nated former subpar. (D), relating to section 1231 gains, as subpar. (E), and added another subpar. (E), relating to rate differential portion. See 1980 Amendment note above.

Subsec. (f)(2)(A). Pub. L. 95–600, § 701(u)(4)(A), struck out provision relating to capital loss carrybacks and carryovers.

Subsec. (f)(4). Pub. L. 95–600, § 701(u)(4)(B), (8)(C), substituted in introductory provisions ''In making the separate computation under this subsection with respect to foreign oil related income which is required by section 907(b)'' for ''In the case of a corporation to which section 907(b)(1) applies'' and in subpar. (A) struck out provision relating to capital loss carrybacks and carryovers.

Subsec. (f)(5). Pub. L. 95–600, § 701(q)(2), added par. (5).

Subsec. (h). Pub. L. 95–600, § 421(e)(6), designated existing provisions as par. (1) and added par. (2).

1977—Subsec. (a). Pub. L. 95–30 provided that, for purposes of determining the maximum total amount of the credit taken under section 901(a), in the case of an individual, the entire taxable income shall be reduced by an amount equal to the zero bracket amount.

1976—Subsec. (a). Pub. L. 94–455, § 1031(a), struck out provisions allowing the per-country limitation, made the overall limitation applicable to all taxpayers to determine their foreign tax credit limitation, and inserted reference to section 901(a).

Subsec. (b). Pub. L. 94–455, §§ 1031(a), 1034(a), 1051(e), redesignated subsec. (c) as (b)(1), inserted provisions that the net United States capital losses would offset net foreign capital gains and, in the case of corporations, that only 30/48 of the net foreign source gain would be included in the foreign tax credit limitation, and that the gain from the sale or exchange of personal property outside the United States would be considered United States source income unless one of three exceptions applied, and added par. (4).

Subsec. (c). Pub. L. 94–455, § 1031(a), redesignated subsec. (d) as (c), and amended the redesignated subsec. (c) generally to conform to the elimination of the per-country limitation in subsec. (a). Former subsec. (c) redesignated (b)(1).

Subsec. (d). Pub. L. 94–455, § 1031(a), redesignated subsec. (f)(1), (2), as (d). Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 94–455, § 1031(a), added subsec. (e). Former subsec. (e) was eliminated in view of the amendment of subsec. (a).

Subsec. (f). Pub. L. 94–455, §§ 1031(a), 1032(a), 1901(b)(10)(B), added subsec. (f), and substituted ''section 172(h)'' for ''section 172(k)(1)'' in pars. (2)(B)(i) and (4)(B)(i). Former subsec. (f)(1), (2), was redesignated (d). Former subsecs. (f)(3), (4), (5) were omitted.

Subsec. (g). Pub. L. 94–455, §§ 1032(a), 503(b)(1), added subsec. (g). Former subsec. (f) redesignated (g), and further redesignated (h).

Subsec. (h). Pub. L. 94–455, § 503(b)(1), redesignated former subsec. (g) as (h).

1971—Subsec. (f). Pub. L. 92–178, § 502(b)(2), inserted ''and dividends from a DISC or former DISC'' after ''interest income'' in the heading.

Subsec. (f)(1). Pub. L. 92–178, § 502(b)(2), inserted ''each of the following items of income'' in introductory text, added subpar. (B), and redesignated former subpar. (B) as (C), inserting therein provisions respecting dividends described in subparagraph (B).

Subsec. (f)(3). Pub. L. 92–178, § 502(b)(3), provided that the limitation provided by subsec. (a)(2) shall not apply to dividends described in paragraph (1)(B) and substituted ''limitation provided by subsection (a)(2) applies with respect to income described in paragraph (1)(B) and (C)'' for ''limitation provided by subsection (a)(2) applies with respect to income other than the interest income described in paragraph (2)''.

Subsec. (f)(5). Pub. L. 92–178, § 502(b)(4), added par. (5).

1969—Subsec. (b)(1). Pub. L. 91–172, § 506(b)(1), substituted ''(A) with the consent of the Secretary or his delegate with respect to any taxable year or (B) for the taxpayer's first taxable year beginning after December 31, 1969'' for ''with the consent of the Secretary or his delegate with respect to any taxable year''.

Subsec. (b)(2). Pub. L. 91–172, § 506(b)(2), substituted ''Except in a case to which paragraph (1)(B) applies, if the taxpayer'' for ''If a taxpayer''.

1966—Subsec. (f)(2). Pub. L. 89–809 inserted reference to includible corporations in an affiliated group, as defined in section 1504, of which the taxpayer is a member and inserted reference to both direct and indirect ownership in subpar. (C) and inserted provision that, for purposes of subpar. (C), stock owned directly or indirectly by or for a foreign corporation shall be considered as being proportionately owned by its shareholders.

1964—Subsec. (g)(2). Pub. L. 88–272 substituted ''section 1503(b)'' for ''section 1503(d)''.

1962—Subsec. (f). Pub. L. 87–834, § 10(a), added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 87–834, §§ 10(a), 12(b)(2), redesignated former subsec. (f) as (g), designated existing provisions as par. (2), and added par. (1).

1960—Subsec. (a). Pub. L. 86–780, § 1(a), designated existing provisions as par. (1), inserted introductory clause ''In the case of any taxpayer who elects the limitation provided by this paragraph'' and inserted ''foreign'', ''or possession of the United States'' and ''or possession'' therein and added par. (2).

Subsec. (b). Pub. L. 86–780, § 1(a), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 86–780, § 1(b), redesignated former subsec. (b) as (c) and inserted ''applicable'' before ''limitation'' therein. Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 86–780, § 1(c), redesignated former subsec. (c) as (d) and inserted ''applicable'' before ''limitation'' in two places.

Subsecs. (e), (f). Pub. L. 86–780, § 1(d), added subsecs. (e) and (f).

1958—Subsec. (c). Pub. L. 85–866 added subsec. (c).

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 13001(b)(2)(M) 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 14101(d) of Pub. L. 115–97 applicable to distributions made after Dec. 31, 2017, and applicable to deductions with respect to taxable years ending after Dec. 31, 2017, see section 14101(f) of Pub. L. 115–97, set out as an Effective Date note under section 245A of this title.

Pub. L. 115–97, title I, § 14201(d), Dec. 22, 2017, 131 Stat. 2213, provided that: ''The amendments made by this section [enacting section 951A of this title and amending this section and section 960 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.''

Amendment by section 14301(c)(15)–(19) 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.

Pub. L. 115–97, title I, § 14302(c), Dec. 22, 2017, 131 Stat. 2225, 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, § 14304(b), Dec. 22, 2017, 131 Stat. 2226, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2017.''

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113–295, div. A, title II, § 219(d), Dec. 19, 2014, 128 Stat. 4035, provided that: ''The amendments made by this section [amending this section, section 199 of this title, and provisions set out as a note under sec-

tion 114 of this title] shall take effect as if included in the provision of the American Jobs Creation Act of 2004 [Pub. L. 108–357] to which they relate.''

Amendment by section 221(a)(72) 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

Amendment by Pub. L. 112–240 applicable to taxable years beginning after Dec. 31, 2011, see section 104(d) of Pub. L. 112–240, set out as a note under section 23 of this title.

EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

Pub. L. 111–226, title II, § 213(b), Aug. 10, 2010, 124 Stat. 2399, 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. 10, 2010].''

Amendment by section 217(c)(2) of 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 an Effective Date of 2010 Amendment note under section 861 of this title.

Amendment by Pub. L. 111–148 terminated applicable to taxable years beginning after Dec. 31, 2011, and section is amended to read as if such amendment had never been enacted, see section 10909(c) of Pub. L. 111–148, set out as a note under section 1 of this title.

Amendment by Pub. L. 111–148 applicable to taxable years beginning after Dec. 31, 2009, see section 10909(d) of Pub. L. 111–148, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by section 1004(b)(5) of Pub. L. 111–5 applicable to taxable years beginning after Dec. 31, 2008, see section 1004(d) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

Amendment by section 1142(b)(1)(E) of Pub. L. 111–5 applicable to vehicles acquired after Feb. 17, 2009, see section 1142(c) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

Amendment by section 1144(b)(1)(E) of Pub. L. 111–5 applicable to taxable years beginning after Dec. 31, 2008, see section 1144(c) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–172, § 11(f)(4), Dec. 29, 2007, 121 Stat. 2489, provided that: ''The amendments made by this subsection [amending this section and sections 1298 and 9502 of this title] shall take effect as if included in the provisions of the American Jobs Creation Act of 2004 [Pub. L. 108–357] to which they relate.''

EFFECTIVE AND TERMINATION DATES OF 2005 AMENDMENT

Amendment by section 402(i)(3)(G) of Pub. L. 109–135 subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, § 901, in the same manner as the provisions of such Act to which such amendment relates, see section 402(i)(3)(H) of Pub. L. 109–135, set out as a note under section 23 of this title. Title IX of Pub. L. 107–16 was repealed by Pub. L. 112–240, title I, § 101(a)(1), Jan. 2, 2013, 126 Stat. 2315.

Amendment by section 402(i)(3)(G) of Pub. L. 109–135 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109–58, to which it relates and applicable to taxable years beginning after Dec. 31, 2005, see section 402(m) of Pub. L. 109–135, set out as a note under section 23 of this title.

Amendments by section 403(k), (*o*) 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 an Effective Date of 2005 Amendment note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 402(a) of Pub. L. 108–357 applicable to losses for taxable years beginning after Dec. 31, 2006, see section 402(c) of Pub. L. 108–357, set out as a note under section 535 of this title.

Amendment by section 403(a), (b)(1)–(5) of Pub. L. 108–357 applicable to taxable years beginning after Dec. 31, 2002, see section 403(c) of Pub. L. 108–357, set out as a note under section 864 of this title.

Amendment by section 403(a), (b)(1)–(5) of Pub. L. 108–357 not applicable to taxable years beginning after Dec. 31, 2002, and before Jan. 1, 2005, with a specific provision for application of subsec. (d)(4)(C)(iv) of this section, if taxpayer so elects, see section 403(d) of Pub. L. 108–357, set out as a note under section 864 of this title.

Pub. L. 108–357, title IV, § 404(g), Oct. 22, 2004, 118 Stat. 1497, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2006.

''(2) TRANSITIONAL RULE RELATING TO INCOME TAX BASE DIFFERENCE.—Section 904(d)(2)(H)(ii) of the Internal Revenue Code of 1986, as added by subsection (e), shall apply to taxable years beginning after December 31, 2004.''

Amendment by section 413(c)(14), (15) 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 IV, § 417(c), Oct. 22, 2004, 118 Stat. 1512, provided that:

''(1) CARRYBACK.—The amendments made by subsections (a)(1) and (b)(1) [amending this section and section 907 of this title] shall apply to excess foreign taxes arising in taxable years beginning after the date of the enactment of this Act [Oct. 22, 2004].

''(2) CARRYOVER.—The amendments made by subsections (a)(2) and (b)(2) [amending this section and section 907 of this title] shall apply to excess foreign taxes which (without regard to the amendments made by this section [amending this section and section 907 of this title]) may be carried to any taxable year ending after the date of the enactment of this Act [Oct. 22, 2004].''

Pub. L. 108–357, title VIII, § 895(b), Oct. 22, 2004, 118 Stat. 1648, provided that: ''The amendment made by this section [amending this section] shall apply to dispositions after the date of the enactment of this Act [Oct. 22, 2004].''

Amendment by Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2003, see section 312(c) of Pub. L. 108–311, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by section 601(b)(1) of Pub. L. 107–147 applicable to taxable years beginning after Dec. 31, 2001, see section 601(c) of Pub. L. 107–147, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by sections 201(b), 202(f), and 618(b) of Pub. L. 107–16 inapplicable to taxable years beginning during 2004 or 2005, see section 312(b)(2) of Pub. L. 108–311, set out as a note under section 23 of this title.

Amendment by sections 201(b), 202(f), and 618(b) of Pub. L. 107–16 inapplicable to taxable years beginning during 2002 and 2003, see section 601(b)(2) of Pub. L. 107–147, set out as a note under section 23 of this title.

Amendment by section 201(b)(2)(G) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31,

2001, see section 201(e)(2) of Pub. L. 107–16, set out as a note under section 24 of this title.

Amendment by section 202(f)(2)(C) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 202(g)(1) of Pub. L. 107–16, set out as a note under section 23 of this title.

Amendment by section 618(b)(2)(D) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 618(d) of Pub. L. 107–16, set out as a note under section 24 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to taxable years beginning after Dec. 31, 1998, see section 501(c) of Pub. L. 106–170, set out as a note under section 24 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 311(c)(3) of Pub. L. 105–34 applicable to taxable years ending after May 6, 1997, see section 311(d) of Pub. L. 105–34, set out as a note under section 1 of this title.

Pub. L. 105–34, title XI, §1101(b), Aug. 5, 1997, 111 Stat. 963, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1997.''

Pub. L. 105–34, title XI, §1105(c), Aug. 5, 1997, 111 Stat. 968, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2002.''

Pub. L. 105–34, title XI, §1111(c)(2), Aug. 5, 1997, 111 Stat. 969, provided that: ''The amendment made by subsection (b) [amending this section] shall apply to distributions after the date of the enactment of this Act [Aug. 5, 1997].''

Pub. L. 105–34, title XI, §1163(c), Aug. 5, 1997, 111 Stat. 987, provided that: ''The amendments made by this section [amending this section and section 902 of this title] shall take effect on the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1501(d), Aug. 20, 1996, 110 Stat. 1826, provided that: ''The amendments made by this section [amending this section and sections 951, 956, 959, 989, and 1297 of this title and repealing section 956A of this title] shall apply to taxable years of foreign corporations beginning after December 31, 1996, and to taxable years of United States shareholders within which or with which such taxable years of foreign corporations end.''

Amendment by section 1703(i)(1) of Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§13001–13444, to which such amendment relates, see section 1703(*o*) of Pub. L. 104–188, set out as a note under section 39 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13227(d) of Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1993, see section 13227(f) of Pub. L. 103–66 set out as a note under section 56 of this title.

Pub. L. 103–66, title XIII, §13235(c), Aug. 10, 1993, 107 Stat. 505, provided that: ''The amendments made by this section [amending this section and sections 907 and 954 of this title] shall apply to taxable years beginning after December 31, 1992.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11101(d)(5) of 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 1989 AMENDMENT

Pub. L. 101–239, title VII, §7402(b), Dec. 19, 1989, 103 Stat. 2358, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after July 10, 1989.''

Amendment by section 7811(i)(1) 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

Pub. L. 100–647, title I, §1012(bb)(4)(B), Nov. 10, 1988, 102 Stat. 3535, provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect as if included in the amendment made by section 121 of the Tax Reform Act of 1984 [Pub. L. 98–369].''

Amendment by sections 1003(b)(2) and 1012(a)(1)(A), (2)–(4), (6)–(11), (c), (p)(11), (29), (q)(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(*l*) 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 1986 AMENDMENT

Amendment by section 104(b)(13) 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 701(e)(4)(H) 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, §1201(e), Oct. 22, 1986, 100 Stat. 2525, as amended by Pub. L. 100–647, title I, §1012(a)(5), Nov. 10, 1988, 102 Stat. 3495; Pub. L. 101–239, title VII, §7404(a), Dec. 19, 1989, 103 Stat. 2361, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section and sections 864 and 954 of this title] shall apply to taxable years beginning after December 31, 1986.

''[(2) Repealed. Pub. L. 101–239, title VII, §7404(a), Dec. 19, 1989, 103 Stat. 2361.]

''(3) SPECIAL RULE FOR TAXPAYER WITH OVERALL FOREIGN LOSS.—

''(A) IN GENERAL.—If a taxpayer incorporated on June 20, 1928, the principal headquarters of which is in Minneapolis, Minnesota, sustained an overall foreign loss (as defined in section 904(f)(2) of the Internal Revenue Code of 1954 [now 1986]) in taxable years beginning before January 1, 1986, in connection with 2 separate trades or businesses which the taxpayer had, during 1985, substantially disposed of in tax-free transactions pursuant to section 355 of such Code, then an amount, not to exceed $40,000,000 of foreign source income, which, but for this paragraph, would not be treated as overall limitation income, shall be so treated.

''(B) SUBSTANTIAL DISPOSITION.—For purposes of this paragraph, a taxpayer shall be treated as having substantially disposed of a trade or business if the retained portion of such business had sales of less than 10 percent of the annual sales of such business for taxable years ending in 1985.''

[Pub. L. 101–239, title VII, §7404(b), (c), Dec. 19, 1989, 103 Stat. 2361, provided that:

[''(b) EFFECTIVE DATE.—The repeal made by subsection (a) [amending section 1201(e) of Pub. L. 99–514, set out above] shall apply to taxable years beginning after December 31, 1989.

[''(c) EXCEPTION FOR CERTAIN TAXPAYERS WITH SUBSTANTIAL LOAN LOSS RESERVES.—

[''(1) IN GENERAL.—The repeal made by subsection (a) shall not apply to any taxpayer if, on any financial statement filed by such taxpayer for regulatory purposes with respect to any quarter ending during the period beginning on March 31, 1989, and ending on December 31, 1989, such taxpayer showed loss reserves against its qualified loans equal to at least 25 percent of the amount of such loans.

[''(2) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

[''(A) QUALIFIED LOAN.—The term 'qualified loan' has the meaning given such term by section 1201(e)(2)(H) of the Tax Reform Act of 1986 [Pub. L. 99–514, formerly set out above] (as in effect before its repeal by subsection (a)).

[''(B) PARENT-SUBSIDIARY CONTROLLED GROUPS.—In the case of any taxpayer which is a member of a parent-subsidiary controlled group (as defined in section 585(c)(5)(A) [26 U.S.C. 585(c)(5)(A)]), this subsection shall be applied by treating all members of such group as 1 taxpayer.'']

Pub. L. 99–514, title XII, §1203(b), Oct. 22, 1986, 100 Stat. 2532, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to losses incurred in taxable years beginning after December 31, 1986.''

Amendment by section 1211(b)(3) 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 1235(f)(4) 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.

Pub. L. 99–514, title XVIII, §1810(a)(1)(B), Oct. 22, 1986, 100 Stat. 2822, provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect on March 28, 1985. In the case of any taxable year ending after such date of any corporation treated as a United States-owned foreign corporation by reason of the amendment made by subparagraph (A)—

''(i) only income received or accrued by such corporation after such date shall be taken into account under section 904(g) of the Internal Revenue Code of 1954 [now 1986]; except that

''(ii) paragraph (5) of such section 904(g) shall be applied by taking into account all income received or accrued by such corporation during such taxable year.''

