108–357, title IV, §403(b)(4)(B), Oct. 22, 2004, 118 Stat. 1494.

Paragraph (3) of subsection (d) of this section, referred to in subsec. (d)(2)(B)(ii), was amended generally by Pub. L. 108–357, title IV, §404(f)(4), Oct. 22, 2004, 118 Stat. 1496, and as so amended, no longer contains a subpar. (I).

The FSC Repeal and Extraterritorial Income Exclusion Act of 2000, referred to in subsec. (d)(2)(B)(v), is Pub. L. 106–519, Nov. 15, 2000, 114 Stat. 2423. For complete classification of this Act to the Code, see Short Title of 2000 Amendments note set out under section 1 of this title and Tables.

Section 172(h), referred to in subsec. (f)(2)(B)(i), was repealed by Pub. L. 101–508, title XI, §11811(b)(1), Nov. 5, 1990, 104 Stat. 1388–532.

The date of the enactment of the Revenue Reconciliation Act of 1990, referred to in subsec. (f)(2)(B)(i), is the date of enactment of Pub. L. 101–508, title XI, which was approved Nov. 5, 1990.

AMENDMENTS

2017—Subsec. (b)(2)(C). Pub. L. 115–97, §13001(b)(2)(M)(i), struck out ''or 1201(a)'' after ''under section 1(h)''.

Subsec. (b)(3)(D). Pub. L. 115–97, §13001(b)(2)(M)(ii), added subpar. (D) and struck out former subpar. (D). Prior to amendment, text read as follows: ''There is a capital gain rate differential for any taxable year if—

''(i) in the case of a taxpayer other than a corporation, subsection (h) of section 1 applies to such taxable year, or

''(ii) in the case of a corporation, any rate of tax imposed by section 11, 511, or 831(a) or (b) (whichever applies) exceeds the alternative rate of tax under section 1201(a) (determined without regard to the last sentence of section 11(b)(1)).''

Subsec. (b)(3)(E). Pub. L. 115–97, §13001(b)(2)(M)(iii), added subpar. (E) and struck out former subpar. (E) which related to rate differential portion for corporations and taxpayers other than corporations.

Subsec. (b)(5). Pub. L. 115–97, §14101(d), added par. (5).

Subsec. (c). Pub. L. 115–97, §14201(b)(2)(C), inserted at end ''This subsection shall not apply to taxes paid or accrued with respect to amounts described in subsection (d)(1)(A).''

Subsec. (d)(1)(A). Pub. L. 115–97, §14201(b)(2)(A), added subpar. (A). Former subpar. (A) redesignated (B), then (C).

Subsec. (d)(1)(B). Pub. L. 115–97, §14302(a), added subpar. (B). Former subpar. (B) redesignated (C), then (D).

Pub. L. 115–97, §14201(b)(2)(A), redesignated subpar. (A) as (B). Former subpar. (B) redesignated (C).

Subsec. (d)(1)(C). Pub. L. 115–97, §14302(a), redesignated subpar. (B) as (C). Former subpar. (C) redesignated (D).

Pub. L. 115–97, §14201(b)(2)(A), redesignated subpar. (B) as (C).

Subsec. (d)(1)(D). Pub. L. 115–97, §14302(a), redesignated subpar. (C) as (D).

Subsec. (d)(2)(A)(ii). Pub. L. 115–97, §14302(b)(2), substituted ''income described in paragraph (1)(A), foreign branch income, and'' for ''income described in paragraph (1)(A) and''.

Pub. L. 115–97, §14201(b)(2)(B), inserted ''income described in paragraph (1)(A) and'' before ''passive category income''.

Subsec. (d)(2)(E)(i). Pub. L. 115–97, §14301(c)(15)(A), amended cl. (i) generally. Prior to amendment, text read as follows: ''The term 'noncontrolled section 902 corporation' means any foreign corporation with respect to which the taxpayer meets the stock ownership requirements of section 902(a) (or, for purposes of applying paragraph (3) or (4), the requirements of section 902(b)). A controlled foreign corporation shall not be treated as a noncontrolled section 902 corporation with respect to any distribution out of its earnings and profits for periods during which it was a controlled foreign corporation.''

Subsec. (d)(2)(E)(ii). Pub. L. 115–97, §14301(c)(15)(B), substituted ''noncontrolled 10-percent owned foreign corporation'' for ''non-controlled section 902 corporation''.

Subsec. (d)(2)(J). Pub. L. 115–97, §14302(b)(1), added subpar. (J).

Subsec. (d)(4). Pub. L. 115–97, §14301(c)(16), substituted ''noncontrolled 10-percent owned foreign corporations'' for ''noncontrolled section 902 corporations'' in heading and ''noncontrolled 10-percent owned foreign corporation'' for ''noncontrolled section 902 corporation'' wherever appearing in text.

Subsec. (d)(6)(A). Pub. L. 115–97, §14301(c)(17), substituted ''907'' for ''902, 907,'' in concluding provisions.

Subsec. (g)(5). Pub. L. 115–97, §14304(a), added par. (5).

Subsec. (h)(10)(A). Pub. L. 115–97, §14301(c)(18), substituted ''sections 907 and 960'' for ''sections 902, 907, and 960'' in concluding provisions.

Subsec. (k). Pub. L. 115–97, §14301(c)(19), amended subsec. (k) generally. Prior to amendment, text read as follows:

''(1) For increase of limitation under subsection (a) for taxes paid with respect to amounts received which were included in the gross income of the taxpayer for a prior taxable year as a United States shareholder with respect to a controlled foreign corporation, see section 960(b).

''(2) For modification of limitation under subsection (a) for purposes of determining the amount of credit which can be taken against the alternative minimum tax, see section 59(a).''

2014—Subsec. (d)(2)(J). Pub. L. 113–295, § 221(a)(72), struck out subpar. (J) which related to a transition rule for taxes paid or accrued in a taxable year beginning before Jan. 1, 1987.

Subsec. (h)(7). Pub. L. 113–295, § 219(c), struck out ''as ordinary income under section 1246 or'' after ''gain treated''.

2013—Subsecs. (i) to (*l*). Pub. L. 112–240 redesignated subsecs. (j) to (*l*) as (i) to (k), respectively, and struck out former subsec. (i). Text read as follows: ''In the case of any taxable year of an individual to which section 26(a)(2) does not apply, for purposes of subsection (a), the tax against which the credit is taken is such tax reduced by the sum of the credits allowable under subpart A of part IV of subchapter A of this chapter (other than sections 23, 24, 25A(i), 25B, 30 30B,, and 30D).''

2010—Subsec. (d)(6), (7). Pub. L. 111–226, § 213(a), added par. (6) and redesignated former par. (6) as (7).

Subsec. (h)(9). Pub. L. 111–226, § 217(c)(2), amended par. (9) generally. Prior to amendment, text read as follows: ''For purposes of this subsection—

''(A) in the case of interest treated as not from sources within the United States under section 861(a)(1)(A), the corporation paying such interest shall be treated as a United States-owned foreign corporation, and

''(B) in the case of any dividend treated as not from sources within the United States under section 861(a)(2)(A), the corporation paying such dividend shall be treated as a United States-owned foreign corporation.''

Subsec. (i). Pub. L. 111–148, § 10909(b)(2)(K), (c), as amended by Pub. L. 111–312, temporarily struck out ''23,'' after ''than sections''. See Effective and Termination Dates of 2010 Amendment note below.

2009—Subsec. (i). Pub. L. 111–5, § 1144(b)(1)(E), inserted ''30B,'' after ''30''.

Pub. L. 111–5, § 1142(b)(1)(E), substituted ''25B, 30, and 30D'' for ''and 25B''.

Pub. L. 111–5, § 1004(b)(5), inserted ''25A(i),'' after ''24,''.

2007—Subsec. (d)(2)(B)(v). Pub. L. 110–172, § 11(g)(10), inserted ''and'' at end of subcl. (I), redesignated subcl. (III) as (II), substituted ''a former FSC (as defined in section 922)'' for ''a FSC (or a former FSC)'' in subcl. (II), struck out former subcl. (II), which read as follows: ''taxable income attributable to foreign trade income (within the meaning of section 923(b)), and'', and added concluding provisions.

Subsec. (f)(3)(D)(iv). Pub. L. 110–172, § 11(f)(3), substituted ''an affiliated group'' for ''a controlled group''.

2005—Subsec. (d)(2)(D). Pub. L. 109–135, § 403(*o*), inserted ''as in effect before its repeal'' after ''section 954(f)''.

Subsec. (g)(2). Pub. L. 109–135, § 403(k), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''For purposes of this subsection—

''(A) IN GENERAL.—The term 'overall domestic loss' means any domestic loss to the extent such loss offsets taxable income from sources without the United States for the taxable year or for any preceding taxable year by reason of a carryback. For purposes of the preceding sentence, the term 'domestic loss' means the amount by which the gross income for the taxable year from sources within the United States is exceeded by the sum of the deductions properly apportioned or allocated thereto (determined without regard to any carryback from a subsequent taxable year).

''(B) TAXPAYER MUST HAVE ELECTED FOREIGN TAX CREDIT FOR YEAR OF LOSS.—The term 'overall domestic loss' shall not include any loss for any taxable year unless the taxpayer chose the benefits of this subpart for such taxable year.''