Pub. L. 99–514, title XVIII, §1810(b)(4)(B), Oct. 22, 1986, 100 Stat. 2824, provided that:

''(i) The amendment made by subparagraph (A) [amending this section] insofar as it adds the last sentence to subparagraph (E) of section 905(d)(3) [904(d)(3)] shall take effect on March 28, 1985. In the case of any taxable year ending after such date of any corporation treated as a designated payor corporation by reason of the amendment made by subparagraph (A)—

''(I) only income received or accrued by such corporation after such date shall be taken into account under section 904(d)(3) of the Internal Revenue Code of 1954 [now 1986]; except that

''(II) subparagraph (C) of such section 904(d)(3) shall be applied by taking into account all income received or accrued by such corporation during such taxable year.

''(ii) The amendment made by subparagraph (A) insofar as it adds clause (iv) to subparagraph (E) of section 904(d)(3) shall take effect on December 31, 1985. For purposes of such amendment, the rule of the second sentence of clause (i) shall be applied by taking into account December 31, 1985, in lieu of March 28, 1985.''

Amendment by sections 1810(b)(1)–(3) and 1876(d)(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.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §121(b), July 18, 1984, 98 Stat. 640, as amended by Pub. L. 99–514, §2, title XVIII, §1810(a)(2), (3), Oct. 22, 1986, 100 Stat. 2095, 2822, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [July 18, 1984]. In the case of any taxable year of any United States-owned foreign corporation ending after the date of the enactment of this Act—

''(A) only income received or accrued by such foreign corporation after such date of enactment shall be taken into account under section 904(g) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)); except that

''(B) paragraph (5) of such section 904(g) (relating to exception where small amount of United States source income) shall be applied by taking into account all income received or accrued by such foreign corporation during such taxable year.

''(2) SPECIAL RULE FOR APPLICABLE CFC.—

''(A) IN GENERAL.—In the case of qualified interest received or accrued by an applicable CFC before January 1, 1992—

''(i) such interest shall not be taken into account under section 904(g) of the Internal Revenue Code of 1986 (as added by subsection (a)), except that

''(ii) such interest shall be taken into account for purposes of applying paragraph (5) of such section 904(g) (relating to exception where small amount of United States source income).

''(B) QUALIFIED INTEREST.—For purposes of subparagraph (A), the term 'qualified interest' means—

''(i) the aggregate amount of interest received or accrued during any taxable year by an applicable CFC on United States affiliate obligations held by such applicable CFC, multiplied by,

''(ii) a fraction (not in excess of 1)—

''(I) the numerator of which is the sum of the aggregate principal amount of United States affiliate obligations held by the applicable CFC on March 31, 1984, but not in excess of the applicable limit, and

''(II) the denominator of which is the average daily principal amount of United States affiliate obligations held by such applicable CFC during the taxable year.

Proper adjustments shall be made to the numerator described in clause (ii)(I) for original issue discount accruing after March 31, 1984, on CFC obligations and United States affiliate obligations.

''(C) ADJUSTMENT FOR RETIREMENT OF CFC OBLIGATIONS.—The amount described in subparagraph (B)(ii)(I) for any taxable year shall be reduced by the sum of—

''(i) the excess of (I) the aggregate principal amount of CFC obligations which are outstanding on March 31, 1984, but only with respect to obligations issued before March 8, 1984, or issued after March 7, 1984, by the applicable CFC pursuant to a binding commitment in effect on March 7, 1984, over (II) the average daily outstanding principal amount during the taxable year of the CFC obligations described in subclause (I), and

''(ii) the portion of the equity of such applicable CFC allocable to the excess described in clause (i) (determined on the basis of the debt-equity ratio of such applicable CFC on March 31, 1984).

''(D) APPLICABLE CFC.—For purposes of this paragraph, the term 'applicable CFC' means any controlled foreign corporation (within the meaning of section 957)—

''(i) which was in existence on March 31, 1984, and

''(ii) the principal purpose of which on such date consisted of the issuing of CFC obligations (or short-term borrowing from nonaffiliated persons) and lending the proceeds of such obligations (or such borrowing) to affiliates.

''(E) AFFILIATES; UNITED STATES AFFILIATES.—For purposes of this paragraph—

''(i) AFFILIATE.—The term 'affiliate' means any person who is a related person (within the meaning of section 482 of the Internal Revenue Code of 1986) to the applicable CFC.

''(ii) UNITED STATES AFFILIATE.—The term 'United States affiliate' means any United States person which is an affiliate of the applicable CFC.

''(iii) TREATMENT OF CERTAIN FOREIGN CORPORATIONS ENGAGED IN BUSINESS IN UNITED STATES.—For purposes of clause (ii), a foreign corporation shall be treated as a United States person with respect to any interest payment made by such corporation if—

''(I) at least 50 percent of the gross income from all sources of such corporation for the 3-year period ending with the close of its last taxable year ending on or before March 31, 1984, was effectively connected with the conduct of a trade or business within the United States, and

''(II) at least 50 percent of the gross income from all sources of such corporation for the 3-year period ending with the close of its taxable year preceding the payment of such interest was effectively connected with the conduct of a trade or business within the United States.

''(F) UNITED STATES AFFILIATE OBLIGATIONS.—For purposes of this paragraph, the term 'United States affiliate obligations' means any obligation of (and payable by) a United States affiliate.

''(G) CFC OBLIGATION.—For purposes of this paragraph, the term 'CFC obligation' means any obligation of (and issued by) a CFC if—

''(i) the requirements of clause (i) of [former] section 163(f)(2)(B) of the Internal Revenue Code of 1986 are met with respect to such obligation, and

''(ii) in the case of an obligation issued after December 31, 1982, the requirements of clause (ii) of such [former] section 163(f)(2)(B) are met with respect to such obligation.

''(H) TREATMENT OF OBLIGATIONS WITH ORIGINAL ISSUE DISCOUNT.—For purposes of this paragraph, in the case of any obligation with original issue discount, the principal amount of such obligation as of any day shall be treated as equal to the revised issue price as of such day (as defined in section 1278(a)(4) of the Internal Revenue Code of 1986).

''(I) APPLICABLE LIMIT.—For purposes of subparagraph (B)(ii)(I), the term 'applicable limit' means the sum of—

''(i) the equity of the applicable CFC on March 31, 1984, and

''(ii) the aggregate principal amount of CFC obligations outstanding on March 31, 1984, which were issued by an applicable CFC—

''(I) before March 8, 1984, or

''(II) after March 7, 1984, pursuant to a binding commitment in effect on March 7, 1984.

''(3) EXCEPTION FOR CERTAIN TERM OBLIGATIONS.—The amendments made by subsection (a) shall not apply to interest on any term obligations held by a foreign corporation on March 7, 1984. The preceding sentence shall not apply to any United States affiliate obligation (as defined in paragraph (2)(F)) held by an applicable CFC (as defined in paragraph (2)(D)).

''(4) DEFINITIONS.—Any term used in this subsection which is also used in section 904(g) of the Internal Revenue Code of 1986 (as added by subsection (a)) shall have the meaning given such term by such section 904(g).

''(5) SEPARATE APPLICATION OF SECTION 904 IN CASE OF INCOME COVERED BY TRANSITIONAL RULES.—Subsections (a), (b), and (c) of section 904 of the Internal Revenue Code of 1986 shall be applied separately to any amount not treated as income derived from sources within the United States but which (but for the provisions of paragraph (2) or (3) of this subsection) would be so treated under the amendments made by subsection (a). Any such separate application shall be made before any separate application required under section 904(d) of such Code.

''(6) APPLICATION OF PARAGRAPH (5) DELAYED IN CERTAIN CASES.—In the case of a foreign corporation—

''(A) which is a subsidiary of a domestic corporation which has been engaged in manufacturing for more than 50 years, and

''(B) which issued certificates with respect to obligations on—

''(i) September 24, 1979, denominated in French francs,

''(ii) September 10, 1981, denominated in Swiss francs,

''(iii) July 14, 1982, denominated in Swiss francs, and

''(iv) December 1, 1982, denominated in United States dollars,

with a total principal amount of less than 200,000,000 United States dollars.[,]

then paragraph (5) shall not apply to the proceeds from relending such obligations or related capital before January 1, 1986.''

Pub. L. 98–369, div. A, title I, § 122(b), July 18, 1984, 98 Stat. 644, provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [July 18, 1984].

''(2) SPECIAL RULES FOR INTEREST INCOME.—

''(A) IN GENERAL.—Interest income received or accrued by a designated payor corporation shall be taken into account for purposes of the amendment made by subsection (a) only in taxable years beginning after the date of the enactment of this Act.

''(B) EXCEPTION FOR INVESTMENT AFTER JUNE 22, 1984.—Notwithstanding subparagraph (A), the amendment made by subsection (a) shall apply to interest income received or accrued by a designated payor corporation after the date of enactment of this Act if it is attributable to investment in the designated payor corporation after June 22, 1984.

''(3) TERM OBLIGATIONS OF DESIGNATED PAYOR CORPORATION WHICH IS NOT APPLICABLE CFC.—In the case of any designated payor corporation which is not an applicable CFC (as defined in section 121(b)(2)(D) [section 121(b)(2)(D) of Pub. L. 98–369, set out above]), any interest received or accrued by such corporation on a term obligation held by such corporation on March 7, 1984, shall not be taken into account.''

Amendment by section 474(r)(21) 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 801(d)(2) 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 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable to taxable years beginning after Dec. 31, 1983, except that if an individual's annuity starting date was deferred under section 105(d)(6) of this title as in effect on the day before Apr. 20, 1983, such deferral shall end on the first day of such individual's first taxable year beginning after Dec. 31, 1983, see section 122(d) of Pub. L. 98–21, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to taxable years beginning after Dec. 31, 1982, except that former subsec. (f)(4), which had provided for the determination of foreign oil related loss where section 907 of this title was applicable, shall continue to apply in certain instances where the taxpayer has had a foreign loss from an activity not related to oil and gas, see section 211(e) of Pub. L. 97–248, set out as a note under section 907 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 1978 AMENDMENT

Amendment by section 403(c)(4) 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.

Amendment by section 421(e)(6) 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 note under section 5 of this title.

Amendment by section 701(a)(8)(C) of Pub. L. 95–600 applicable, in the case of individuals, to taxable years ending after Dec. 31, 1974, and, in the case of corporations, to taxable years ending after Dec. 31, 1976, see section 701(u)(8)(D) of Pub. L. 95–600, set out as a note under section 907 of this title.

Pub. L. 95–600, title VII, §701(q)(3)(B), Nov. 6, 1978, 92 Stat. 2910, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by paragraph (2) [amending this section] shall take effect as if included in section 904(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as such provision was added to such Code by section 1032(a) of the Tax Reform Act of 1976 [section 1032(a) of Pub. L. 94–455].''

Pub. L. 95–600, title VII, §701(u)(2)(D), Nov. 6, 1978, 92 Stat. 2913, provided that: ''The amendments made by this paragraph [amending this section] shall apply to taxable years beginning after December 31, 1975.''

Pub. L. 95–600, title VII, §701(u)(3)(B), Nov. 6, 1978, 92 Stat. 2913, provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to taxable years beginning after December 31, 1975.''

Pub. L. 95–600, title VII, §701(u)(4)(C), Nov. 6, 1978, 92 Stat. 2914, provided that: ''The amendments made by this paragraph [amending this section] shall apply—

''(i) to overall foreign losses sustained in taxable years beginning after December 31, 1975, and

''(ii) to foreign oil related losses sustained in taxable years ending 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

Amendment by section 503(b)(1) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, see section 508 of Pub. L. 94–455, set out as a note under section 3 of this title.

Pub. L. 94–455, title X, §1031(c), Oct. 4, 1976, 90 Stat. 1623, as amended by Pub. L. 95–600, title VII, §701(u)(6), (7)(B)(ii), Nov. 6, 1978, 92 Stat. 2914, 2916; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this section and sections 243, 383, 901, 907, 960, 1351, 1503, 6038, and 6501 of this title] shall apply to taxable years beginning after December 31, 1975.

''(2) EXCEPTION FOR CERTAIN MINING OPERATIONS.—In the case of a domestic corporation or includible corporation in an affiliated group (as defined in section 1504 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) which has as of October 1, 1975—

''(A) been engaged in the active conduct of the trade or business of the extraction of minerals (of a character with respect to which a deduction for depletion is allowable under section 613 of such Code) outside the United States or its possessions for less than 5 years preceding the date of enactment of this Act [Oct. 4, 1976],

''(B) had deductions properly apportioned or allocated to its gross income from such trade or business in excess of such gross income in at least 2 taxable years,

''(C) 80 percent of its gross receipts are from the sale of such minerals, and

''(D) made commitments for substantial expansion of such mineral extraction activities,

the amendments made by this section [amending this section and sections 243, 383, 901, 907, 960, 1351, 1503, 6038, and 6501 of this title] shall apply to taxable years beginning after December 31, 1978. In the case of a loss sustained in a taxable year beginning before January 1, 1979, by any corporation to which this paragraph applies, if section 904(a)(1) of such Code (as in effect before the enactment of this Act [Oct. 4, 1976]) applies with respect to such taxable year, the provisions of section 904(f) of such Code shall be applied with respect to such loss under the principles of such section 904(a)(1).

''(3) EXCEPTION FOR INCOME FROM POSSESSIONS.—In the case of gross income from sources within a possession of the United States (and the deductions properly apportioned or allocated thereto), the amendments made by this section [amending this section and sections 243, 383, 901, 907, 960, 1351, 1503, 6038, and 6501 of this title] shall apply to taxable years beginning after December 31, 1978.

''(4) CARRYBACKS AND CARRYOVERS IN THE CASE OF MINING OPERATIONS AND INCOME FROM A POSSESSION.—In the case of a taxpayer to whom paragraph (2) or (3) of this subsection applies, section 904(e) of such Code [section 904(e) of this title] shall apply except that 'January 1, 1979' shall be substituted for 'January 1, 1976' each place it appears therein. If such a taxpayer elects the overall limitation for a taxable year beginning before January 1, 1979, such section 904(e) shall be applied by substituting 'the January 1, of the last year for which such taxpayer is on the per-country limitation' for 'January 1, 1976' each place it appears therein.''

Pub. L. 94–455, title X, §1032(c), Oct. 4, 1976, 90 Stat. 1626, as amended by Pub. L. 95–600, title VII, §701(u)(5), (7)(A), (B)(i), Nov. 6, 1978, 92 Stat. 2914; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in paragraphs (2), (3), and (5), the amendment made by subsection (a) [amending this section] shall apply to losses sustained in taxable years beginning after December 31, 1975. The amendment made by subsection (b)(1) [amending section 907 of this title] shall apply to taxable years beginning after December 31, 1975. The amendment made by subsection (b)(2) [amending section 907 of this title] shall apply to losses sustained in taxable years ending after December 31, 1975.

''(2) OBLIGATIONS OF FOREIGN GOVERNMENTS.—The amendments made by subsection (a) [amending this section] shall not apply to losses on the sale, exchange, or other disposition of bonds, notes, or other evidences of indebtedness issued before May 14, 1976, by a foreign government or instrumentality thereof for the acquisition of property located in that country or stock of a corporation (created or organized in or under the laws of that foreign country) or indebtedness of such corporation.

''(3) SUBSTANTIAL WORTHLESSNESS BEFORE ENACTMENT.—The amendments made by subsection (a) [amending this section] shall not apply to losses incurred on the loss from stock or indebtedness of a corporation in which the taxpayer owned at least 10 percent of the voting stock and which has sustained losses in 3 out of the last 5 taxable years beginning before January 1, 1976, which has sustained an overall loss for those 5 years, and with respect to which the taxpayer has terminated or will terminate all operations by reason of sale, liquidation, or other disposition before January 1, 1977, of such corporation or its assets.

''(4) LIMITATION BASED ON DEFICIT IN EARNINGS AND PROFITS.—If paragraph (3) would apply to a taxpayer but for the fact that the loss is sustained after December 31, 1976, and if the loss is sustained in a taxable year beginning before January 1, 1979, the amendments made by subsection (a) [amending this section] shall not apply to such loss to the extent that there was on December 31, 1975, a deficit in earnings and profits in the corporation from which the loss arose. For purposes of

the preceding sentence, there shall be taken into account only earnings and profits of the corporation which (A) were accumulated in taxable years of the corporation beginning after December 31, 1962, and during the period in which the stock of such corporation from which the loss arose was held by the taxpayer and (B) are attributable to such stock.

''(5) FOREIGN OIL RELATED LOSSES.—The amendment made by subsection (a) [amending this section] shall apply to foreign oil related losses sustained in taxable years ending after December 31, 1975.

''(6) RECAPTURE OF POSSESSION LOSSES DURING TRANSITIONAL PERIOD WHERE TAXPAYER IS ON A PER-COUNTRY BASIS.—

''(A) APPLICATION OF PARAGRAPH.—This paragraph shall apply if—

''(i) the taxpayer sustained a loss in a possession of the United States in a taxable year beginning after December 31, 1975, and before January 1, 1979,

''(ii) such loss is attributable to a trade or business engaged in by the taxpayer in such possession on January 1, 1976, and

''(iii) the taxpayer chooses to have the benefits of subpart A of part III of subchapter N apply for such taxable year and section 904(a)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect before the enactment of this Act [Oct. 4, 1976]) applies with respect to such taxable year.

''(B) NO RECAPTURE DURING TRANSITION PERIOD.—In any case to which this paragraph applies, for purposes of determining the liability for tax of the taxpayer for taxable years beginning before January 1, 1979, section 904(f) of the Internal Revenue Code of 1986 shall not apply with respect to the loss described in subparagraph (A)(i).

''(C) RECAPTURE OF LOSS AFTER THE TRANSITION PERIOD.—In any case to which this paragraph applies—

''(i) for purposes of determining the liability for tax of the taxpayer for taxable years beginning after December 31, 1978, section 904(f) of the Internal Revenue Code of 1986 [subsec. (f) of this section] shall be applied with respect to the loss described in subparagraph (A)(i) under the principles of section 904(a)(1) of such Code (as in effect before the enactment of this Act [Oct. 4, 1976]); but

''(ii) in the case of any taxpayer and any possession, the aggregate amount to which such section 904(f) applies by reason of clause (i) shall not exceed the sum of the net incomes of all affiliated corporations from such possession for taxable years of such affiliated corporations beginning after December 31, 1975, and before January 1, 1979.