Subsec. (i). Pub. L. 109–135, § 402(i)(3)(G), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''In the case of an individual, for purposes of subsection (a), the tax against which the credit is taken is such tax reduced by the sum of the credits allowable under subpart A of part IV of subchapter A of this chapter (other than sections 23, 24, and 25B). This subsection shall not apply to taxable years beginning during 2000, 2001, 2002, 2003, 2004, or 2005.''

2004—Subsec. (c). Pub. L. 108–357, § 417(a), struck out ''in the second preceding taxable year,'' before ''in the first preceding taxable year'' and substituted ''and in any of the first 10'' for '', and in the first, second, third, fourth, or fifth''.

Subsec. (d)(1). Pub. L. 108–357, § 404(a), reenacted heading without change and amended text of par. (1) generally, substituting provisions relating to applicability of subsecs. (a), (b), and (c) and sections 902, 907, and 960 to passive category income and general category income, for provisions relating to applicability of subsecs. (a), (b), and (c) and sections 902, 907, and 960 to passive income, high withholding tax interest, financial services income, shipping income, certain dividends from a DISC or former DISC, taxable income attributable to foreign trade income, certain distributions from a FSC or a former FSC, and income other than income previously described.

Subsec. (d)(1)(E). Pub. L. 108–357, § 403(b)(1), struck out subpar. (E) which read as follows: ''in the case of a corporation, dividends from noncontrolled section 902 corporations out of earnings and profits accumulated in taxable years beginning before January 1, 2003,''.

Subsec. (d)(2)(A). Pub. L. 108–357, § 404(b), added subpar. (A). Former subpar. (A) redesignated (B).

Subsec. (d)(2)(A)(ii). Pub. L. 108–357, § 413(c)(14), reenacted heading without change and amended text of cl. (ii) generally. Prior to amendment, text read as follows: ''Except as provided in clause (iii), the term 'passive income' includes any amount includible in gross income under section 551 or, except as provided in subparagraph (E)(iii) or paragraph (3)(I), section 1293 (relating to certain passive foreign investment companies).''

Subsec. (d)(2)(B). Pub. L. 108–357, § 404(b), redesignated subpar. (A) as (B) and struck out former subpar. (B), which defined the term ''high withholding tax interest''.

Subsec. (d)(2)(B)(iii). Pub. L. 108–357, § 404(f)(1), redesignated subcls. (II) and (III) as (I) and (II), respectively, and struck out former subcl. (I) which read as follows: ''any income described in a subparagraph of paragraph (1) other than subparagraph (A),''.

Subsec. (d)(2)(B)(v). Pub. L. 108–357, § 404(c), added cl. (v).

Subsec. (d)(2)(C). Pub. L. 108–357, § 404(d), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (d)(2)(C)(iii). Pub. L. 108–357, § 403(b)(2), inserted ''and'' at end of subcl. (I), redesignated subcl. (III) as (II), and struck out former subcl. (II) which read as follows: ''any dividend from a noncontrolled section 902 corporation out of earnings and profits accumulated in taxable years beginning before January 1, 2003, and''.

Subsec. (d)(2)(D). Pub. L. 108–357, § 404(d), redesignated subpar. (C) as (D) and struck out heading and text of former subpar. (D). Text read as follows: ''The term 'shipping income' means any income received or accrued by any person which is of a kind which would be foreign base company shipping income (as defined in section 954(f) as in effect before its repeal). Such term does not include any financial services income.''

Pub. L. 108–357, § 403(b)(3), substituted ''Such term does not include any financial services income'' for ''Such term does not include any dividend from a noncontrolled section 902 corporation out of earnings and

profits accumulated in taxable years beginning before January 1, 2003 and does not include any financial services income''.

Subsec. (d)(2)(D)(i). Pub. L. 108–357, § 404(f)(2), inserted ''or'' at end of subcl. (I), added subcl. (II), and struck out former subcls. (II) and (III) which read as follows:

''(II) passive income (determined without regard to subclauses (I) and (III) of subparagraph (A)(iii)), or

''(III) export financing interest which (but for subparagraph (B)(ii)) would be high withholding tax interest.''

Subsec. (d)(2)(D)(iii). Pub. L. 108–357, § 404(f)(3), which directed striking out of cl. (iii) ''as so redesignated and amended by section 404(b)(3)'', was executed by striking out heading and text of cl. (iii) as amended by section 403(b)(2) and redesignated by section 404(d), to reflect the probable intent of Congress. Text read as follows: ''The term 'financial services income' does not include—

''(I) any high withholding tax interest, and

''(II) any export financing interest not described in clause (i)(III).''

Subsec. (d)(2)(E)(i). Pub. L. 108–357, § 403(b)(4)(A), inserted ''or (4)'' after ''paragraph (3)''.

Subsec. (d)(2)(E)(ii), (iii). Pub. L. 108–357, § 403(b)(4)(B), redesignated cl. (iii) as (ii) and struck out heading and text of former cl. (ii). Text read as follows: ''If a foreign corporation is a noncontrolled section 902 corporation with respect to the taxpayer, taxes on high withholding tax interest (to the extent imposed at a rate in excess of 5 percent) shall not be treated as foreign taxes for purposes of determining the amount of foreign taxes deemed paid by the taxpayer under section 902.''

Subsec. (d)(2)(E)(iv). Pub. L. 108–357, § 403(b)(4)(B), struck out heading and text of cl. (iv). Text read as follows: ''All noncontrolled section 902 corporations which are not passive foreign investment companies (as defined in section 1297) shall be treated as one noncontrolled section 902 corporation for purposes of paragraph (1).''

Subsec. (d)(2)(H) to (J). Pub. L. 108–357, § 404(e), added subpar. (H) and redesignated former subpars. (H) and (I) as (I) and (J), respectively.

Subsec. (d)(2)(K). Pub. L. 108–357, § 404(f)(5), added subpar. (K).

Subsec. (d)(3). Pub. L. 108–357, § 404(f)(4), reenacted heading without change and amended text of par. (3) generally, substituting provisions consisting of subpars. (A) to (H) for former subpars. (A) to (I) which contained similar provisions.

Subsec. (d)(3)(F)(i). Pub. L. 108–357, § 403(b)(5), substituted ''or (D)'' for ''(D), or (E)''.

Subsec. (d)(4). Pub. L. 108–357, § 403(a), reenacted heading without change and amended text of par. (4) generally, substituting provisions relating to dividends from noncontrolled section 902 corporations, earnings and profits of controlled foreign corporations, and setting forth special rules, for provisions relating to treatment of applicable dividends, defining the term ''applicable dividend'', and setting forth special rules.

Subsec. (f)(3)(D). Pub. L. 108–357, § 895(a), added subpar. (D).

Subsec. (g). Pub. L. 108–357, § 402(a), added subsec. (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 108–357, § 402(a), redesignated subsec. (g) as (h). Former subsec. (h) redesignated (i).

Pub. L. 108–311 substituted ''2003, 2004, or 2005'' for ''or 2003''.

Subsec. (h)(1)(A). Pub. L. 108–357, § 413(c)(15)(A), inserted ''or'' at end of cl. (i), redesignated cl. (iii) as (ii), and struck out former cl. (ii) which read as follows: ''section 551 (relating to foreign personal holding company income taxed to United States shareholders), or''.

Subsec. (h)(2). Pub. L. 108–357, § 413(c)(15)(B), struck out ''foreign personal holding or'' before ''passive foreign investment'' in heading.

Subsecs. (i), (j). Pub. L. 108–357, § 402(a), redesignated subsecs. (h) and (i) as (i) and (j), respectively. Former subsec. (j) redesignated (k).

Subsec. (k). Pub. L. 108–357, § 402(a), redesignated subsec. (j) as (k). Former subsec. (k) redesignated (*l*).

Subsec. (k)(3)(A)(i). Pub. L. 108–357, § 404(f)(6), which directed amendment of subsec. (j)(3)(A)(i) by substituting ''subsection (d)(2)(B)'' for ''subsection (d)(2)(A)'', was executed to subsec. (k)(3)(A)(i) to reflect the probable intent of Congress and the amendment by Pub. L. 108–357, § 402(a). See above.

Subsec. (*l*). Pub. L. 108–357, § 402(a), redesignated subsec. (k) as (*l*).

2002—Subsec. (h). Pub. L. 107–147, § 601(b)(1), substituted ''during 2000, 2001, 2002, or 2003'' for ''during 2000 or 2001''.

Pub. L. 107–147, § 417(23)(B), amended directory language of Pub. L. 107–16, § 618(b)(2)(D). See 2001 Amendment note below.

2001—Subsec. (h). Pub. L. 107–16, § 618(b)(2)(D), as amended by Pub. L. 107–147, § 417(23)(B), substituted '', 24, and 25B'' for ''and 24''.

Pub. L. 107–16, § 202(f)(2)(C), substituted ''sections 23 and 24'' for ''section 24''.

Pub. L. 107–16, § 201(b)(2)(G), inserted ''(other than section 24)'' after ''chapter''.

1999—Subsec. (h). Pub. L. 106–170 inserted at end ''This subsection shall not apply to taxable years beginning during 2000 or 2001.''