''(D) TAXPAYERS NOT ENGAGED IN TRADE OR BUSINESS ON JANUARY 1, 1976.—In any case to which this paragraph applies but for the fact that the taxpayer was not engaged in a trade or business in such possession on January 1, 1976, for purposes of determining the liability for tax of the taxpayer for taxable years beginning before January 1, 1979; if section 904(a)(1) of such Code (as in effect before the enactment of this Act [Oct. 4, 1976]) applies with respect to such taxable year, the provisions of section 904(f) of such Code shall be applied with respect to the loss described in subparagraph (A)(i) under the principles of such section 904(a)(1).

''(E) AFFILIATED CORPORATION DEFINED.—For purposes of subparagraph (C)(ii), the term 'affiliated corporation' means a corporation which, for the taxable year for which the net income is being determined, was not a member of the same affiliated group (within the meaning of section 1504 of the Internal Revenue Code of 1986) as the taxpayer but would have been a member of such group but for the application of subsection (b) of such section 1504.''

Pub. L. 94–455, title X, § 1034(b), Oct. 4, 1976, 90 Stat. 1630, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1975, except that the provisions of section 904(b)(3)(C) shall only apply to sales or exchanges made after November 12, 1975.''

Amendment by section 1051(e) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, with certain exceptions, 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)(10) of Pub. L. 94–455 applicable with respect to taxable years ending after Oct. 4, 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 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 a note under section 991 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 506(c) of Pub. L. 91–172, set out as a note under section 901 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89–809, title I, § 106(c)(2), Nov. 13, 1966, 80 Stat. 1571, provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to interest received after December 31, 1965, in taxable years ending after such date.''

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 234(c) of Pub. L. 88–272, set out as a note under section 1503 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87–834, § 10(b), Oct. 16, 1962, 76 Stat. 1003, provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after the date of the enactment of this Act [Oct. 16, 1962], but only with respect to interest resulting from transactions consummated after April 2, 1962.''

EFFECTIVE DATE OF 1960 AMENDMENT

Pub. L. 86–780, § 4, Sept. 14, 1960, 74 Stat. 1013, provided that: ''The amendments made by the first section [amending this section], section 2 [amending section 1503 of this title], and subsection (a) of section 3 of this Act [amending section 901 of this title] shall apply with respect to taxable years beginning after December 31, 1960. The amendment made by subsection (b) of section 3 of this Act [amending section 901 of this title] shall apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954. The amendments made by subsection (c) of section 3 of this Act [enacting section 6501 of this title] shall apply with respect to taxable years beginning after December 31, 1957.''

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–866, title I, § 42(c), Sept. 2, 1958, 72 Stat. 1640, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 6611 of this title] shall apply only with respect to taxable years beginning after December 31, 1957.''

SAVINGS PROVISION

For provisions that nothing in amendment by section 11801(a)(31) 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.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendments by sections 701(e)(4)(H) and 1201(a), (b), (d)(1)–(3) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, and for nonapplication of amendment by section 1211(b)(3) 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)(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.

LIMITATION ON CARRYBACK OF FOREIGN TAX CREDITS TO TAXABLE YEARS BEGINNING BEFORE 1987

Pub. L. 99–514, title XII, § 1205, Oct. 22, 1986, 100 Stat. 2532, provided that:

''(a) DETERMINATION OF EXCESS CREDITS.—

''(1) IN GENERAL.—Any taxes paid or accrued in a taxable year beginning after 1986 may be treated under section 904(c) of the Internal Revenue Code of 1954 as paid or accrued in a taxable year beginning before 1987 only to the extent such taxes would be so treated if the tax imposed by chapter 1 of such Code for the taxable year beginning after 1986 were determined by applying section 1 or 11 of such Code (as the case may be) as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986].

''(2) ADJUSTMENTS.—Under regulations prescribed by the Secretary of the Treasury or his delegate proper adjustments shall be made in the application of paragraph (1) to take into account—

''(A) the repeal of the zero bracket amount, and

''(B) the changes in the treatment of capital gains.

''(b) COORDINATION WITH SEPARATE BASKETS.—Any taxes paid or accrued in a taxable year beginning after 1986 which (after the application of subsection (a)) are treated as paid or accrued in a taxable year beginning before 1987 shall be treated as imposed on income described in section 904(d)(1)(E) 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]). No taxes paid or accrued in a taxable year beginning after 1986 with respect to high withholding tax interest (as defined in section 904(d)(2)(B) of the Internal Revenue Code of 1986 as amended by this Act) may be treated as paid or accrued in a taxable year beginning before 1987.''

COORDINATION WITH TREATY OBLIGATIONS

Pub. L. 99–514, title XVIII, § 1810(a)(4), Oct. 22, 1986, 100 Stat. 2822, provided that: ''Section 904(g) of the Internal Revenue Code of 1954 shall apply notwithstanding any treaty obligation of the United States to the contrary (whether entered into on, before, or after the date of the enactment of this Act [Oct. 22, 1986]) unless (in the case of a treaty entered into after the date of the enactment of this Act) such treaty by specific reference to such section 904(g) clearly expresses the intent to override the provisions of such section.''

SEPARATE APPLICATION OF SECTION 904 IN CASE OF INCOME COVERED BY TRANSITIONAL RULES

Pub. L. 99–514, title XVIII, § 1810(a)(5), Oct. 22, 1986, 100 Stat. 2823, as amended by Pub. L. 100–647, title I, § 1018(g)(1), Nov. 10, 1988, 102 Stat. 3582, provided that: ''For purposes of section 121(b)(5) of the Tax Reform Act of 1984 [Pub. L. 98–369, set out above] (relating to separate application of section 904 [of the Internal Revenue Code of 1954 [now 1986]] in case of income covered by transitional rules), any carryover under section 904(c) of the Internal Revenue Code of 1954 [now 1986] allowed to a taxpayer which was incorporated on August 31, 1962, attributable to taxes paid or accrued in taxable years beginning in 1981, 1982, 1983, or 1984, with respect to amounts included in gross income under section 951 of such Code in respect of a controlled foreign corporation which was incorporated on May 27, 1977, shall be treated as taxes paid or accrued on income separately treated under such section 121(b)(5).''

§ 905. Applicable rules

(a) Year in which credit taken

The credits provided in this subpart may, at the option of the taxpayer and irrespective of the method of accounting employed in keeping his books, be taken in the year in which the taxes of the foreign country or the possession of the United States accrued, subject, however, to the conditions prescribed in subsection (c). If the taxpayer elects to take such credits in the year in which the taxes of the foreign country or the possession of the United States accrued, the credits for all subsequent years shall be taken on the same basis, and no portion of any such taxes shall be allowed as a deduction in the same or any succeeding year.

(b) Proof of credits

The credits provided in this subpart shall be allowed only if the taxpayer establishes to the satisfaction of the Secretary—

(1) the total amount of income derived from sources without the United States, determined as provided in part I,

(2) the amount of income derived from each country, the tax paid or accrued to which is claimed as a credit under this subpart, such amount to be determined under regulations prescribed by the Secretary, and

(3) all other information necessary for the verification and computation of such credits.

(c) Adjustments to accrued taxes

(1) In general

If—

(A) accrued taxes when paid differ from the amounts claimed as credits by the taxpayer,

(B) accrued taxes are not paid before the date 2 years after the close of the taxable year to which such taxes relate, or

(C) any tax paid is refunded in whole or in part,

the taxpayer shall notify the Secretary, who shall redetermine the amount of the tax for the year or years affected.

(2) Special rule for taxes not paid within 2 years

(A) In general

Except as provided in subparagraph (B), in making the redetermination under para-

graph (1), no credit shall be allowed for accrued taxes not paid before the date referred to in subparagraph (B) of paragraph (1).

(B) Taxes subsequently paid

Any such taxes if subsequently paid—

(i) shall be taken into account for the taxable year to which such taxes relate, and

(ii) shall be translated as provided in section 986(a)(2)(A).

(3) Adjustments

The amount of tax (if any) due on any redetermination under paragraph (1) shall be paid by the taxpayer on notice and demand by the Secretary, and the amount of tax overpaid (if any) shall be credited or refunded to the taxpayer in accordance with subchapter B of chapter 66 (section 6511 et seq.).

(4) Bond requirements

In the case of any tax accrued but not paid, the Secretary, as a condition precedent to the allowance of the credit provided in this subpart, may require the taxpayer to give a bond, with sureties satisfactory to and approved by the Secretary, in such sum as the Secretary may require, conditioned on the payment by the taxpayer of any amount of tax found due on any such redetermination. Any such bond shall contain such further conditions as the Secretary may require.

(5) Other special rules

In any redetermination under paragraph (1) by the Secretary of the amount of tax due from the taxpayer for the year or years affected by a refund, the amount of the taxes refunded for which credit has been allowed under this section shall be reduced by the amount of any tax described in section 901 imposed by the foreign country or possession of the United States with respect to such refund; but no credit under this subpart, or deduction under section 164, shall be allowed for any taxable year with respect to any such tax imposed on the refund. No interest shall be assessed or collected on any amount of tax due on any redetermination by the Secretary, resulting from a refund to the taxpayer, for any period before the receipt of such refund, except to the extent interest was paid by the foreign country or possession of the United States on such refund for such period.

(Aug. 16, 1954, ch. 736, 68A Stat. 288; Pub. L. 85–866, title I, § 103(b), Sept. 2, 1958, 72 Stat. 1675; Pub. L. 94–455, title XIX, §§ 1901(a)(114), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1784, 1834; Pub. L. 96–603, § 2(c)(1), Dec. 28, 1980, 94 Stat. 3509; Pub. L. 97–248, title III, § 343(a), Sept. 3, 1982, 96 Stat. 635; Pub. L. 105–34, title XI, § 1102(a)(2), Aug. 5, 1997, 111 Stat. 964; Pub. L. 115–97, title I, § 14301(c)(20), (21), Dec. 22, 2017, 131 Stat. 2223.)

AMENDMENTS

2017—Subsec. (c)(1). Pub. L. 115–97, § 14301(c)(20), struck out ''The Secretary may prescribe adjustments to the pools of post-1986 foreign income taxes and the pools of post-1986 undistributed earnings under sections 902 and 960 in lieu of the redetermination under the preceding sentence.'' at end of concluding provisions.

Subsec. (c)(2)(B)(i). Pub. L. 115–97, § 14301(c)(21), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''shall be taken into account—

''(I) in the case of taxes deemed paid under section 902 or section 960, for the taxable year in which paid (and no redetermination shall be made under this section by reason of such payment), and

''(II) in any other case, for the taxable year to which such taxes relate, and''.

1997—Subsec. (c). Pub. L. 105–34 amended heading and text of subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''If accrued taxes when paid differ from the amounts claimed as credits by the taxpayer, or if any tax paid is refunded in whole or in part, the taxpayer shall notify the Secretary, who shall redetermine the amount of the tax for the year or years affected. The amount of tax due on such redetermination, if any, shall be paid by the taxpayer on notice and demand by the Secretary, or the amount of tax overpaid, if any, shall be credited or refunded to the taxpayer in accordance with subchapter B of chapter 66 (sec. 6511 and following). In the case of such a tax accrued but not paid, the Secretary, as a condition precedent to the allowance of this credit, may require the taxpayer to give a bond, with sureties satisfactory to and to be approved by the Secretary, in such sum as the Secretary may require, conditioned on the payment by the taxpayer of any amount of tax found due on any such redetermination; and the bond herein prescribed shall contain such further conditions as the Secretary may require. In such redetermination by the Secretary of the amount of tax due from the taxpayer for the year or years affected by a refund, the amount of the taxes refunded for which credit has been allowed under this section shall be reduced by the amount of any tax described in section 901 imposed by the foreign country or possession of the United States with respect to such refund; but no credit under this subpart, and no deduction under section 164 (relating to deduction for taxes) shall be allowed for any taxable year with respect to such tax imposed on the refund. No interest shall be assessed or collected on any amount of tax due on any redetermination by the Secretary, resulting from a refund to the taxpayer, for any period before the receipt of such refund, except to the extent interest was paid by the foreign country or possession of the United States on such refund for such period.''

1982—Subsec. (c). Pub. L. 97–248, § 343(a), struck out provision that, although no interest can be assessed or collected on any amount of tax due on any redetermination by the Secretary, resulting from a refund to the taxpayer, for any period before the receipt of such refund, except to the extent interest has been paid by the foreign country or possession of the United States on such refund for such period, that prohibition does not apply (with respect to any period after the refund or adjustment in the foreign taxes) if the taxpayer fails to notify the Secretary (on or before the date prescribed by regulations for giving such notice) unless it is shown that such failure is due to reasonable cause and not due to willful neglect.

1980—Subsec. (c). Pub. L. 96–603 inserted provision that the preceding sentence not apply, with respect to any period after the refund or adjustment in the foreign taxes, if the taxpayer fails to notify the Secretary, on or before the date prescribed by regulations for giving such notice, unless it is shown that such failure is due to reasonable cause and not due to willful neglect.

1976—Subsec. (b). Pub. L. 94–455, §§ 1901(a)(114), 1906(b)(13)(A), struck out provision allowing credits to be taken for tax on royalties paid, accrued and derived from sources within the United Kingdom of Britain and Northern Ireland and struck out ''or his delegate'' after ''Secretary'', in two places.

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

1958—Subsec. (b). Pub. L. 85–866 inserted sentence deeming recipient of a royalty or other amount for use of copyright, patent, and other like property derived from sources within United Kingdom, to have paid or accrued taxes paid or accrued to United Kingdom with respect to royalty if recipient elects to include in its gross income the amount of such United Kingdom tax.

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 1997 AMENDMENT

Pub. L. 105–34, title XI, §1102(c)(2), Aug. 5, 1997, 111 Stat. 966, provided that: ''The amendment made by subsection (a)(2) [amending this section] shall apply to taxes which relate to taxable years beginning after December 31, 1997.''

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title III, §343(b), Sept. 3, 1982, 96 Stat. 635, provided that: ''The amendment made by subsection (a) [amending this section] shall have the same effect as if the last sentence of section 905(c) had never been enacted.''

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 OF 1976 AMENDMENT

Amendment by section 1901(a)(114) 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

Pub. L. 85–866, title I, §103(c), Sept. 2, 1958, 72 Stat. 1675, provided that: ''The amendment made by subsection (a) of this section [amending section 131(e) of Internal Revenue Code of 1939] shall apply for all taxable years beginning on or after January 1, 1950, as to which section 131 of the Internal Revenue Code of 1939 is the applicable provision. The amendment made by subsection (b) of this section [amending this section] shall apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954. No interest shall be allowed or paid on any overpayment resulting from the amendments made by subsections (a) and (b) of this section.''

§906. Nonresident alien individuals and foreign corporations

(a) Allowance of credit

A nonresident alien individual or a foreign corporation engaged in trade or business within the United States during the taxable year shall be allowed a credit under section 901 for 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 income effectively connected with the conduct of a trade or business within the United States.

(b) Special rules

(1) For purposes of subsection (a) and for purposes of determining the deductions allowable under sections 873(a) and 882(c), in determining the amount of any tax paid or accrued to any foreign country or possession there shall not be taken into account any amount of tax to the extent the tax so paid or accrued is imposed with respect to income from sources within the United States which would not be taxed by such foreign country or possession but for the fact that—

(A) in the case of a nonresident alien individual, such individual is a citizen or resident of such foreign country or possession, or

(B) in the case of a foreign corporation, such corporation was created or organized under the law of such foreign country or possession or is domiciled for tax purposes in such country or possession.

(2) For purposes of subsection (a), in applying section 904 the taxpayer's taxable income shall be treated as consisting only of the taxable income effectively connected with the taxpayer's conduct of a trade or business within the United States.

(3) The credit allowed pursuant to subsection (a) shall not be allowed against any tax imposed by section 871(a) (relating to income of nonresident alien individual not connected with United States business) or 881 (relating to income of foreign corporations not connected with United States business).

[(4), (5) Repealed. Pub. L. 115–97, title I, §14301(c)(23), Dec. 22, 2017, 131 Stat. 2223.]

(6) No credit shall be allowed under this section against the tax imposed by section 884.

(Added Pub. L. 89–809, title I, §106(a)(1), Nov. 13, 1966, 80 Stat. 1568; amended Pub. L. 98–369, div. A, title VIII, §801(d)(3), July 18, 1984, 98 Stat. 996; Pub. L. 99–514, title XII, §1241(c), title XVIII, §1876(d)(3), Oct. 22, 1986, 100 Stat. 2580, 2899; Pub. L. 100–647, title I, §1012(q)(10), Nov. 10, 1988, 102 Stat. 3524; Pub. L. 110–172, §11(g)(11), Dec. 29, 2007, 121 Stat. 2490; Pub. L. 115–97, title I, §14301(c)(22), (23), Dec. 22, 2017, 131 Stat. 2223.)

AMENDMENTS

2017—Subsec. (a). Pub. L. 115–97, §14301(c)(22), struck out ''(or deemed, under section 902, paid or accrued during the taxable year)'' after ''paid or accrued during the taxable year''.

Subsec. (b)(4), (5). Pub. L. 115–97, §14301(c)(23), struck out pars. (4) and (5) which read as follows:

''(4) For purposes of sections 902(a) and 78, a foreign corporation choosing the benefits of this subpart which receives dividends shall, with respect to such dividends, be treated as a domestic corporation.

''(5) For purposes of section 902, any income, war profits, and excess profits taxes paid or accrued (or deemed paid or accrued) to any foreign country or possession of the United States with respect to income effectively connected with the conduct of a trade or business within the United States shall not be taken into account, and any accumulated profits attributable to such income shall not be taken into account.''

2007—Subsec. (b)(5) to (7). Pub. L. 110–172 redesignated pars. (6) and (7) as (5) and (6), respectively, and struck out former par. (5) 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.''

1988—Subsec. (b)(6), (7). Pub. L. 100–647 redesignated par. (6), relating to credit against tax imposed by section 884, as (7).

1986—Subsec. (b)(6). Pub. L. 99–514, §1876(d)(3), added par. (6) relating to credit for income, war profits, and excess profits taxes paid or accrued to a foreign country or possession of the United States.

Pub. L. 99–514, §1241(c), added par. (6) relating to credit against tax imposed by section 884.

1984—Subsec. (b)(5). Pub. L. 98–369 added par. (5).

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 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 1241(c) 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.

Amendment by section 1876(d)(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

Amendment by 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

Section applicable with respect to taxable years beginning after Dec. 31, 1966, and, in applying section 904 of this title with respect to this section, no amount to be carried from or to any taxable year beginning before Jan. 1, 1967, and no such year to be taken into account, see section 106(a)(6) of Pub. L. 89–809, set out as an Effective Date of 1966 Amendment note under section 874 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.

§ 907. Special rules in case of foreign oil and gas income

(a) Reduction in amount allowed as foreign tax under section 901

In applying section 901, the amount of any foreign oil and gas taxes paid or accrued (or deemed to have been paid) during the taxable year which would (but for this subsection) be taken into account for purposes of section 901 shall be reduced by the amount (if any) by which the amount of such taxes exceeds the product of—

(1) the amount of the combined foreign oil and gas income for the taxable year,

(2) multiplied by—

(A) in the case of a corporation, the percentage which is equal to the highest rate of tax specified under section 11(b), or

(B) in the case of an individual, a fraction the numerator of which is the tax against which the credit under section 901(a) is taken and the denominator of which is the taxpayer's entire taxable income.

(b) Combined foreign oil and gas income; foreign oil and gas taxes

For purposes of this section—

(1) Combined foreign oil and gas income

The term ''combined foreign oil and gas income'' means, with respect to any taxable year, the sum of—

(A) foreign oil and gas extraction income, and

(B) foreign oil related income.

(2) Foreign oil and gas taxes

The term ''foreign oil and gas taxes'' means, with respect to any taxable year, the sum of—

(A) oil and gas extraction taxes, and

(B) any income, war profits, and excess profits taxes paid or accrued (or deemed to have been paid or accrued under section 960) during the taxable year with respect to foreign oil related income (determined without regard to subsection (c)(4)) or loss which would be taken into account for purposes of section 901 without regard to this section.

(c) Foreign income definitions and special rules

For purposes of this section—

(1) Foreign oil and gas extraction income

The term ''foreign oil and gas extraction income'' means the taxable income derived from sources without the United States and its possessions from—

(A) the extraction (by the taxpayer or any other person) of minerals from oil or gas wells, or

(B) the sale or exchange of assets used by the taxpayer in the trade or business described in subparagraph (A).

Such term does not include any dividend or interest income which is passive income (as defined in section 904(d)(2)(A)).

(2) Foreign oil related income

The term ''foreign oil related income'' means the taxable income derived from sources outside the United States and its possessions from—

(A) the processing of minerals extracted (by the taxpayer or by any other person) from oil or gas wells into their primary products,

(B) the transportation of such minerals or primary products,

(C) the distribution or sale of such minerals or primary products,

(D) the disposition of assets used by the taxpayer in the trade or business described in subparagraph (A), (B), or (C), or

(E) the performance of any other related service.

Such term does not include any dividend or interest income which is passive income (as defined in section 904(d)(2)(A)).

(3) Dividends, interest, partnership distribution, etc.

The term ''foreign oil and gas extraction income'' and the term ''foreign oil related income'' include—

(A) interest, to the extent the category of income of such interest is determined under section 904(d)(3),

(B) amounts with respect to which taxes are deemed paid under section 960, and

(C) the taxpayer's distributive share of the income of partnerships.[1]

to the extent such dividends, interest, amounts, or distributive share is attributable to foreign oil and gas extraction income, or to foreign oil related income, as the case may be; except that interest described in subparagraph (A) shall not be taken into account in computing foreign oil and gas extraction income but shall be taken into account in computing foreign oil-related income.

(4) Recapture of foreign oil and gas losses by recharacterizing later combined foreign oil and gas income

(A) In general

The combined foreign oil and gas income of a taxpayer for a taxable year (determined without regard to this paragraph) shall be reduced—

(i) first by the amount determined under subparagraph (B), and

(ii) then by the amount determined under subparagraph (C).

The aggregate amount of such reductions shall be treated as income (from sources without the United States) which is not combined foreign oil and gas income.

(B) Reduction for pre-2009 foreign oil extraction losses

The reduction under this paragraph shall be equal to the lesser of—

(i) the foreign oil and gas extraction income of the taxpayer for the taxable year (determined without regard to this paragraph), or

(ii) the excess of—

(I) the aggregate amount of foreign oil extraction losses for preceding taxable years beginning after December 31, 1982, and before January 1, 2009, over

(II) so much of such aggregate amount as was recharacterized under this paragraph (as in effect before and after the date of the enactment of the Energy Improvement and Extension Act of 2008) for preceding taxable years beginning after December 31, 1982.

(C) Reduction for post-2008 foreign oil and gas losses

The reduction under this paragraph shall be equal to the lesser of—

(i) the combined foreign oil and gas income of the taxpayer for the taxable year (determined without regard to this paragraph), reduced by an amount equal to the reduction under subparagraph (A) for the taxable year, or

(ii) the excess of—

(I) the aggregate amount of foreign oil and gas losses for preceding taxable years beginning after December 31, 2008, over

(II) so much of such aggregate amount as was recharacterized under this paragraph for preceding taxable years beginning after December 31, 2008.

(D) Foreign oil and gas loss defined

(i) In general

For purposes of this paragraph, the term ''foreign oil and gas loss'' means the amount by which—

(I) the gross income for the taxable year from sources without the United States and its possessions (whether or not the taxpayer chooses the benefits of this subpart for such taxable year) taken into account in determining the combined foreign oil and gas income for such year, is exceeded by

(II) the sum of the deductions properly apportioned or allocated thereto.

(ii) Net operating loss deduction not taken into account

For purposes of clause (i), the net operating loss deduction allowable for the taxable year under section 172(a) shall not be taken into account.

(iii) Expropriation and casualty losses not taken into account

For purposes of clause (i), there shall not be taken into account—

(I) any foreign expropriation loss (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)) for the taxable year, or

(II) any loss for the taxable 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.

(iv) Foreign oil extraction loss

For purposes of subparagraph (B)(ii)(I), foreign oil extraction losses shall be determined under this paragraph as in effect on the day before the date of the enactment of the Energy Improvement and Extension Act of 2008.

(5) Oil and gas extraction taxes

The term ''oil and gas extraction taxes'' means any income, war profits, and excess profits tax paid or accrued (or deemed to have been paid under section 960) during the taxable year with respect to foreign oil and gas extraction income (determined without regard to paragraph (4)) or loss which would be taken into account for purposes of section 901 without regard to this section.

(d) Disregard of certain posted prices, etc.

For purposes of this chapter, in determining the amount of taxable income in the case of for-

[1] So in original. The period probably should be a comma.

eign oil and gas extraction income, if the oil or gas is disposed of, or is acquired other than from the government of a foreign country, at a posted price (or other pricing arrangement) which differs from the fair market value for such oil or gas, such fair market value shall be used in lieu of such posted price (or other pricing arrangement).

[(e) Repealed. Pub. L. 101–508, title XI, § 11801(a)(32), Nov. 5, 1990, 104 Stat. 1388–521]

(f) Carryback and carryover of disallowed credits

(1) In general

If the amount of the foreign oil and gas taxes paid or accrued during any taxable year exceeds the limitation provided by subsection (a) for such taxable year (hereinafter in this subsection referred to as the ''unused credit year''), such excess shall be deemed to be foreign oil and gas taxes paid or accrued in the first preceding taxable year and in any of the first 10 succeeding taxable year,[2] in that order and to the extent not deemed tax paid or accrued in a prior taxable year by reason of the limitation imposed by paragraph (2). Such amount deemed paid or accrued in any taxable 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.

(2) Limitation

The amount of the unused foreign oil and gas taxes which under paragraph (1) may be deemed paid or accrued in any preceding or succeeding taxable year shall not exceed the lesser of—

(A) the amount by which the limitation provided by subsection (a) for such taxable year exceeds the sum of—

(i) the foreign oil and gas taxes paid or accrued during such taxable year, plus

(ii) the amounts of the foreign oil and gas taxes which by reason of this subsection are deemed paid or accrued in such taxable year and are attributable to taxable years preceding the unused credit year; or

(B) the amount by which the limitation provided by section 904 for such taxable year exceeds the sum of—

(i) the taxes paid or accrued (or deemed to have been paid under section 960) to all foreign countries and possessions of the United States during such taxable year,

(ii) the amount of such taxes which were deemed paid or accrued in such taxable year under section 904(c) and which are attributable to taxable years preceding the unused credit year, plus

(iii) the amount of the foreign oil and gas taxes which by reason of this subsection are deemed paid or accrued in such taxable year and are attributable to taxable years preceding the unused credit year.

(3) Special rules

(A) In the case of any taxable year which is an unused credit year under this subsection and which is an unused credit year under section 904(c), the provisions of this subsection shall be applied before section 904(c).

(B) For purposes of determining the amount of taxes paid or accrued in any taxable year which may be deemed paid or accrued in a preceding or succeeding taxable year under section 904(c), any tax deemed paid or accrued in such preceding or succeeding taxable year under this subsection shall be considered to be tax paid or accrued in such preceding or succeeding taxable year.

(4) Transition rules for pre-2009 and 2009 disallowed credits

(A) Pre-2009 credits

In the case of any unused credit year beginning before January 1, 2009, this subsection, as in effect on the day before the date of the enactment of the Energy Improvement and Extension Act of 2008, shall apply to unused oil and gas extraction taxes carried from such unused credit year to a taxable year beginning after December 31, 2008.

(B) 2009 credits

In the case of any unused credit year beginning in 2009, the amendments made to this subsection by the Energy Improvement and Extension Act of 2008 shall be treated as being in effect for any preceding year beginning before January 1, 2009, solely for purposes of determining how much of the unused foreign oil and gas taxes for such unused credit year may be deemed paid or accrued in such preceding year.

(Added Pub. L. 94–12, title VI, § 601(a), Mar. 29, 1975, 89 Stat. 54; amended Pub. L. 94–455, title X, §§ 1031(b)(6), 1032(b), 1035(a), (b), (d)(1), (2), 1052(c)(4), Oct. 4, 1976, 90 Stat. 1623, 1626, 1630–1632, 1648; Pub. L. 95–600, title III, § 301(b)(14), title VII, § 701(u)(8)(A), (B), Nov. 6, 1978, 92 Stat. 2822, 2916; Pub. L. 97–248, title II, § 211(a)–(c)(1), (d), Sept. 3, 1982, 96 Stat. 448–450; Pub. L. 100–647, title I, § 1012(g)(6), Nov. 10, 1988, 102 Stat. 3501; Pub. L. 101–508, title XI, § 11801(a)(32), Nov. 5, 1990, 104 Stat. 1388–521; Pub. L. 103–66, title XIII, § 13235(a)(1), Aug. 10, 1993, 107 Stat. 504; Pub. L. 104–188, title I, § 1704(t)(36), Aug. 20, 1996, 110 Stat. 1889; Pub. L. 108–357, title IV, § 417(b), Oct. 22, 2004, 118 Stat. 1512; Pub. L. 110–343, div. B, title IV, § 402(a)–(c), Oct. 3, 2008, 122 Stat. 3852, 3854; Pub. L. 113–295, div. A, title II, § 210(e), Dec. 19, 2014, 128 Stat. 4031; Pub. L. 115–97, title I, § 14301(c)(24)–(27), Dec. 22, 2017, 131 Stat. 2223, 2224.)

REFERENCES IN TEXT

The date of the enactment of the Energy Improvement and Extension Act of 2008, referred to in subsecs. (c)(4)(B)(ii)(II), (D)(iv) and (f)(4)(A), is the date of enactment of div. B of Pub. L. 110–343, which was approved Oct. 3, 2008.

Section 172(h), referred to in subsec. (c)(4)(D)(iii)(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. (c)(4)(D)(iii)(I),

[2] So in original. Probably should be ''years,''.

is the date of enactment of Pub. L. 101–508, title XI, which was approved Nov. 5, 1990.

The Energy Improvement and Extension Act of 2008, referred to in subsec. (f)(4)(B), is div. B of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3807. For the amendments made to subsec. (f) of this section by the Act, see 2008 Amendment notes below.

AMENDMENTS

2017—Subsec. (b)(2)(B). Pub. L. 115–97, §14301(c)(24), struck out ''902 or'' after ''under section''.

Subsec. (c)(3)(A). Pub. L. 115–97, §14301(c)(25)(A), added subpar. (A) and struck out former subpar. (A) which read as follows: ''dividends and interest from a foreign corporation in respect of which taxes are deemed paid by the taxpayer under section 902,''.

Subsec. (c)(3)(B). Pub. L. 115–97, §14301(c)(25)(B), substituted ''section 960'' for ''section 960(a)''.

Subsec. (c)(5). Pub. L. 115–97, §14301(c)(26), struck out ''902 or'' after ''under section''.

Subsec. (f)(2)(B)(i). Pub. L. 115–97, §14301(c)(27), struck out ''902 or'' after ''under section''.

2014—Subsec. (f)(4)(A). Pub. L. 113–295 substituted ''this subsection, as in effect on the day before the date of the enactment of the Energy Improvement and Extension Act of 2008, shall apply to unused oil and gas extraction taxes carried from such unused credit year to a taxable year beginning after December 31, 2008.'' for ''this subsection shall be applied to any unused oil and gas extraction taxes carried from such unused credit year to a year beginning after December 31, 2008—

''(i) by substituting 'oil and gas extraction taxes' for 'foreign oil and gas taxes' each place it appears in paragraphs (1), (2), and (3), and

''(ii) by computing, for purposes of paragraph (2)(A), the limitation under subparagraph (A) for the year to which such taxes are carried by substituting 'foreign oil and gas extraction income' for 'foreign oil and gas income' in subsection (a).''

2008—Subsecs. (a), (b). Pub. L. 110–343, §402(a), amended subsecs. (a) and (b) generally. Prior to amendment, subsec. (a) related to reduction in amount of oil and gas extraction taxes paid or accrued for purposes of section 901 and subsec. (b) excepted certain amounts of foreign oil related income taxes paid or accrued to any foreign country from the definition of ''income, war profits, and excess profits taxes''.

Subsec. (c)(4). Pub. L. 110–343, §402(b), amended par. (4) generally. Prior to amendment, par. (4) provided for recapture of foreign oil and gas extraction losses by recharacterizing later extraction income.

Subsec. (f). Pub. L. 110–343, §402(c)(1), substituted ''foreign oil and gas taxes'' for ''oil and gas extraction taxes'' wherever appearing.

Subsec. (f)(4). Pub. L. 110–343, §402(c)(2), added par. (4).

2004—Subsec. (f)(1). Pub. L. 108–357, §417(b)(3), struck out at end ''For purposes of this subsection, the terms 'second preceding taxable year', and 'first preceding taxable year' do not include any taxable year ending before January 1, 1975.''

Pub. L. 108–357, §417(b)(2), substituted ''and in any of the first 10'' for '', and in the first, second, third, fourth, or fifth''.

Pub. L. 108–357, §417(b)(1), struck out ''in the second preceding taxable year,'' before ''in the first preceding taxable year''.

1996—Subsec. (c)(4)(B)(iii)(I). Pub. L. 104–188 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. (c)(1), (2). Pub. L. 103–66 inserted concluding provisions.

1990—Subsec. (e). Pub. L. 101–508, §11801(a)(32), struck out subsec. (e) which read as follows:

''(1) CREDITS ARISING IN TAXABLE YEARS BEGINNING BEFORE JANUARY 1, 1983.—The amount of taxes paid or accrued in any taxable year beginning before January 1, 1983 (hereinafter in this paragraph referred to as the 'excess credit year') which under section 904(c) or 907(f) may be deemed paid or accrued in a taxable year beginning after December 31, 1982, shall not exceed the amount which could have been deemed paid or accrued if sections 907(b), 907(f), and 904(f)(4) (as in effect on the day before the date of the enactment of the Tax Equity and Fiscal Responsibility Act of 1982) remained in effect for taxable years beginning after December 31, 1982.

''(2) CARRYBACK OF CREDITS ARISING IN TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1982.—The amount of the taxes paid or accrued in a taxable year beginning after December 31, 1982, which may be deemed paid or accrued under section 904(c) or 907(f) in a taxable year beginning before January 1, 1983, shall not exceed the amount which could have been deemed paid or accrued if sections 907(b), 907(f), and 904(f)(4) (as in effect on the day before the date of the enactment of the Tax Equity and Fiscal Responsibility Act of 1982) remained in effect for taxable years beginning after December 31, 1982.''

Subsec. (f)(3)(C). Pub. L. 101–508, §11801(a)(32), struck out subpar. (C) which read as follows: ''For purposes of determining the amount of the unused oil and gas extraction taxes which under paragraph (1) may be deemed paid or accrued in any taxable year ending before January 1, 1977, subparagraph (A) of paragraph (2) shall be applied as if the amendment made by section 1035(a) of the Tax Reform Act of 1976 applied to such taxable year.''

1988—Subsec. (c)(3). Pub. L. 100–647, §1012(g)(6)(B), struck out ''and dividends described in subparagraph (B)'' after ''described in subparagraph (A)'' in closing provisions.

Subsec. (c)(3)(B) to (D). Pub. L. 100–647, §1012(g)(6)(A), redesignated subpars. (C) and (D) as (B) and (C), respectively, and struck out former subpar. (B) which read as follows: ''dividends from a domestic corporation which are treated under section 861(a)(2)(A) as income from sources without the United States,''.

1982—Subsec. (b). Pub. L. 97–248, §211(c)(1), added subsec. (b). Former subsec. (b), which had provided that section 904 be applied separately with respect to foreign oil related income and other taxable income, was struck out.

Subsec. (c)(2). Pub. L. 97–248, §211(b), in subpar. (A) substituted ''the processing of minerals extracted (by the taxpayer or by any other person) from oil or gas wells into their primary products'' for ''the extraction (by the taxpayer or any other person) of minerals from oil or gas wells'', deleted subpar. (B) which had provided that foreign oil related income meant the taxable income derived from sources outside the United States and its possessions from the processing of minerals from oil or gas wells into their primary products, redesignated subpar. (C) as (B), redesignated subpar. (D) as (C) and in subpar. (C) as so redesignated struck out ''or'' at the end, redesignated subpar. (E) as (D) and in subpar. (D) as so redesignated substituted ''disposition'' for ''sale or exchange'', and ''or (C), or'' for ''(C), or (D)'', struck out the period at the end, and added subpar. (E).

Subsec. (c)(4). Pub. L. 97–248, §211(a), substituted provisions regarding the recapture of foreign oil and gas extraction losses by recharacterization of later extraction income for provisions that if, for any foreign country for any taxable year, the taxpayer would have had a net operating loss if only items from sources within such country (including deductions properly apportioned or allocated thereto) which related to the extraction of minerals from oil or gas wells had been taken into account, such items would not be taken into account in computing foreign oil and gas extraction income for such year, but would be taken into account in computing foreign oil related income for such year.

Subsec. (e). Pub. L. 97–248, §211(d)(1), substituted rules regarding credits arising in taxable years beginning before Jan. 1, 1983, for rules regarding taxable years ending after Dec. 31, 1974, in par. (1), and in par. (2) substituted rules regarding carryback of credits arising in taxable years beginning after Dec. 31, 1982, for rules regarding taxable years ending after Dec. 31, 1975.