1997—Subsec. (b)(2)(C). Pub. L. 105–34, § 311(c)(3), added subpar. (C).

Subsec. (d)(1)(E). Pub. L. 105–34, § 1105(a)(1), amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: ''in the case of a corporation, dividends from each noncontrolled section 902 corporation,''.

Subsec. (d)(2)(C)(i)(II). Pub. L. 105–34, § 1163(b), substituted ''subclauses (I) and (III)'' for ''subclause (I)''.

Subsec. (d)(2)(C)(iii)(II), (D). Pub. L. 105–34, § 1105(a)(3), inserted ''out of earnings and profits accumulated in taxable years beginning before January 1, 2003'' after ''corporation''.

Subsec. (d)(2)(E)(i). Pub. L. 105–34, § 1111(b), struck out ''and except as provided in regulations, the taxpayer was a United States shareholder in such corporation'' after ''was a controlled foreign corporation''.

Subsec. (d)(2)(E)(iv). Pub. L. 105–34, § 1105(a)(2), added cl. (iv).

Subsec. (d)(4) to (6). Pub. L. 105–34, § 1105(b), added par. (4) and redesignated former pars. (4) and (5) as (5) and (6), respectively.

Subsecs. (j), (k). Pub. L. 105–34, § 1101(a), added subsec. (j) and redesignated former subsec. (j) as (k).

1996—Subsec. (d)(3)(G). Pub. L. 104–188, § 1501(b)(1), (12), amended subpar. (G) identically, substituting ''section 951(a)(1)(B)'' for ''subparagraph (B) or (C) of section 951(a)(1)''.

Pub. L. 104–188, § 1703(i)(1), substituted ''subparagraph (B) or (C) of section 951(a)(1)'' for ''section 951(a)(1)(B)''.

Subsec. (f)(2)(B)(i). Pub. L. 104–188, § 1704(t)(36), inserted ''(as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)'' after ''section 172(h)''.

1993—Subsec. (b)(4). Pub. L. 103–66, § 13227(d), inserted before period at end ''(without regard to subsections (a)(4) and (i) thereof)''.

Subsec. (d)(2)(A)(iii)(II) to (IV). Pub. L. 103–66, § 13235(a)(2), inserted ''and'' at end of subcl. II, substituted ''income.'' for ''income, and'' in subcl. III, and struck out subcl. (IV) which read as follows: ''any foreign oil and gas extraction income (as defined in section 907(c)).''

1990—Subsec. (b)(3)(D)(i). Pub. L. 101–508, § 11101(d)(5)(A), substituted ''subsection (h)'' for ''subsection (j)''.

Subsec. (b)(3)(E)(iii)(I). Pub. L. 101–508, § 11101(d)(5)(B), substituted ''section 1(h)'' for ''section 1(j)''.

Subsec. (e). Pub. L. 101–508, § 11801(a)(31), struck out subsec. (e) which related to transitional rules for carrybacks and carryovers for taxpayers on the per-country limitation.

1989—Subsec. (d)(1)(H). Pub. L. 101–239, § 7811(i)(1), substituted ''interest or carrying charges (as defined in section 927(d)(1)) derived from a transaction which results in foreign trade income (as defined in section 923(b))'' for ''qualified interest and carrying charges (as defined in section 245(c))''.

Subsecs. (i), (j). Pub. L. 101–239, §7402(a), added subsec. (i) and redesignated former subsec. (i) as (j).

1988—Subsec. (b)(2). Pub. L. 100–647, §1003(b)(2)(A), amended par. (2) generally, substituting general provisions and provisions setting special rules where there is a capital gain rate differential for provisions for corporations and for other taxpayers.

Subsec. (b)(3)(D). Pub. L. 100–647, §1003(b)(2)(B), added subpar. (D) and struck out former subpar. (D), Rate differential portion, which read as follows: ''The 'rate differential portion' of foreign source net capital gain, net capital gain, or the excess of net capital gain from sources within the United States over net capital gain, as the case may be, is the same proportion of such amount as the excess of the highest rate of tax specified in section 11(b) over the alternative rate of tax under section 1201(a) bears to the highest rate of tax specified in section 11(b).''

Subsec. (b)(3)(D)(ii). Pub. L. 100–647, §2004(*l*), substituted ''section 11(b)(1)'' for ''section 11(b)''.

Subsec. (b)(3)(E). Pub. L. 100–647, §1003(b)(2)(B), added subpar. (E).

Subsec. (d)(1)(E). Pub. L. 100–647, §1012(a)(11), inserted ''in the case of a corporation,'' before ''dividends''.