Subsec. (f)(1). Pub. L. 97–248, § 211(d)(2)(A), substituted ''such excess'' for ''so much of such excess as does not exceed 2 percent of foreign oil and gas extraction income for such taxable year'' in first sentence, and struck out former provision that had directed that the above substitution be made regarding taxes deemed paid or accrued in any taxable year which ended in 1975, 1976, or 1977.

Subsec. (f)(2)(B). Pub. L. 97–248, § 211(d)(2)(B)(i), substituted ''provided by section 904 for such taxable year'' for ''provided by section 904 on taxes paid or accrued with respect to foreign oil-related income for such taxable year'' in the introductory provisions, and in cl. (i) substituted ''the United States during such taxable year'' for ''the United States with respect to such income during such taxable year''.

Subsec. (f)(3)(A). Pub. L. 97–248, § 211(d)(2)(B)(ii), substituted ''section 904(c)'' for ''section 904(c) with respect to oil-related income''.

Subsec. (f)(3)(B). Pub. L. 97–248, § 211(d)(2)(B)(iii), struck out ''oil-related'' after ''determining the amount of''.

1978—Subsec. (a)(2). Pub. L. 95–600, §§ 301(b)(14), 701(u)(8)(A), designated existing provisions as subpar. (A), inserted applicability to corporations and generally reworked applicable formula, and added subpar. (B).

Subsec. (b). Pub. L. 95–600, § 701(u)(8)(B), substituted provisions relating to applicability of section 904 separately to foreign oil related income and other taxable income for provisions relating to applicability of section 904 to corporations and other taxpayers.

1976—Subsec. (a). Pub. L. 94–455, § 1035(a), substituted ''oil and gas extraction taxes'' for ''income, war profits, and excess profits taxes'' after ''the amount of any'' and, in par. (2), substituted ''the percentage which is the sum of the normal tax rate and the surtax rate for the taxable year specified in section 11'' for provisions giving the percentage multiplier for years ending 1975, 1976, and after 1976.

Subsec. (b). Pub. L. 94–455, §§ 1032(b)(1), 1035(b), inserted provisions making a distinction between corporations and other taxpayers and rules applicable to each and, as amended, struck out provision requiring the overall limitation, rather than the per-country limitation, be applied in the case of a corporation to foreign oil-related income and, a taxpayer other than a corporation, to foreign oil and gas extraction income.

Subsec. (c)(5). Pub. L. 94–455, § 1035(d)(2), added par. (5).

Subsec. (e)(1). Pub. L. 94–455, § 1031(b)(6)(A), substituted ''(d) and (e) of section 904 (as in effect on the day before the date of enactment of the Tax Reform Act of 1976)'' for ''(d) and (e) of section 904'' after ''In applying subsections''.

Subsec. (e)(2). Pub. L. 94–455, § 1031(b)(6), substituted ''(d) and (e) of section 904 (as in effect on the day before the date of enactment of the Tax Reform Act of 1976)'' for ''(d) and (e) of section 904'' after ''In applying subsections'', ''section 904(a)(1) (as so in effect)'' for ''section 904(a)(1)'' after ''provided by section'' and, in subpar. (A), ''section 904(e)(2) (as so in effect)'' for ''section 904(e)(2)'' after ''sentence of section''.

Subsec. (f). Pub. L. 94–455, §§ 1032(b)(2), 1035(d)(1), added subsec. (f). Former subsec. (f), relating to recapture of foreign oil related loss, was struck out.

Subsec. (g). Pub. L. 94–455, §§ 1032(b)(2), 1035(d)(1), 1052(c)(4), struck out subsec. (g) relating to Western Hemisphere trade corporations which are members of an affiliated group.

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 as if included in the provisions of the Energy Improvement and Extension Act of 2008, Pub. L. 110–343, div. B, to which such amendment relates, see section 210(h) of Pub. L. 113–295, set out as a note under section 45 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title IV, § 402(e), Oct. 3, 2008, 122 Stat. 3854, provided that: ''The amendments made by this section [amending this section and section 6501 of this title] shall apply to taxable years beginning after December 31, 2008.''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 417(b)(1) of Pub. L. 108–357 applicable to excess foreign taxes arising in taxable years beginning after Oct. 22, 2004, and amendment by section 417(b)(2) of Pub. L. 108–357 applicable to excess foreign taxes which may be carried to any taxable year ending after Oct. 22, 2004, see section 417(c) of Pub. L. 108–357, set out as a note under section 904 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 13235(c) of Pub. L. 103–66, set out as a note under section 904 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 1982 AMENDMENT

Pub. L. 97–248, title II, § 211(e), Sept. 3, 1982, 96 Stat. 450, as amended by Pub. L. 97–448, title III, § 306(a)(5), 96 Stat. 2401; Pub. L. 98–369, div. A, title VII, § 712(e), July 18, 1984, 98 Stat. 947, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 904 of this title] shall apply to taxable years beginning after December 31, 1982.

''(2) RETENTION OF OLD SECTIONS 907(b) AND 904(f)(4) WHERE TAXPAYER HAD SEPARATE BASKET FOREIGN LOSS.—

''(A) IN GENERAL.—If, after applying old sections 907(b) and 904(f)(4) to a taxable year beginning before January 1, 1983, the taxpayer had a separate basket foreign loss, such loss shall not be recaptured from income of a kind not taken into account in computing the amount of such separate basket foreign loss more rapidly than ratably over the 8-year period (or such shorter period as the taxpayer may select) beginning with the first taxable year beginning after December 31, 1982.

''(B) DEFINITIONS.—For purposes of this paragraph—

''(i) The term 'separate basket foreign loss' means any foreign loss attributable to activities taken into account (or not taken into account) in determining foreign oil related income (as defined in old section 907(c)(2)).

''(ii) An 'old' section is such section as in effect on the day before the date of the enactment of this Act [Sept. 3, 1982].''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 301(b)(14) 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 VII, § 701(u)(8)(D), Nov. 6, 1978, 92 Stat. 2916, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(i) The amendments made by this paragraph [amending this section and section 904 of this title] shall apply, in the case of individuals, to taxable years ending after December 31, 1974, and, in the case of corporations, to taxable years ending after December 31, 1976.

''(ii) In the case of any taxable year ending after December 31, 1975, with respect to foreign oil related income (within the meaning of section 907(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]), the overall limitation provided by section 904(a)(2) of such Code shall apply and the per-country limitation provided by section 904(a)(1) of such Code shall not apply.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1031(b)(6)(A) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, with exceptions for certain mining operations, income from possessions, and carryback and carryover in the case of mining operations and income from a possession, see section 1031(c) of Pub. L. 94–455, set out as a note under section 904 of this title.

Amendment by section 1032(b)(1) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, and amendment by section 1032(b)(2) of Pub. L. 94–455 applicable to losses sustained in taxable years beginning after Dec. 31, 1975, see section 1032(c) of Pub. L. 94–455, set out as a note under section 904 of this title.

Pub. L. 94–455, title X, §1035(e), Oct. 4, 1976, 90 Stat. 1633, 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 ending after December 31, 1976.

''(2) The amendment made by subsection (b) [amending this section] shall apply to taxable years ending after December 31, 1974; except that the last sentence of section 907(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall only apply to taxable years ending after December 31, 1975.

''(3) The amendment made by subsection (c) [enacting provisions set out below] shall apply to taxable years beginning after June 29, 1976.

''(4) The amendments made by subsection (d) [amending this section] shall apply to taxes paid or accrued during taxable years ending after the date of the enactment of this Act [Oct. 4, 1976].''

Amendment by section 1052(c)(4) of Pub. L. 94–455 effective with respect to taxable years beginning after December 31, 1979, see section 1052(d) of Pub. L. 94–455, set out as a note under section 170 of this title.

EFFECTIVE DATE

Pub. L. 94–12, title VI, §601(d), Mar. 29, 1975, 89 Stat. 58, provided that: ''The amendments made by this section [enacting this section and amending section 901 of this title] shall apply to taxable years ending after December 31, 1974; except that—

''(1) the second sentence of section 907(b) shall apply to taxable years ending after December 31, 1975, and

''(2) the provisions of section 907(f) shall apply to losses sustained in taxable years ending after December 31, 1975.''

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.

TAX CREDIT FOR PRODUCTION-SHARING CONTRACTS

Pub. L. 94–455, title X, §1035(c), Oct. 4, 1976, 90 Stat. 1631, as amended by Pub. L. 95–600, title VII, §§701(u)(9), 703(h)(1), Nov. 6, 1978, 92 Stat. 2916, 2940; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) For purposes of section 901 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], there shall be treated as income, war profits, and excess profits taxes to be taken into account under section 907(a) of such Code amounts designated as income taxes of a foreign government by such government (which otherwise would not be treated as taxes for purposes of section 901 of such Code) with respect to production-sharing contracts for the extraction of foreign oil or gas.

''(2) The amounts specified in paragraph (1) shall not exceed the lessor of—

''(A) the product of the foreign oil and gas extraction income (as defined in section 907(c) of such Code) with respect to all such production-sharing contracts multiplied by the sum of the normal tax rate and the surtax rate for the taxable year specified in section 11 of such Code, or

''(B) the excess of the total amount of foreign oil and gas extraction income (as so defined) for the taxable year multiplied by the sum of the normal tax rate and the surtax rate for the taxable year specified in section 11 of such Code over the amount of any income, war profits, and excess profits taxes paid or accrued (or deemed to have been paid) without regard to paragraph (1) during the taxable year with respect to foreign oil and gas extraction income.

''(3) The production-sharing contracts taken into account for purposes of paragraph (1) shall be those contracts which were entered into before April 8, 1976, for the sharing of foreign oil and gas production with a foreign government (or an entity owned by such government) with respect to which amounts claimed as taxes paid or accrued to such foreign government for taxable years beginning before June 30, 1976, will not be disallowed as taxes. A contract described in the preceding sentence shall be taken into account under paragraph (1) only with respect to amounts (A) paid or accrued to the foreign government before January 1, 1978, and (B) attributable to income earned before such date.''

§ 908. Reduction of credit for participation in or cooperation with an international boycott

(a) In general

If a person, or a member of a controlled group (within the meaning of section 993(a)(3)) which includes such person, participates in or cooperates with an international boycott during the taxable year (within the meaning of section 999(b)), the amount of the credit allowable under section 901 to such person, or under section 960 to United States shareholders of such person, for foreign taxes paid during the taxable year shall be reduced by an amount equal to the product of—

(1) the amount of the credit which, but for this section, would be allowed under section 901 for the taxable year, multiplied by

(2) the international boycott factor (determined under section 999).

(b) Application with sections 275(a)(4) and 78

Section 275(a)(4) and section 78 shall not apply to any amount of taxes denied credit under subsection (a).

(Added Pub. L. 94–455, title X, §1061(a), Oct. 4, 1976, 90 Stat. 1649; amended Pub. L. 115–97, title I, §14301(c)(28), Dec. 22, 2017, 131 Stat. 2224.)

AMENDMENTS

2017—Subsec. (a). Pub. L. 115–97 struck out ''902 or'' after ''or under section'' in introductory provisions.

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

Pub. L. 94–455, title X, §1066(a), Oct. 4, 1976, 90 Stat. 1654, provided that:

''(1) GENERAL RULE.—The amendments made by this part (other than by section 1065) [enacting this section and section 999 of this title and amending sections 952 and 995 of this title] apply to participation in or cooperation with an international boycott more than 30 days after the date of enactment of this Act [Oct. 4, 1976].

''(2) EXISTING CONTRACTS.—In the case of operations which constitute participation in or cooperation with an international boycott and which are carried out in accordance with the terms of a binding contract entered into before September 2, 1976, the amendments made by this part (other than by section 1065) apply to such participation or cooperation after December 31, 1977.''

§ 909. Suspension of taxes and credits until related income taken into account

(a) In general

If there is a foreign tax credit splitting event with respect to a foreign income tax paid or accrued by the taxpayer, such tax shall not be taken into account for purposes of this title before the taxable year in which the related income is taken into account under this chapter by the taxpayer.

(b) Special rules with respect to specified 10-percent owned foreign corporations

If there is a foreign tax credit splitting event with respect to a foreign income tax paid or accrued by a specified 10-percent owned foreign corporation (as defined in section 245A(b) without regard to paragraph (2) thereof), such tax shall not be taken into account—

(1) for purposes of section 960, or

(2) for purposes of determining earnings and profits under section 964(a),

before the taxable year in which the related income is taken into account under this chapter by such specified 10-percent owned foreign corporation or a domestic corporation which is a United States shareholder with respect to such specified 10-percent owned foreign corporation.

(c) Special rules

For purposes of this section—

(1) Application to partnerships, etc.

In the case of a partnership, subsections (a) and (b) shall be applied at the partner level. Except as otherwise provided by the Secretary, a rule similar to the rule of the preceding sentence shall apply in the case of any S corporation or trust.

(2) Treatment of foreign taxes after suspension

In the case of any foreign income tax not taken into account by reason of subsection (a) or (b), except as otherwise provided by the Secretary, such tax shall be so taken into account in the taxable year referred to in such subsection (other than for purposes of section 986(a)) as a foreign income tax paid or accrued in such taxable year.

(d) Definitions

For purposes of this section—

(1) Foreign tax credit splitting event

There is a foreign tax credit splitting event with respect to a foreign income tax if the related income is (or will be) taken into account under this chapter by a covered person.

(2) Foreign income tax

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.

(3) Related income

The term ''related income'' means, with respect to any portion of any foreign income tax, the income (or, as appropriate, earnings and profits) to which such portion of foreign income tax relates.

(4) Covered person

The term ''covered person'' means, with respect to any person who pays or accrues a foreign income tax (hereafter in this paragraph referred to as the ''payor'')—

(A) any entity in which the payor holds, directly or indirectly, at least a 10 percent ownership interest (determined by vote or value),

(B) any person which holds, directly or indirectly, at least a 10 percent ownership interest (determined by vote or value) in the payor,

(C) any person which bears a relationship to the payor described in section 267(b) or 707(b), and

(D) any other person specified by the Secretary for purposes of this paragraph.

(e) 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 provides—

(1) appropriate exceptions from the provisions of this section, and

(2) for the proper application of this section with respect to hybrid instruments.

(Added Pub. L. 111–226, title II, § 211(a), Aug. 10, 2010, 124 Stat. 2394; amended Pub. L. 115–97, title I, § 14301(c)(29), (30), Dec. 22, 2017, 131 Stat. 2224.)

AMENDMENTS

2017—Subsec. (b). Pub. L. 115–97, § 14301(c)(29)(A), (C), (D), substituted ''specified 10-percent owned foreign corporations'' for ''section 902 corporations'' in heading, ''specified 10-percent owned foreign corporation (as defined in section 245A(b) without regard to paragraph (2) thereof)'' for ''section 902 corporation'' in introductory provisions, and ''by such specified 10-percent owned foreign corporation or a domestic corporation which is a United States shareholder with respect to such specified 10-percent owned foreign corporation.'' for ''by such section 902 corporation or a domestic corporation which meets the ownership requirements of subsection (a) or (b) of section 902 with respect to such section 902 corporation.'' in concluding provisions.

Subsec. (b)(1). Pub. L. 115–97, § 14301(c)(29)(B), struck out ''902 or'' after ''for purposes of section''.

Subsec. (d)(5). Pub. L. 115–97, § 14301(c)(30), struck out par. (5). Text read as follows: ''The term 'section 902 corporation' means any foreign corporation with respect to which one or more domestic corporations meets the ownership requirements of subsection (a) or (b) of section 902.''

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

Pub. L. 111–226, title II, § 211(c), Aug. 10, 2010, 124 Stat. 2395, provided that: ''The amendments made by this section [enacting this section] shall apply to—

''(1) foreign income taxes (as defined in section 909(d) of the Internal Revenue Code of 1986, as added by this section) paid or accrued in taxable years beginning after December 31, 2010; and

''(2) foreign income taxes (as so defined) paid or accrued by a [former] section 902 corporation (as so defined) in taxable years beginning on or before such date (and not deemed paid under section 902(a) or 960 of such Code on or before such date), but only for purposes of applying sections 902 and 960 with respect to periods after such date.

Section 909(b)(2) of the Internal Revenue Code of 1986, as added by this section, shall not apply to foreign income taxes described in paragraph (2).''

SUBPART B—EARNED INCOME OF CITIZENS OR RESIDENTS OF UNITED STATES

AMENDMENTS

1981—Pub. L. 97–34, title I, §§ 111(b)(1), 112(b)(1), Aug. 13, 1981, 95 Stat. 194, 195, substituted ''Citizens or residents of the United States living abroad'' for ''Income earned by individuals in certain camps or from charitable services'' in item 911 and struck out item 913 ''Deduction for certain expenses of living abroad''.

1980—Pub. L. 96–595, § 4(c)(2), Dec. 24, 1980, 94 Stat. 3467, inserted ''or from charitable services'' after ''camps'' in item 911.

1978—Pub. L. 95–615, §§ 202(g)(2), (3), 203(c), formerly §§ 202(f)(2), (3), 203(c), Nov. 8, 1978, 92 Stat. 3100, 3106, renumbered Pub. L. 96–222, title I, § 108(a)(1)(A), Apr. 1, 1980, 94 Stat. 223, inserted in subpart heading ''or Residents'' after ''Citizens'', substituted in item 911 ''Income earned by individuals in certain camps'' for ''Earned income from sources without the United States'', and added item 913.

§ 911. Citizens or residents of the United States living abroad

(a) Exclusion from gross income

At the election of a qualified individual (made separately with respect to paragraphs (1) and (2)), there shall be excluded from the gross income of such individual, and exempt from taxation under this subtitle, for any taxable year—

(1) the foreign earned income of such individual, and

(2) the housing cost amount of such individual.

(b) Foreign earned income

(1) Definition

For purposes of this section—

(A) In general

The term ''foreign earned income'' with respect to any individual means the amount received by such individual from sources within a foreign country or countries which constitute earned income attributable to services performed by such individual during the period described in subparagraph (A) or (B) of subsection (d)(1), whichever is applicable.

(B) Certain amounts not included in foreign earned income

The foreign earned income for an individual shall not include amounts—

(i) received as a pension or annuity,

(ii) paid by the United States or an agency thereof to an employee of the United States or an agency thereof,

(iii) included in gross income by reason of section 402(b) (relating to taxability of beneficiary of nonexempt trust) or section 403(c) (relating to taxability of beneficiary under a nonqualified annuity), or

(iv) received after the close of the taxable year following the taxable year in which the services to which the amounts are attributable are performed.

(2) Limitation on foreign earned income

(A) In general

The foreign earned income of an individual which may be excluded under subsection (a)(1) for any taxable year shall not exceed the amount of foreign earned income computed on a daily basis at an annual rate equal to the exclusion amount for the calendar year in which such taxable year begins.

(B) Attribution to year in which services are performed

For purposes of applying subparagraph (A), amounts received shall be considered received in the taxable year in which the services to which the amounts are attributable are performed.

(C) Treatment of community income

In applying subparagraph (A) with respect to amounts received from services performed by a husband or wife which are community income under community property laws applicable to such income, the aggregate amount which may be excludable from the gross income of such husband and wife under subsection (a)(1) for any taxable year shall equal the amount which would be so excludable if such amounts did not constitute community income.

(D) Exclusion amount

(i) In general

The exclusion amount for any calendar year is $80,000.

(ii) Inflation adjustment

In the case of any taxable year beginning in a calendar year after 2005, the $80,000 amount in clause (i) shall be increased by an amount equal to the product of—

(I) such dollar amount, and

(II) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ''2004'' for ''2016'' in subparagraph (A)(ii) thereof.

If any increase determined under the preceding sentence is not a multiple of $100, such increase shall be rounded to the next lowest multiple of $100.

(c) Housing cost amount

For purposes of this section—

(1) In general

The term ''housing cost amount'' means an amount equal to the excess of—

(A) the housing expenses of an individual for the taxable year to the extent such expenses do not exceed the amount determined under paragraph (2), over

(B) an amount equal to the product of—

(i) 16 percent of the amount (computed on a daily basis) in effect under subsection (b)(2)(D) for the calendar year in which such taxable year begins, multiplied by

(ii) the number of days of such taxable year within the applicable period described in subparagraph (A) or (B) of subsection (d)(1).

(2) Limitation

(A) In general

The amount determined under this paragraph is an amount equal to the product of—

(i) 30 percent (adjusted as may be provided under subparagraph (B)) of the amount (computed on a daily basis) in effect under subsection (b)(2)(D) for the calendar year in which the taxable year of the individual begins, multiplied by

(ii) the number of days of such taxable year within the applicable period described in subparagraph (A) or (B) of subsection (d)(1).

(B) Regulations

The Secretary may issue regulations or other guidance providing for the adjustment of the percentage under subparagraph (A)(i) on the basis of geographic differences in housing costs relative to housing costs in the United States.

(3) Housing expenses

(A) In general

The term ''housing expenses'' means the reasonable expenses paid or incurred during the taxable year by or on behalf of an individual for housing for the individual (and, if they reside with him, for his spouse and dependents) in a foreign country. The term—

(i) includes expenses attributable to the housing (such as utilities and insurance), but

(ii) does not include interest and taxes of the kind deductible under section 163 or 164 or any amount allowable as a deduction under section 216(a).

Housing expenses shall not be treated as reasonable to the extent such expenses are lavish or extravagant under the circumstances.

(B) Second foreign household

(i) In general

Except as provided in clause (ii), only housing expenses incurred with respect to that abode which bears the closest relationship to the tax home of the individual shall be taken into account under paragraph (1).

(ii) Separate household for spouse and dependents

If an individual maintains a separate abode outside the United States for his spouse and dependents and they do not reside with him because of living conditions which are dangerous, unhealthful, or otherwise adverse, then—

(I) the words ''if they reside with him'' in subparagraph (A) shall be disregarded, and

(II) the housing expenses incurred with respect to such abode shall be taken into account under paragraph (1).

(4) Special rules where housing expenses not provided by employer

(A) In general

To the extent the housing cost amount of any individual for any taxable year is not attributable to employer provided amounts, such amount shall be treated as a deduction allowable in computing adjusted gross income to the extent of the limitation of subparagraph (B).

(B) Limitation

For purposes of subparagraph (A), the limitation of this subparagraph is the excess of—

(i) the foreign earned income of the individual for the taxable year, over

(ii) the amount of such income excluded from gross income under subsection (a) for the taxable year.

(C) 1-year carryover of housing amounts not allowed by reason of subparagraph (B)

(i) In general

The amount not allowable as a deduction for any taxable year under subparagraph (A) by reason of the limitation of subparagraph (B) shall be treated as a deduction allowable in computing adjusted gross income for the succeeding taxable year (and only for the succeeding taxable year) to the extent of the limitation of clause (ii) for such succeeding taxable year.

(ii) Limitation

For purposes of clause (i), the limitation of this clause for any taxable year is the excess of—

(I) the limitation of subparagraph (B) for such taxable year, over

(II) amounts treated as a deduction under subparagraph (A) for such taxable year.

(D) Employer provided amounts

For purposes of this paragraph, the term ''employer provided amounts'' means any amount paid or incurred on behalf of the individual by the individual's employer which is foreign earned income included in the individual's gross income for the taxable year (without regard to this section).

(E) Foreign earned income

For purposes of this paragraph, an individual's foreign earned income for any taxable year shall be determined without regard to

the limitation of subparagraph (A) of subsection (b)(2).

(d) Definitions and special rules

For purposes of this section—

(1) Qualified individual

The term ''qualified individual'' means an individual whose tax home is in a foreign country and who is—

(A) a citizen of the United States and establishes to the satisfaction of the Secretary that he has been a bona fide resident of a foreign country or countries for an uninterrupted period which includes an entire taxable year, or

(B) a citizen or resident of the United States and who, during any period of 12 consecutive months, is present in a foreign country or countries during at least 330 full days in such period.

(2) Earned income

(A) In general

The term ''earned income'' means wages, salaries, or professional fees, and other amounts received as compensation for personal services actually rendered, but does not include that part of the compensation derived by the taxpayer for personal services rendered by him to a corporation which represents a distribution of earnings or profits rather than a reasonable allowance as compensation for the personal services actually rendered.

(B) Taxpayer engaged in trade or business

In the case of a taxpayer engaged in a trade or business in which both personal services and capital are material income-producing factors, under regulations prescribed by the Secretary, a reasonable allowance as compensation for the personal services rendered by the taxpayer, not in excess of 30 percent of his share of the net profits of such trade or business, shall be considered as earned income.

(3) Tax home

The term ''tax home'' means, with respect to any individual, such individual's home for purposes of section 162(a)(2) (relating to traveling expenses while away from home). An individual shall not be treated as having a tax home in a foreign country for any period for which his abode is within the United States.

(4) Waiver of period of stay in foreign country

Notwithstanding paragraph (1), an individual who—

(A) is a bona fide resident of, or is present in, a foreign country for any period,

(B) leaves such foreign country after August 31, 1978—

(i) during any period during which the Secretary determines, after consultation with the Secretary of State or his delegate, that individuals were required to leave such foreign country because of war, civil unrest, or similar adverse conditions in such foreign country which precluded the normal conduct of business by such individuals, and

(ii) before meeting the requirements of such paragraph (1), and

(C) establishes to the satisfaction of the Secretary that such individual could reasonably have been expected to have met such requirements but for the conditions referred to in clause (i) of subparagraph (B),

shall be treated as a qualified individual with respect to the period described in subparagraph (A) during which he was a bona fide resident of, or was present in, the foreign country, and in applying subsections (b)(2)(A), (c)(1)(B)(ii), and (c)(2)(A)(ii) with respect to such individual, only the days within such period shall be taken into account.

(5) Test of bona fide residence

If—

(A) an individual who has earned income from sources within a foreign country submits a statement to the authorities of that country that he is not a resident of that country, and

(B) such individual is held not subject as a resident of that country to the income tax of that country by its authorities with respect to such earnings,

then such individual shall not be considered a bona fide resident of that country for purposes of paragraph (1)(A).

(6) Denial of double benefits

No deduction or exclusion from gross income under this subtitle or credit against the tax imposed by this chapter (including any credit or deduction for the amount of taxes paid or accrued to a foreign country or possession of the United States) shall be allowed to the extent such deduction, exclusion, or credit is properly allocable to or chargeable against amounts excluded from gross income under subsection (a).

(7) Aggregate benefit cannot exceed foreign earned income

The sum of the amount excluded under subsection (a) and the amount deducted under subsection (c)(4)(A) for the taxable year shall not exceed the individual's foreign earned income for such year.

(8) Limitation on income earned in restricted country

(A) In general

If travel (or any transaction in connection with such travel) with respect to any foreign country is subject to the regulations described in subparagraph (B) during any period—

(i) the term ''foreign earned income'' shall not include any income from sources within such country attributable to services performed during such period,

(ii) the term ''housing expenses'' shall not include any expenses allocable to such period for housing in such country or for housing of the spouse or dependents of the taxpayer in another country while the taxpayer is present in such country, and

(iii) an individual shall not be treated as a bona fide resident of, or as present in, a

foreign country for any day during which such individual was present in such country during such period.

(B) Regulations

For purposes of this paragraph, regulations are described in this subparagraph if such regulations—

(i) have been adopted pursuant to the Trading With the Enemy Act (50 U.S.C. App. 1 et seq.),[1] or the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), and

(ii) include provisions generally prohibiting citizens and residents of the United States from engaging in transactions related to travel to, from, or within a foreign country.

(C) Exception

Subparagraph (A) shall not apply to any individual during any period in which such individual's activities are not in violation of the regulations described in subparagraph (B).

(9) Regulations

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

(A) for cases where a husband and wife each have earned income from sources outside the United States, and

(B) for married individuals filing separate returns.

(e) Election

(1) In general

An election under subsection (a) shall apply to the taxable year for which made and to all subsequent taxable years unless revoked under paragraph (2).

(2) Revocation

A taxpayer may revoke an election made under paragraph (1) for any taxable year after the taxable year for which such election was made. Except with the consent of the Secretary, any taxpayer who makes such a revocation for any taxable year may not make another election under this section for any subsequent taxable year before the 6th taxable year after the taxable year for which such revocation was made.

(f) Determination of tax liability

(1) In general

If, for any taxable year, any amount is excluded from gross income of a taxpayer under subsection (a), then, notwithstanding sections 1 and 55—

(A) if such taxpayer has taxable income for such taxable year, the tax imposed by section 1 for such taxable year shall be equal to the excess (if any) of—

(i) the tax which would be imposed by section 1 for such taxable year if the taxpayer's taxable income were increased by the amount excluded under subsection (a) for such taxable year, over

(ii) the tax which would be imposed by section 1 for such taxable year if the taxpayer's taxable income were equal to the amount excluded under subsection (a) for such taxable year, and

(B) if such taxpayer has a taxable excess (as defined in section 55(b)(1)(B)) for such taxable year, the amount determined under the first sentence of section 55(b)(1)(A) for such taxable year shall be equal to the excess (if any) of—

(i) the amount which would be determined under such sentence for such taxable year (subject to the limitation of section 55(b)(3)) if the taxpayer's taxable excess (as so defined) were increased by the amount excluded under subsection (a) for such taxable year, over

(ii) the amount which would be determined under such sentence for such taxable year if the taxpayer's taxable excess (as so defined) were equal to the amount excluded under subsection (a) for such taxable year.

For purposes of this paragraph, the amount excluded under subsection (a) shall be reduced by the aggregate amount of any deductions or exclusions disallowed under subsection (d)(6) with respect to such excluded amount.

(2) Special rules

(A) Regular tax

In applying section 1(h) for purposes of determining the tax under paragraph (1)(A)(i) for any taxable year in which, without regard to this subsection, the taxpayer's net capital gain exceeds taxable income (hereafter in this subparagraph referred to as the capital gain excess)—

(i) the taxpayer's net capital gain (determined without regard to section 1(h)(11)) shall be reduced (but not below zero) by such capital gain excess,

(ii) the taxpayer's qualified dividend income shall be reduced by so much of such capital gain excess as exceeds the taxpayer's net capital gain (determined without regard to section 1(h)(11) and the reduction under clause (i)), and

(iii) adjusted net capital gain, unrecaptured section 1250 gain, and 28-percent rate gain shall each be determined after increasing the amount described in section 1(h)(4)(B) by such capital gain excess.

(B) Alternative minimum tax

In applying section 55(b)(3) for purposes of determining the tax under paragraph (1)(B)(i) for any taxable year in which, without regard to this subsection, the taxpayer's net capital gain exceeds the taxable excess (as defined in section 55(b)(1)(B))—

(i) the rules of subparagraph (A) shall apply, except that such subparagraph shall be applied by substituting ''the taxable excess (as defined in section 55(b)(1)(B))'' for ''taxable income'', and

(ii) the reference in section 55(b)(3)(B) to the excess described in section 1(h)(1)(B), and the reference in section 55(b)(3)(C)(ii)

[1] See References in Text note below.

to the excess described in section 1(h)(1)(C)(ii), shall each be treated as a reference to each such excess as determined under the rules of subparagraph (A) for purposes of determining the tax under paragraph (1)(A)(i).

(C) Definitions

Terms used in this paragraph which are also used in section 1(h) shall have the respective meanings given such terms by section 1(h), except that in applying subparagraph (B) the adjustments under part VI of subchapter A shall be taken into account.

(g) Cross references

For administrative and penal provisions relating to the exclusions provided for in this section, see sections 6001, 6011, 6012(c), and the other provisions of subtitle F.

(Aug. 16, 1954, ch. 736, 68A Stat. 289; Pub. L. 85–866, title I, §72(b), Sept. 2, 1958, 72 Stat. 1660; Pub. L. 87–834, §11(a), Oct. 16, 1962, 76 Stat. 1003; Pub. L. 88–272, title II, §237(a), Feb. 26, 1964, 78 Stat. 128; Pub. L. 89–809, title I, §105(e)(3), Nov. 13, 1966, 80 Stat. 1567; Pub. L. 94–455, title X, §1011(a), (b), title XIX, §§1901(a)(115), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1610, 1784, 1834; Pub. L. 95–30, title I, §102(b)(12), May 23, 1977, 91 Stat. 138; Pub. L. 95–600, title IV, §401(b)(4), title VII, §§701(u)(10)(A), 703(e), Nov. 6, 1978, 92 Stat. 2867, 2917, 2939; Pub. L. 95–615, title II, §202(a)–(e), (g)(1), formerly §202(a)–(f)(1), Nov. 8, 1978, 92 Stat. 3098–3100, renumbered §202(a)–(e), (g)(1), and amended Pub. L. 96–222, title I, §§107(a)(3)(B), 108(a)(1)(A), (C), (D), Apr. 1, 1980, 94 Stat. 223, 224; Pub. L. 96–595, §4(a)–(c)(1), Dec. 24, 1980, 94 Stat. 3466, 3467; Pub. L. 97–34, title I, §111(a), Aug. 13, 1981, 95 Stat. 190; Pub. L. 97–448, title I, §101(c), Jan. 12, 1983, 96 Stat. 2366; Pub. L. 98–369, div. A, title I, §17, July 18, 1984, 98 Stat. 505; Pub. L. 99–514, title XII, §1233(a), (b), Oct. 22, 1986, 100 Stat. 2564; Pub. L. 105–34, title XI, §1172(a), Aug. 5, 1997, 111 Stat. 988; Pub. L. 109–222, title V, §515(a)–(c), May 17, 2006, 120 Stat. 367; Pub. L. 110–172, §4(c), Dec. 29, 2007, 121 Stat. 2476; Pub. L. 113–295, div. A, title II, §§202(b), 215(a), 221(a)(73), Dec. 19, 2014, 128 Stat. 4024, 4034, 4049; Pub. L. 115–97, title I, §§11002(d)(9), 12001(b)(3)(E), Dec. 22, 2017, 131 Stat. 2062, 2093.)

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 Trading With the Enemy Act, referred to in subsec. (d)(8)(B)(i), is act Oct. 6, 1917, ch. 106, 40 Stat. 411, which was classified to sections 1 to 6, 7 to 39, and 41 to 44 of the former Appendix to Title 50, War and National Defense, prior to editorial reclassification and renumbering in Title 50, and is now classified generally to chapter 53 (§4301 et seq.) of Title 50. For complete classification of this Act to the Code, see Tables.

The International Emergency Economic Powers Act, referred to in subsec. (d)(8)(B)(i), is Pub. L. 95–223, title II, Dec. 28, 1977, 91 Stat. 1626, 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.

AMENDMENTS

2017—Subsec. (b)(2)(D)(ii)(II). Pub. L. 115–97, §11002(d)(9), substituted ''for '2016' in subparagraph (A)(ii)'' for ''for '1992' in subparagraph (B)''.

Subsec. (f)(1)(B). Pub. L. 115–97, §12001(b)(3)(E)(i), substituted ''section 55(b)(1)(B)'' for ''section 55(b)(1)(A)(ii)'' and ''section 55(b)(1)(A)'' for ''section 55(b)(1)(A)(i)'' in introductory provisions.

Subsec. (f)(2)(B). Pub. L. 115–97, §12001(b)(3)(E)(ii), substituted ''section 55(b)(1)(B)'' for ''section 55(b)(1)(A)(ii)'' in introductory provisions and in cl. (i).

2014—Subsec. (b)(2)(D)(i). Pub. L. 113–295, §221(a)(73), amended cl. (i) generally. Prior to amendment, cl. (i) listed exclusion amounts for calendar years beginning from 1998 to 2002 and thereafter.

Subsec. (f)(1). Pub. L. 113–295, §215(a), inserted concluding provisions.

Subsec. (f)(2)(B)(ii). Pub. L. 113–295, §202(b), substituted ''described in section 1(h)(1)(B), and the reference in section 55(b)(3)(C)(ii) to the excess described in section 1(h)(1)(C)(ii), shall each be treated as a reference to each such excess as determined'' for ''described in section 1(h)(1)(B) shall be treated as a reference to such excess as determined''.

2007—Subsec. (f). Pub. L. 110–172 amended heading and text generally, substituting provisions relating to determination of tax liability, special rules for determining regular tax and alternative minimum tax, and definitions for former provisions relating to determination of tax liability and tentative minimum tax.

2006—Subsec. (b)(2)(D)(ii). Pub. L. 109–222, §515(a)(1), substituted ''2005'' for ''2007'' in introductory provisions.

Subsec. (b)(2)(D)(ii)(II). Pub. L. 109–222, §515(a)(2), substituted ''2004'' for ''2006''.

Subsec. (c)(1)(A). Pub. L. 109–222, §515(b)(2)(A), inserted ''to the extent such expenses do not exceed the amount determined under paragraph (2)'' after ''the taxable year''.

Subsec. (c)(1)(B)(i). Pub. L. 109–222, §515(b)(1), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''16 percent of the salary (computed on a daily basis) of an employee of the United States who is compensated at a rate equal to the annual rate paid for step 1 of grade GS–14, multiplied by''.