Subsec. (d)(2)(A)(ii). Pub. L. 100–647, §1012(a)(6)(A), (p)(29)(A), substituted ''Except as provided in clause (iii), the term'' for ''The term'' and ''or, except as provided in subparagraph (E)(iii) or paragraph (3)(I), section 1293'' for ''or section 1293''.

Subsec. (d)(2)(A)(iv). Pub. L. 100–647, §1012(a)(6)(B), added cl. (iv).

Subsec. (d)(2)(B)(iii). Pub. L. 100–647, §1012(a)(8), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''The Secretary may by regulations provide that amounts (not otherwise high withholding tax interest) shall be treated as high withholding tax interest where necessary to prevent avoidance of the purposes of this subparagraph.''

Subsec. (d)(2)(C). Pub. L. 100–647, §1012(a)(1)(A), amended subpar. (C) generally, revising and restating as cls. (i) to (iii) provisions of former cls. (i) to (iv).

Subsec. (d)(2)(D). Pub. L. 100–647, §1012(a)(2), provided for exclusion from term ''shipping income'' any dividend from a noncontrolled section 902 corporation and any financial services income.

Subsec. (d)(2)(E)(i). Pub. L. 100–647, §1012(a)(10), inserted ''and except as provided in regulations, the taxpayer was a United States shareholder in such corporation'' before period at end.

Subsec. (d)(2)(E)(iii). Pub. L. 100–647, §1012(p)(29)(B), added cl. (iii).

Subsec. (d)(2)(I)(ii). Pub. L. 100–647, §1012(a)(9), substituted ''except that—'' for ''except to the extent that—'', added subcls. (I) to (III), and struck out former subcls. (I) and (II) which read as follows:

''(I) the taxpayer establishes to the satisfaction of the Secretary that such taxes were paid or accrued with respect to shipping income, or

''(II) in the case of an entity meeting the requirements of subparagraph (C)(ii), the taxpayer establishes to the satisfaction of the Secretary that such taxes were paid or accrued with respect to financial services income, and''.

Subsec. (d)(3)(E). Pub. L. 100–647, §1012(a)(4), inserted first sentence, struck out former first sentence which read ''If a controlled foreign corporation meets the requirements of section 954(b)(3)(A) (relating to de minimis rule) for any taxable year, for purposes of this paragraph, none of its income for such taxable year shall be treated as income in a separate category.'', and in second sentence substituted ''passive income'' for ''income (other than high withholding tax interest and dividends from a noncontrolled section 902 corporation)''.

Subsec. (d)(3)(F). Pub. L. 100–647, §1012(a)(7), amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: ''For purposes of this paragraph, the term 'separate category' means any category of income described in subparagraph (A), (B), (C), (D), or (E) of paragraph (1).''

Subsec. (d)(3)(H). Pub. L. 100–647, §1012(a)(3), added subpar. (H).

Subsec. (d)(3)(I). Pub. L. 100–647, §1012(p)(11), added subpar. (I).

Subsec. (f)(5)(F). Pub. L. 100–647, §1012(c), added subpar. (F).

Subsec. (g)(9)(A). Pub. L. 100–647, §1012(q)(12), substituted ''861(a)(1)(A)'' for ''861(a)(1)(B)''.

Subsec. (g)(10), (11). Pub. L. 100–647, §1012(bb)(4)(A), added par. (10) and redesignated former par. (10) as (11).

1986—Subsec. (a). Pub. L. 99–514, §104(b)(13), struck out last sentence ''For purposes of the preceding sentence, in the case of an individual the entire taxable income shall be reduced by an amount equal to the zero bracket amount.''

Subsec. (b)(3)(C). Pub. L. 99–514, §1211(b)(3), redesignated subpar. (E) as (C) and struck out former subpar. (C), exception for gain from the sale of certain personal property, which read as follows: ''There shall be included as gain from sources within the United States any gain from sources without the United States from the sale or exchange of a capital asset which is personal property which—

''(i) in the case of an individual, is sold or exchanged outside of the country (or possession) of the individual's residence,

''(ii) in the case of a corporation, is stock in a second corporation sold or exchanged other than in a country (or possession) in which such second corporation derived more than 50 percent of its gross income for the 3-year period ending with the close of such second corporation's taxable year immediately preceding the year during which the sale or exchange occurred, or

''(iii) in the case of any taxpayer, is personal property (other than stock in a corporation) sold or exchanged other than in a country (or possession) in which such property is used in a trade or business of the taxpayer or in which such taxpayer derived more than 50 percent of its gross income for the 3-year period ending with the close of its taxable year immediately preceding the year during which the sale or exchange occurred,

unless such gain is subject to an income, war profits, or excess profits tax of a foreign country or possession of the United States, and the rate of tax applicable to such gain is 10 percent or more of the gain from the sale or exchange (computed under this chapter).''

Subsec. (b)(3)(D). Pub. L. 99–514, §1211(b)(3), redesignated subpar. (F) as (D) and struck out former subpar. (D), gain from liquidation of certain foreign corporations, which read as follows: ''Subparagraph (C) shall not apply with respect to a distribution in liquidation of a foreign corporation to which part II of subchapter C applies if such corporation derived less than 50 percent of its gross income from sources within the United States for the 3-year period ending with the close of such corporation's taxable year immediately preceding the year during which the distribution occurred.''

Subsec. (b)(3)(E), (F). Pub. L. 99–514, §1211(b)(3), redesignated former subpars. (E) and (F) as (C) and (D), respectively.

Subsec. (d). Pub. L. 99–514, §1201(d)(1), substituted ''certain categories of income'' for ''certain interest income and income from DISC, former DISC, FSC, or former FSC'' in heading.

Subsec. (d)(1). Pub. L. 99–514, §1201(a), (d)(2), (3), inserted ''and sections 902, 907, and 960'' in introductory provisions, added subpars. (A) to (E), struck out former subpar. (A) which read ''the interest income described in paragraph (2)'', redesignated former subpars. (B), (C), (D), and (E) as (F), (G), (H), and (I), respectively, and in subpar. (I), substituted ''in any of the preceding subparagraphs'' for ''in subparagraph (A), (B), (C), or (D)''.

Pub. L. 99–514, §1899A(24), made technical correction clarifying heading. See 1984 Amendment note below.

Subsec. (d)(1)(D). Pub. L. 99–514, §1876(d)(2), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''distributions from a FSC (or former FSC) out of earnings and profits attributable to foreign

trade income (within the meaning of section 923(b)), and''.

Subsec. (d)(2). Pub. L. 99–514, §1201(b), added par. (2) and struck out former par. (2), interest income to which applicable, which read as follows: ''For purposes of this subsection, the interest income described in this paragraph is interest other than interest—

''(A) derived from any transaction which is directly related to the active conduct by the taxpayer of a trade or business in a foreign country or a possession of the United States,

''(B) derived in the conduct by the taxpayer of a banking, financing, or similar business,

''(C) received from a corporation in which the taxpayer (or one or more includible corporations in an affiliated group, as defined in section 1504, of which the taxpayer is a member) owns, directly or indirectly, at least 10 percent of the voting stock, or

''(D) received on obligations acquired as a result of the disposition of a trade or business actively conducted by the taxpayer in a foreign country or possession of the United States or as a result of the disposition of stock or obligations of a corporation in which the taxpayer owned at least 10 percent of the voting stock.

For purposes of subparagraph (C), stock owned, directly or indirectly, by or for a foreign corporation, shall be considered as being proportionately owned by its shareholders. For purposes of this subsection, interest (after the operation of section 904(d)(3)) received from a designated payor corporation described in section 904(d)(3)(E)(iii) by a taxpayer which owns directly or indirectly less than 10 percent of the voting stock of such designated payor corporation shall be treated as interest described in subparagraph (A) to the extent such interest would have been so treated had such taxpayer received it from other than a designated payor corporation.''

Pub. L. 99–514, §1810(b)(3), inserted at end ''For purposes of this subsection, interest (after the operation of section 904(d)(3)) received from a designated payor corporation described in section 904(d)(3)(E)(iii) by a taxpayer which owns directly or indirectly less than 10 percent of the voting stock of such designated payor corporation shall be treated as interest described in subparagraph (A) to the extent such interest would have been so treated had such taxpayer received it from other than a designated payor corporation.''

Subsec. (d)(3). Pub. L. 99–514, §1201(b), added par. (3) and struck out former par. (3) treating as interest certain amounts attributable to United States-owned foreign corporations, etc., subpars. thereof relating to following subject matter: (A) general provisions, (B) separate limitation interest, (C) exception where designated corporation has small amount of separate limitation interest, (D) treatment of certain interest, (E) designated payor corporation, (F) determination of year to which amount is attributable, (G) ordering rules, (H) dividend, (I) interest and dividends from members of same affiliated group, and (J) distributions through other entities.

Subsec. (d)(3)(C). Pub. L. 99–514, §1810(b)(1), inserted at end ''The preceding sentence shall not apply to any amount includible in gross income under section 551 or 951.''

Subsec. (d)(3)(E). Pub. L. 99–514, §1810(b)(4)(A), inserted at end:

''(iv) any other corporation formed or availed of for purposes of avoiding the provisions of this paragraph.

For purposes of this paragraph, the rules of paragraph (9) of subsection (g) shall apply.''