Subsec. (c)(2) to (4). Pub. L. 109–222, §515(b)(2)(B), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

Subsec. (d)(4). Pub. L. 109–222, §515(b)(2)(C)(i), substituted '', (c)(1)(B)(ii), and (c)(2)(A)(ii)'' for ''and (c)(1)(B)(ii)'' in concluding provisions.

Subsec. (d)(7). Pub. L. 109–222, §515(b)(2)(C)(ii), which directed substitution of ''subsection (c)(4)'' for ''subsection (c)(3)'', was executed by substituting ''subsection (c)(4)(A)'' for ''subsection (c)(3)(A)'' to reflect the probable intent of Congress.

Subsecs. (f), (g). Pub. L. 109–222, §515(c), added subsec. (f) and redesignated former subsec. (f) as (g).

1997—Subsec. (b)(2)(A). Pub. L. 105–34, §1172(a)(1), substituted ''equal to the exclusion amount for the calendar year in which such taxable year begins'' for ''of $70,000''.

Subsec. (b)(2)(D). Pub. L. 105–34, §1172(a)(2), added subpar. (D).

1986—Subsec. (b)(2)(A). Pub. L. 99–514, §1233(a), in amending subpar. (A) generally, substituted ''an annual rate of $70,000'' for ''the annual rate set forth in the following table for each day of the taxable year within the applicable period described in subparagraph (A) or (B) of subsection (d)(1):

"In the case of taxable years beginning in:	The annual rate is:
1983, 1984, 1985, 1986, or 1987	$80,000
1988	85,000
1989	90,000
1990 and thereafter	95,000.''

Subsec. (d)(8), (9). Pub. L. 99–514, §1233(b), added par. (8) and redesignated former par. (8) as (9).

1984—Subsec. (b)(2)(A). Pub. L. 98–369 amended table by striking out item which set the annual rate at $75,000 for taxable years beginning in 1982, substituted item setting the annual rate at $80,000 for taxable years beginning in 1983, 1984, 1985, 1986, or 1987 for items which had set annual rates of $80,000 for taxable years beginning in 1983, $85,000 for taxable years beginning in 1984, $90,000 for taxable years beginning in 1985, and $95,000 for taxable years beginning in 1986 and thereafter, and added items setting annual rates of $85,000 for taxable years beginning in 1988, $90,000 for taxable years beginning in 1989, and $95,000 for taxable years beginning in 1990 and thereafter.

1983—Subsec. (c)(3)(B)(ii). Pub. L. 97–448, §101(c)(2), substituted ''subsection (a)'' for ''subsection (a)(1)''.

Subsec. (d)(7), (8). Pub. L. 97–448, §101(c)(1), added par. (7) and redesignated former par. (7) as (8).

1981—Pub. L. 97–34 amended section generally, modifying the eligibility standards of existing law, replacing the existing system of deduction for excess living costs with an exclusion of a portion of foreign earned income, and providing for an individual's election to exclude a portion of his income or to deduct an amount for housing, based on his housing expenses.

1980—Pub. L. 96–595 §4(c)(1), inserted ''or from charitable services'' after ''camps'' in section catchline.

Subsec. (a). Pub. L. 96–595, §4(a), inserted ''or who performs qualified charitable services in a lesser developed country,'' after ''hardship area''.

Pub. L. 96–222, §108(a)(1)(C), (D), substituted ''a foreign country or'' for ''qualified foreign'' in par. (2) and, in provisions following par. (2), substituted ''his gross income any deduction,'' for ''his gross income'' and ''other than the deduction allowed by section 217'' for ''other than the deductions allowed by sections 217''.

Subsec. (c)(1)(A). Pub. L. 96–595, §4(b)(1), substituted ''Dollar limitations'' for ''In general'' in heading, redesignated existing provisions as cl. (i), and in cl. (i) as so redesignated, inserted ''Camp residents—In the case of an individual who resides in a camp located in a hardship area'' before ''the amount excluded'', and added cls. (ii) and (iii).

Subsec. (c)(1)(D), (E). Pub. L. 96–595, §4(b)(2), added subpars. (D) and (E).

1978—Pub. L. 95–615, §202(g)(1), formerly §202(f)(1), substituted ''Income earned by individuals in certain camps'' for ''Earned income from sources without the United States'' in section catchline.

Subsec. (a). Pub. L. 95–615, §202(a), in introductory provisions inserted reference to an individual described in section 913(a) who, because of his employment, resides in a camp located in a hardship area, in par. (1) substituted reference to amounts received from sources within a foreign country or countries for reference to amounts received from sources without the United States, in par. (2) substituted reference to amounts received from sources within qualified foreign countries for reference to amounts received from sources without the United States, and in provisions following par. (2) struck out ''any deductions (other than those allowed by section 151, relating to personal exemptions),'' after ''deduction from his gross income'' and inserted '', other than the deductions allowed by sections 217 (relating to moving expenses)'' after ''subsection''.

Pub. L. 95–600, §701(u)(10)(A), inserted provisions setting forth formula for determining amount of reduction of taxes, and struck out provisions relating to the credit against taxes.

Subsec. (c)(1)(A). Pub. L. 95–615, §202(b), substituted ''The amount excluded'' for ''Except as provided in subparagraphs (B) and (C), the amount excluded'' and ''an annual rate of $20,000 for days during which he resides in a camp'' for ''an annual rate of $15,000''.

Subsec. (c)(1)(B). Pub. L. 95–615, §202(b), substituted provisions relating to conditions upon which an individual will be considered to reside in a camp because of his employment for provisions which related to the amount excluded from the gross income of an individual performing qualified charitable services.

Subsec. (c)(1)(C). Pub. L. 95–615, §202(b), substituted provisions relating to definition of ''hardship area'' for provisions which related to the amount excluded from the gross income of an individual performing both qualified charitable services and other services.

Subsec. (c)(1)(D). Pub. L. 95–615, §202(b), struck out subpar. (D) which defined ''qualified charitable services''.

Subsec. (c)(7). Pub. L. 95–615, §202(c), added par. (7).

Pub. L. 95–600, §703(e), redesignated former par. (8) as (7). Such par. (8) was subsequently repealed by section 202(e) of Pub. L. 95–615 without taking into account the redesignation of par. (8) as (7) by Pub. L. 95–600. See 1978 Amendment note for subsec. (c)(8) below.

Subsec. (c)(8). Pub. L. 95–615, §202(e), struck out par. (8) which related to the nonexclusion under subsec. (a) of any amount attributable to services performed in a foreign country or countries if such amount was received outside of the foreign country or countries where such services were performed and if one of the purposes was the avoidance of any tax imposed by such foreign country or countries on such amount.

Subsec. (d). Pub. L. 95–615, §202(d)(1), redesignated subsec. (e) as (d), inserted ''for the taxable year'' after ''section apply'', and struck out provision that an election was applicable to the taxable year for which made and to all subsequent taxable years. Former subsec. (d), which related to the computation of tax imposed by section 1 or section 1201 if an individual earned income which was excluded from gross income under subsec. (a) and which defined ''net taxable income'' and ''net excluded earned income'', was struck out.

Subsec. (d)(1). Pub. L. 95–600, §401(b)(4), struck out provisions respecting applicability of section 1201 of this title.

Subsecs. (e), (f). Pub. L. 95–615, §202(d)(1), (2), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

1977—Subsec. (d)(1)(B). Pub. L. 95–30 substituted ''on the sum of (i) the amount of net excluded earned income, and (ii) the zero bracket amount'' for ''on the amount of net excluded earned income''.

1976—Subsec. (a). Pub. L. 94–455, §§1011(b)(1), 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' in par. (1), and in provisions following par. (2), inserted ''or as a credit against the tax imposed by this chapter any credit for the amount of taxes paid or accrued to a foreign country or possession of the United States, to the extent that such deductions or credit is'' after ''personal exemptions)''.

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

Subsec. (c)(1). Pub. L. 94–455, §1011(a), reduced the amount excludable from individual's gross income from $20,000 to $15,000 and $20,000 for employees of charitable organizations, added special rule to be applied to income from charitable sources and other sources combined, inserted definition of ''qualified charitable services'', and struck out provisions relating to $25,000 exclusion for individual who has been a bona fide resident in a foreign country for an uninterrupted period of 3 years.

Subsec. (c)(7). Pub. L. 94–455, §1901(a)(115), struck out par. (7) relating to certain noncash remuneration from sources outside the United States.

Subsec. (c)(8). Pub. L. 94–455, §1011(b)(2), added par. (8).

Subsecs. (d) to (f). Pub. L. 94–455, §1011(b)(3), added subsecs. (d) and (e) and redesignated former subsec. (d) as (f).

1966—Subsec. (d). Pub. L. 89–809 designated existing text as par. (1) and added par. (2).

1964—Subsec. (c)(1)(B). Pub. L. 88–272 substituted ''$25,000'' for ''$35,000''.

1962—Subsec. (a). Pub. L. 87–834 substituted ''which constitute earned income attributable to services performed during such uninterrupted period'' for ''if such amounts constitute earned income (as defined in subsection (b)) attributable to such period'' in par. (1), and ''which constitute earned income attributable to services performed during such 18-month period'' for ''if such amounts constitute earned income (as defined in

subsection (b)) attributable to such period'' in par. (2), inserted provisions in pars. (1) and (2) requiring the amount excluded under such paragraphs to be computed by applying the special rules contained in subsec. (c), and eliminated provisions from par. (2) which limited the amount excluded under such paragraph to not more than $20,000 if the 18-month period includes the entire taxable year, and to not more than an amount which bears the same ratio to $20,000 as the number of days in the part of the taxable year within the 18-month period bears to the total number of days in such year if the 18-month period does not include the entire taxable year.

Subsecs. (c) and (d). Pub. L. 87–834 added subsec. (c) and redesignated former subsec. (c) as (d).

1958—Subsec. (c). Pub. L. 85–866 added subsec. (c).

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 11002(d)(9) 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 12001(b)(3)(E) 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.

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by section 202(b) of 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.

Amendment by section 215(a) of Pub. L. 113–295 effective as if included in the provisions of the Tax Technical Corrections Act of 2007, Pub. L. 110–172, to which such amendment relates, see section 215(c) of Pub. L. 113–295, set out as a note under section 56 of this title.

Amendment by section 221(a)(73) 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 2007 AMENDMENT

Amendment by Pub. L. 110–172 effective as if included in the provisions of the Tax Increase Prevention and Reconciliation Act of 2005, Pub. L. 109–222, to which such amendment relates, with certain exceptions, see section 4(d) of Pub. L. 110–172, set out as a note under section 355 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–222, title V, § 515(d), May 17, 2006, 120 Stat. 368, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2005.''

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XI, § 1172(b), Aug. 5, 1997, 111 Stat. 988, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997.''

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XII, § 1233(c), Oct. 22, 1986, 100 Stat. 2565, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1986.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by 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.

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, § 115, Aug. 13, 1981, 95 Stat. 196, provided that: ''The amendments made by this subtitle [subtitle B (§§ 111–115) of title I of Pub. L. 97–34, amending this section and sections 37, 43, 62, 63, 105, 119, 410, 879, 1034, 1302, 1303, 1304, 1402, 3401, 6012, and 6091 of this title and repealing section 913 of this title] (other than section 114 [amending section 208 of Pub. L. 95–615, set out below]) shall apply with respect to taxable years beginning after December 31, 1981.''

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–595, § 4(d), Dec. 24, 1980, 94 Stat. 3467, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1978.''

Amendment by section 107(a)(3)(B) of 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.

Amendment by section 108(a)(1)(A), (C), (D) of Pub. L. 96–222 effective as if included in the Foreign Earned Income Act of 1978, Pub. L. 95–615, see section 108(a)(2)(A) of Pub. L. 96–222, set out as a note under section 3 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 401(b)(4) 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.

Pub. L. 95–600, title VII, § 701(u)(10)(B), Nov. 6, 1978, 92 Stat. 2917, as amended by Pub. L. 96–222, title I, § 107(a)(1)(B), Apr. 1, 1980, 94 Stat. 222, provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to taxable years beginning in calendar year 1978 but only in the case of taxpayers who make an election under section 209(c) of the Foreign Earned Income Act of 1978 [section 209(c) of Pub. L. 95–615, set out below].''

Amendment by section 703(e) 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.

EFFECTIVE DATE OF 1978 AMENDMENT; ELECTION OF PRIOR LAW

Pub. L. 95–615, title II, § 209, Nov. 8, 1978, 92 Stat. 3109, provided that:

''(a) GENERAL RULE.—Except as provided in subsections (b) and (c), the amendments made by this title [see section 201(a) of Pub. L. 95–615, set out as a Short Title of 1978 Amendment note under section 1 of this title] shall apply to taxable years beginning after December 31, 1977.

''(b) WAGE WITHHOLDING.—The amendment made by section 207(a) [amending section 3401 of this title] shall apply to remuneration paid after the date of the enactment of this Act. [Nov. 8, 1978].

''(c) ELECTION OF PRIOR LAW.—

''(1) A taxpayer may elect not to have the amendments made by this title [see section 201(a) of Pub. L. 95–615, set out as a Short Title of 1978 Amendment note under section 1 of this title] apply with respect to any taxable year beginning after December 31, 1977, and before January 1, 1979.

''(2) An election under this subsection shall be filed with a taxpayer's timely filed return for the first taxable year beginning after December 31, 1977.''

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 X, § 1011(d), Oct. 4, 1976, 90 Stat. 1611, as amended by Pub. L. 95–30, title III, § 302, May 23, 1977, 91 Stat. 152; Pub. L. 95–615, § 4(a), Nov. 8, 1978, 92 Stat. 3097, provided that: ''The amendments made by this section [amending this section and section 36 of this title] shall apply to taxable years beginning after December 31, 1977.''

Amendment by section 1901(a)(115) 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 1964 AMENDMENT

Pub. L. 88–272, title II, § 237(b), Feb. 26, 1964, 78 Stat. 128, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1964.''

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87–834, § 11(c)(1), Oct. 16, 1962, 76 Stat. 1005, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after September 4, 1962, but only with respect to amounts—

''(A) received after March 12, 1962, which are attributable to services performed after December 31, 1962, or

''(B) received after December 31, 1962, which are attributable to services performed on or before December 31, 1962, unless on March 12, 1962, there existed a right (whether forfeitable or nonforfeitable) to receive such amounts.''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1957, see section 72(c) of Pub. L. 85–866 set out as a note under section 6012 of this title.

REPEALS

Section 703(e) of Pub. L. 95–600, cited as a credit to this section, was repealed by Pub. L. 96–222, title I, § 107(a)(3)(B), Apr. 1, 1980, 94 Stat. 223. See 1978 Amendment note for subsec. (c)(7) of this section set out above.

TREATMENT OF CERTAIN PERSONS IN PANAMA

Pub. L. 99–514, title XII, § 1232(a), Oct. 22, 1986, 100 Stat. 2563, provided that: ''Nothing in the Panama Canal Treaty (or in any agreement implementing such Treaty) shall be construed as exempting (in whole or in part) any citizen or resident of the United States from any tax under the Internal Revenue Code of 1954 or 1986. The preceding sentence shall apply to all taxable years whether beginning before, on, or after the date of the enactment of this Act [Oct. 22, 1986] (or in the case of any tax not imposed with respect to a taxable year, to taxable events after the date of enactment of this Act.)''

TAXABLE YEARS BEGINNING IN 1977 OR 1978; INDIVIDUALS WHO LEAVE FOREIGN COUNTRY AFTER AUGUST 31, 1978

Rules similar to the rules of section 913(j)(4) of this title to apply for the purposes of applying this section for taxable years beginning in 1977 or 1978 in the case of an individual who leaves a foreign country after Aug. 31, 1978, see section 1(b) of Pub. L. 96–608, set out as an Effective Date of 1980 Amendment note under section 913 of this title.

INDIVIDUALS FOR WHOM UNUSED ZERO BRACKET AMOUNT COMPUTATION IS PROVIDED FOR TAXABLE YEARS BEGINNING IN 1977

Pub. L. 95–615, § 4(b), Nov. 8, 1978, 92 Stat. 3097, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''If for any taxable year beginning in 1977—

''(1) an individual is entitled to the benefits of section 911 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], and

''(2) such individual chooses to take to any extent the benefits of section 901 of such Code,

then such individual shall be treated for such taxable year as an individual for whom an unused zero bracket amount computation is provided by section 63(e) of such Code.''

REPORTS TO CONGRESSIONAL COMMITTEES; INFORMATION FROM FEDERAL AGENCIES

Pub. L. 95–615, title II, § 208, Nov. 8, 1978, 92 Stat. 3108, as amended by Pub. L. 97–34, title I, § 114, Aug. 13, 1981, 95 Stat. 195; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 101–508, title XI, § 11833, Nov. 5, 1990, 104 Stat. 1388–560, provided that:

''(a) GENERAL RULE.—As soon as practicable after December 31, 1993, and as soon as practicable after the close of each fifth calendar year thereafter, the Secretary of the Treasury shall transmit a report to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate on the operation and effects of sections 911 and 912 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].

''(b) INFORMATION FROM FEDERAL AGENCIES.—Each agency of the Federal Government which pays allowances excludable from gross income under section 912 of such Code shall keep such records and furnish to the Secretary of the Treasury such information as he determines to be necessary to carry out his responsibility under subsection (a).''

§ 912. Exemption for certain allowances

The following items shall not be included in gross income, and shall be exempt from taxation under this subtitle:

(1) Foreign areas allowances

In the case of civilian officers and employees of the Government of the United States, amounts received as allowances or otherwise (but not amounts received as post differentials) under—

(A) chapter 9 of title I of the Foreign Service Act of 1980,

(B) section 4 of the Central Intelligence Agency Act of 1949, as amended (50 U.S.C., sec. 403e),[1]

(C) title II of the Overseas Differentials and Allowances Act, or

(D) subsection (e) or (f) of the first section of the Administrative Expenses Act of 1946, as amended, or section 22 of such Act.

(2) Cost-of-living allowances

In the case of civilian officers or employees of the Government of the United States stationed outside the continental United States (other than Alaska), amounts (other than amounts received under title II of the Overseas Differentials and Allowances Act) received as cost-of-living allowances in accordance with regulations approved by the President (or in the case of judicial officers or employees of the United States, in accordance with rules similar to such regulations).

(3) Peace Corps allowances

In the case of an individual who is a volunteer or volunteer leader within the meaning of the Peace Corps Act and members of his fam-

[1] See References in Text note below.

ily, amounts received as allowances under section 5 or 6 of the Peace Corps Act other than amounts received as—

(A) termination payments under section 5(c) or section 6(1) of such Act,

(B) leave allowances,

(C) if such individual is a volunteer leader training in the United States, allowances to members of his family, and

(D) such portion of living allowances as the President may determine under the Peace Corps Act as constituting basic compensation.