Subsec. (d)(3)(I). Pub. L. 99–514, §1810(b)(2), redesignated subpar. (I) as (J) and added a new subpar. (I), interest and dividends from members of same affiliated group, which read as follows: ''For purposes of this paragraph, dividends and interest received or accrued by the designated payor corporation from another member of the same affiliated group (determined under section 1504 without regard to subsection (b)(3) thereof) shall be treated as separate limitation interest if (and only if) such amounts are attributable (directly or indirectly) to separate limitation interest of any other member of such group.''

Subsec. (d)(3)(J). Pub. L. 99–514, §1810(b)(2), redesignated subpar. (I) as (J) and struck out former subpar. (J), interest from members of same affiliated group, which read as follows: ''For purposes of this paragraph, interest received or accrued by the designated payor corporation from another member of the same affiliated group (determined under section 1504 without regard to subsection (b)(3) thereof) shall not be treated as separate limitation interest, unless such interest is attributable directly or indirectly to separate limitation interest of such other member.''

Subsec. (d)(4), (5). Pub. L. 99–514, §1201(b), added pars. (4) and (5).

Subsec. (f)(5). Pub. L. 99–514, §1203(a), added par. (5).

Subsec. (g)(1)(A)(iii). Pub. L. 99–514, §1235(f)(4)(A), added cl. (iii).

Subsec. (g)(2). Pub. L. 99–514, §1235(f)(4)(B), substituted ''holding or passive foreign investment company'' for ''holding company'' in heading.

Subsec. (g)(9), (10). Pub. L. 99–514, §1810(a)(1)(A), added par. (9) and redesignated former par. (9) as (10).

Subsec. (i)(2). Pub. L. 99–514, §701(e)(4)(H), struck out ''by an individual'' after ''can be taken'' and substituted ''section 59(a)'' for ''section 55(c)''.

1984—Subsec. (d). Pub. L. 98–369, §801(d)(2)(C), which directed amendment of par. (1) heading by substituting ''Separate application of section with respect to certain interest income and income from DISC, former DISC, FSC, or former FSC'' for ''Application of section in case of certain interest income and dividends from a DISC or former DISC'' was executed to subsec. (d) heading to reflect the probable intent of Congress.

Subsec. (d)(1)(B) to (E). Pub. L. 98–369, §801(d)(2)(A), (B), struck out ''and'' after ''United States,'' at end of subpar. (B), substituted ''taxable income attributable to foreign trade income (within the meaning of section 923(b)),'' for ''income other than the interest income described in paragraph (2) and dividends described in subparagraph (B),'' in subpar. (C), and added subpars. (D) and (E).

Subsec. (d)(3). Pub. L. 98–369, §122(a), added par. (3).

Subsec. (g). Pub. L. 98–369, §121(a), added subsec. (g). Former subsec. (g) redesignated (h).

Pub. L. 98–369, §474(r)(21), amended subsec. (g) generally, substituting ''Coordination with nonrefundable personal credits'' for ''Coordination with credit for the elderly'' in heading and in text substituting ''reduced by the sum of the credits allowable under subpart A of part IV of subchapter A of this chapter'' for ''reduced by the amount of the credit (if any) for the taxable year allowable under section 37 (relating to credit for the elderly and the permanently and totally disabled)''.

Subsecs. (h), (i). Pub. L. 98–369, §121(a), redesignated former subsecs. (g) and (h) as (h) and (i), respectively.

1983—Subsec. (g). Pub. L. 98–21 substituted ''relating to credit for the elderly and the permanently and totally disabled'' for ''relating to credit for the elderly''.

1982—Subsec. (f)(4) to (6). Pub. L. 97–248 struck out par. (4) which provided for the determination of foreign oil related loss where section 907 was applicable, redesignated par. (5) as (4), and purported to redesignate par. (6) as (5). However, subsec. (f) did not contain a par. (6).

1980—Subsec. (b)(3)(F). Pub. L. 96–222, §104(a)(3)(D)(i), redesignated subpar. (E) ''Rate differential portion'', added by Pub. L. 95–600, as (F).

1978—Subsec. (b)(2). Pub. L. 95–600, §§403(c)(4)(A), 701(u)(2)(A), (3)(A), in subpar. (A) substituted ''this section'' for ''subsection (a)'', ''the rate differential portion'' for ''three eighths'' wherever appearing, and ''for purposes of determining taxable income from sources without the United States, any net capital loss (and any amount which is a short term capital loss under section 1212(a))'' for ''any net capital loss''.

Subsec. (b)(3). Pub. L. 95–600, §§403(c)(4)(B), 701(u)(2)(B), (C), as amended by Pub. L. 96–222, §104(a)(3)(D)(ii), substituted ''There'' for ''For purposes of this paragraph, there'', added subpar. (D), redesig-