(Aug. 16, 1954, ch. 736, 68A Stat. 290; Pub. L. 86–707, title V, § 523(a), Sept. 6, 1960, 74 Stat. 802; Pub. L. 87–293, title II, § 201(a), Sept. 22, 1961, 75 Stat. 625; Pub. L. 96–465, title II, § 2206(e)(3), Oct. 17, 1980, 94 Stat. 2163; Pub. L. 100–647, title VI, § 6137(a), Nov. 10, 1988, 102 Stat. 3723.)

REFERENCES IN TEXT

The Foreign Service Act of 1980, referred to in par. (1)(A), is Pub. L. 96–465, Oct. 17, 1980, 94 Stat. 2071, as amended. Chapter 9 of title I of the Foreign Service Act of 1980 is classified generally to subchapter IX (§ 4081 et seq.) of chapter 52 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 3901 of Title 22 and Tables.

The Central Intelligence Agency Act of 1949, referred to in par. (1)(B), is act June 20, 1949, ch. 227, 63 Stat. 208, which was formerly classified generally to section 403a et seq. of Title 50, War and National Defense, prior to editorial reclassification in Title 50, and is now classified generally to chapter 46 (§ 3501 et seq.) of Title 50. Section 4 of the Act is now classified to section 3505 of Title 50. For complete classification of this Act to the Code, see Tables.

Title II of the Overseas Differentials and Allowances Act, referred to in pars. (1)(C) and (2), was title II of Pub. L. 86–707, Sept. 6, 1960, 74 Stat. 793, which was repealed and reenacted as sections 5922 to 5925 of Title 5, Government Organization and Employees, by Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 378.

Sections 1(e) and (f) and 22 of the Administrative Expenses Act of 1946, referred to in par. (1)(D), were repealed and the provisions thereof reenacted as sections 5726(b), 5727(b) to (e), and 5913 of Title 5, by Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 378.

The Peace Corps Act, referred to in par. (3), is Pub. L. 87–293, Sept. 22, 1961, 75 Stat. 612, as amended, which is classified principally to chapter 34 (§ 2501 et seq.) of Title 22, Foreign Relations and Intercourse. Sections 5 and 6 of that act are classified to sections 2504 and 2505 of Title 22. For complete classification of this act to the Code, see Short Title note set out under section 2501 of Title 22 and Tables.

AMENDMENTS

1988—Par. (2). Pub. L. 100–647 inserted ''(or in the case of judicial officers or employees of the United States, in accordance with rules similar to such regulations)'' after ''President''.

1980—Par. (1)(A). Pub. L. 96–465 substituted reference to chapter 9 of title I of the Foreign Service Act of 1980 for reference to title IX of the Foreign Service Act of 1946.

1961—Par. (3). Pub. L. 87–293 added par. (3).

1960—Pub. L. 86–707 exempted foreign areas allowances received under section 4 of the Central Intelligence Agency Act of 1949, title II of the Overseas Differentials and Allowances Act, subsection (e) or (f) of the first section of the Administrative Expenses Act of 1946, or section 22 of such Act, provided that amounts received as post differentials shall not be exempt and in provisions relating to cost-of-living allowances excluded Alaska from term ''continental United States'' and amounts received under title II of the Overseas Differentials and Allowances Act.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title VI, § 6137(b), Nov. 10, 1988, 102 Stat. 3723, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to allowances received after October 12, 1987, in taxable years ending after such date.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–465 effective Feb. 15, 1981, except as otherwise provided, see section 2403 of Pub. L. 96–465, set out as an Effective Date note under section 3901 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1961 AMENDMENT

Pub. L. 87–293, title II, § 201(d), Sept. 22, 1961, 75 Stat. 625, provided that: ''The amendments made by subsections (a) and (b) of this section [amending this section and section 1303 of this title] shall apply with respect to taxable years ending after March 1, 1961. The amendment made by subsection (c) [amending section 3401 of this title] shall apply with respect to remuneration paid after the date of the enactment of this Act [Sept. 22, 1961].''

[Section 201(d) of Pub. L. 87–293 was repealed by Pub. L. 89–572, § 5(a), Sept. 13, 1966, 80 Stat. 765. Such repeal not deemed to affect amendments contained in such provisions, see sections 5(b) of Pub. L. 89–572, set out as a note under former section 2515 of Title 22, Foreign Relations and Intercourse.]

EFFECTIVE DATE OF 1960 AMENDMENT

Pub. L. 86–707, title V, § 523(b), Sept. 6, 1960, 74 Stat. 802, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Paragraphs (1) and (2) of section 912 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as amended by subsection (a) of this section, shall apply only with respect to amounts received on or after the date of the enactment of this Act [Sept. 6, 1960] in taxable years ending on or after such date.''

REPEALS; AMENDMENTS AND APPLICATION OF AMENDMENTS UNAFFECTED

Section 201(a) of Pub. L. 87–293, cited as a credit to this section, was repealed by Pub. L. 89–572, § 5(a), Sept. 13, 1966, 80 Stat. 765. Such repeal not deemed to affect amendments to this section contained in such provisions, and continuation in full force and effect until modified by appropriate authority of all determinations, authorization, regulations, orders, contracts, agreements, and other actions issued undertaken, or entered into under authority of the repealed provisions, see section 5(b) of Pub. L. 89–572, set out as a note under former section 2515 of Title 22, Foreign Relations and Intercourse.

DELEGATION OF FUNCTIONS

Function of determining the portion of living allowances constituting basic compensation for Peace Corps volunteers or volunteer leaders under par. (3) of this section delegated by President to Director of Peace Corps to be performed in consultation with the Secretary of the Treasury, see section 1–104 of Ex. Ord. No. 12137, May 16, 1979, 44 F.R. 29023, set out as a note under section 2501 of Title 22, Foreign Relations and Intercourse.

Authority of President under par. (2) of this section delegated to Secretary of Defense with respect to military departments, and to Secretary of Transportation with respect to Coast Guard when it is not operating as a service in the Navy, concerning civilian employees of nonappropriated fund instrumentalities of the armed forces, see section 201 of Ex. Ord. No. 11137, Jan. 7, 1964, as amended, set out as a note under section 5921 of Title 5, Government Organization and Employees.

TREATMENT OF EMPLOYEES OF PANAMA CANAL COMMISSION AND DEPARTMENT OF DEFENSE

Pub. L. 99–514, title XII, §1232(b), Oct. 22, 1986, 100 Stat. 2564, provided that: ''Employees of the Panama Canal Commission and civilian employees of the Defense Department of the United States stationed in Panama may exclude from gross income allowances which are comparable to the allowances excludable under section 912(1) of the Internal Revenue Code of 1986 by employees of the State Department of the United States stationed in Panama. The preceding sentence shall apply to taxable years beginning after December 31, 1986.''

[§ 913. Repealed. Pub. L. 97–34, title I, § 112(a), Aug. 13, 1981, 95 Stat. 194]

Section, added Pub. L. 95–615, title II, §203(a), Nov. 8, 1978, 92 Stat. 3100; amended Pub. L. 96–222, title I, §108(a)(1)(B), (F), Apr. 1, 1980. 94 Stat. 223, 225; Pub. L. 96–608, §1(a), Dec. 28, 1980, 94 Stat. 3550, related to a deduction for certain expenses of living abroad.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to taxable years beginning after Dec. 31, 1981, see section 115 of Pub. L. 97–34, set out as an Effective Date of 1981 Amendment note under section 911 of this title.

[SUBPART C—REPEALED]

[§§ 921 to 927. Repealed. Pub. L. 106–519, § 2, Nov. 15, 2000, 114 Stat. 2423]

Section 921, added Pub. L. 98–369, div. A, title VIII, §801(a), July 18, 1984, 98 Stat. 985, provided for exclusion from gross income of exempt foreign trade income.

A prior section 921, acts Aug. 16, 1954, ch. 736, 68A Stat. 290; Oct. 4, 1976, Pub. L. 94–455, title XIX, §1901(a)(116), 90 Stat. 1784, defined Western Hemisphere trade corporation, prior to repeal by Pub. L. 94–455, title X, §1052(b), Oct. 4, 1976, 90 Stat. 1648, effective with respect to taxable years beginning after Dec. 31, 1979.

Section 922, added Pub. L. 98–369, div. A, title VIII, §801(a), July 18, 1984, 98 Stat. 986, defined FSC's.

A prior section 922, acts Aug. 16, 1954, ch. 736, 68A Stat. 291; Dec. 10, 1971, Pub. L. 92–178, title V, §502(c), 85 Stat. 550; Oct. 4, 1976, Pub. L. 94–455, title X, §1052(a), (c)(1), 90 Stat. 1647, 1648; Nov. 6, 1978, Pub. L. 95–600, title III, §301(b)(15), 92 Stat. 2822, related to a special deduction for a Western Hemisphere trade corporation, prior to repeal by Pub. L. 94–455, title X, §1052(b), Oct. 4, 1976, 90 Stat. 1648, effective with respect to taxable years beginning after Dec. 31, 1979.

Section 923, added Pub. L. 98–369, div. A, title VIII, §801(a), July 18, 1984, 98 Stat. 986; amended Pub. L. 99–514, title XVIII, §1876(b)(3), Oct. 22, 1986, 100 Stat. 2898, related to exempt foreign trade income.

Section 924, added Pub. L. 98–369, div. A, title VIII, §801(a), July 18, 1984, 98 Stat. 987; amended Pub. L. 99–514, title XVIII, §1876(e)(2), (*l*), Oct. 22, 1986, 100 Stat. 2899, 2901, related to foreign trading gross receipts.

Section 925, added Pub. L. 98–369, div. A, title VIII, §801(a), July 18, 1984, 98 Stat. 990, related to transfer pricing rules.

Section 926, added Pub. L. 98–369, div. A, title VIII, §801(a), July 18, 1984, 98 Stat. 991, related to distributions to shareholders.

Section 927, added Pub. L. 98–369, div. A, title VIII, §801(a), July 18, 1984, 98 Stat. 991; amended Pub. L. 99–514, title XVIII, §1876(a)(1), (e)(1), (f)(1), (p)(5), Oct. 22, 1986, 100 Stat. 2897, 2899, 2902; Pub. L. 100–647, title I, §1012(bb)(8)(A), Nov. 10, 1988, 102 Stat. 3536; Pub. L. 101–508, title XI, §11704(a)(10), Nov. 5, 1990, 104 Stat. 1388–518; Pub. L. 103–66, title XIII, §13239(a), Aug. 10, 1993, 107 Stat. 509; Pub. L. 105–34, title XI, §1171(a), Aug. 5, 1997, 111 Stat. 987, related to other definitions and special rules.

EFFECTIVE DATE OF REPEAL

Repeal 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 an Effective Date of 2000 Amendments note under section 56 of this title.

SUBPART D—POSSESSIONS OF THE UNITED STATES

AMENDMENTS

2004—Pub. L. 108–357, title VIII, §908(c)(6), Oct. 22, 2004, 118 Stat. 1657, added item 937.

1986—Pub. L. 99–514, title XII, §§1272(d)(12), 1274(d), 1275(c)(8), Oct. 22, 1986, 100 Stat. 2595, 2598, 2599, substituted ''Guam, American Samoa, or the Northern Mariana Islands'' for ''possessions of the United States'' in item 931, added item 932, and struck out former item 932 ''Citizens of possessions of the United States'', item 934A ''Income tax rate on Virgin Islands source income'' and item 935 ''Coordination of United States and Guam individual income taxes''.

1983—Pub. L. 97–455, §1(d)(1), Jan. 12, 1983, 96 Stat. 2498, added item 934A.

1972—Pub. L. 92–606, §1(f)(5), Oct. 31, 1972, 86 Stat. 1497, added item 935.

1960—Pub. L. 86–779, §4(a)(2), Sept. 14, 1960, 74 Stat. 999, added item 934.

§ 931. Income from sources within Guam, American Samoa, or the Northern Mariana Islands

(a) General rule

In the case of an individual who is a bona fide resident of a specified possession during the entire taxable year, gross income shall not include—

(1) income derived from sources within any specified possession, and

(2) income effectively connected with the conduct of a trade or business by such individual within any specified possession.

(b) Deductions, etc. allocable to excluded amounts not allowable

An individual shall not be allowed—

(1) as a deduction from gross income any deductions (other than the deduction under section 151, relating to personal exemptions), or

(2) any credit,

properly allocable or chargeable against amounts excluded from gross income under this section.

(c) Specified possession

For purposes of this section, the term ''specified possession'' means Guam, American Samoa, and the Northern Mariana Islands.

(d) Employees of the United States

Amounts paid for services performed as an employee of the United States (or any agency thereof) shall be treated as not described in paragraph (1) or (2) of subsection (a).

[1] Editorially supplied. Section 936 added by Pub. L. 94–455 without corresponding amendment of subpart analysis.

(Aug. 16, 1954, ch. 736, 68A Stat. 291; Pub. L. 89–809, title I, §107(a), Nov. 13, 1966, 80 Stat. 1571; Pub. L. 92–178, title V, §502(d), Dec. 10, 1971, 85 Stat. 550; Pub. L. 92–606, §1(f)(1), Oct. 31, 1972, 86 Stat. 1497; Pub. L. 94–455, title X, §1051(c), title XIX, §§1901(a)(117), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1645, 1784, 1834; Pub. L. 95–30, title I, §101(d)(12), 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. 99–514, title XII, §1272(a), Oct. 22, 1986, 100 Stat. 2593; Pub. L. 108–357, title VIII, §908(c)(1), Oct. 22, 2004, 118 Stat. 1656.)

AMENDMENTS

2004—Subsec. (d). Pub. L. 108–357 amended heading and text of subsec. (d) generally, substituting provisions relating to employees of the United States for provisions consisting of pars. (1) to (3) relating to special rules concerning employees of the United States, determination of source of income, and determination of residency.

1986—Pub. L. 99–514 amended section generally, substituting provisions relating to income from sources within Guam, American Samoa, or the Northern Mariana Islands, for former provisions relating to income from sources within possessions of the United States, which had declared in: subsec. (a), general rule as to gross income, including requirements relating to 3-year period and trade or business; subsec. (b), rule as to amounts received in United States; subsec. (c), definition of ''possession of the United States''; subsec. (d), general rule allowing deductions only to extent connected with income from sources within United States, and specific exceptions to limitations of general rule; subsec. (e), deduction for personal exemption; subsec. (f), allowance of deductions and credits; subsec. (g), foreign tax credit; subsec. (h), provisions relating to employees of United States.

1984—Subsec. (d)(2)(B). 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. (d)(3). Pub. L. 95–30 struck out par. (3) which made a cross reference to section 142(b)(2) for disallowance of the standard deduction.

1976—Subsec. (a). Pub. L. 94–455, §1051(c)(1), struck out all references to domestic corporations and made subsection applicable only to individual citizens.

Subsec. (c). Pub. L. 94–455, §1051(c)(2), substituted ''Commonwealth of Puerto Rico, the Virgin Islands of the United States, or Guam'' for ''Virgin Islands of the United States, and such term when used with respect to citizens of the United States does not include Puerto Rico or Guam'' after ''does not include the''.

Subsec. (d)(1). Pub. L. 94–455, §§1051(c)(3), 1906(b)(13)(A), substituted ''a citizen of the United States'' for ''persons'' after ''in the case of'' and struck out ''or his delegate'' after ''Secretary''.

Subsec. (f). Pub. L. 94–455, §§1051(c)(3), 1906(b)(13)(A), substituted ''A citizen of the United States'' for ''Persons'' after ''Allowance of deductions and credits'' and struck out in two places ''or his delegate'' after ''Secretary''.

Subsecs. (h), (i). Pub. L. 94–455, §1901(a)(117), redesignated subsec. (i) as (h). Former subsec. (h), relating to the status of a citizen of the United States who has been interned by the enemy, was struck out.

1972—Subsec. (c). Pub. L. 92–606 substituted ''Puerto Rico or Guam'' for ''Puerto Rico''.

1971—Subsec. (a). Pub. L. 92–178 provided for non-application of section in the case of a corporation for a taxable year for which it is a DISC or in which it owns at any time stock in a DISC or former DISC.

1966—Subsec (d). Pub. L. 89–809 made applicable to United States citizens and domestic corporations engaged in trade or business in possessions, who qualify for the special tax treatment of income qualifying for the exclusion relating to income from United States possessions, provisions which allow deductions to nonresident aliens or foreign corporations engaged in trade or business in the United States by allowing deductions only where they are allocable to income effectively connected with the trade or business in the United States and by spelling out the exceptions allowing deductions whether or not connected with income from sources within the United States in the case of losses not connected with the trade or business but incurred in transactions entered into for profit, casualty losses, and charitable contributions.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years ending after Oct. 22, 2004, see section 908(d)(1) of Pub. L. 108–357, set out as an Effective Date note under section 937 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XII, §1277, Oct. 22, 1986, 100 Stat. 2600, as amended by Pub. L. 100–647, title I, §1012(z), Nov. 10, 1988, 102 Stat. 3530, provided that:

''(a) IN GENERAL.—Except as otherwise provided in this section, the amendments made by this subtitle [subtitle G (§§1271–1277) of title XII of Pub. L. 99–514, enacting section 932 of this title, amending this section and sections 28, 32, 48, 63, 153, 246, 338, 864, 876, 881, 933, 934, 936, 957, 1402, 1442, 3401, 6091, 7651, 7654, and 7655 of this title, repealing sections 932, 934A, and 935 of this title, and enacting provisions set out as notes under this section and section 932 of this title] shall apply to taxable years beginning after December 31, 1986.

''(b) SPECIAL RULE FOR GUAM, AMERICAN SAMOA, AND THE NORTHERN MARIANA ISLANDS.—The amendments made by this subtitle shall apply with respect to Guam, American Samoa, or the Northern Mariana Islands (and to residents thereof and corporations created or organized therein) only if (and so long as) an implementing agreement under section 1271 [set out below] is in effect between the United States and such possession.

''(c) SPECIAL RULES FOR THE VIRGIN ISLANDS.—

''(1) IN GENERAL.—The amendments made by section 1275(c) [amending sections 28, 48, 338, 864, and 934 of this title and repealing section 934A of this title] shall apply with respect to the Virgin Islands (and residents thereof and corporations created or organized therein) only if (and so long as) an implementing agreement is in effect between the United States and the Virgin Islands with respect to the establishment of rules under which the evasion or avoidance of United States income tax shall not be permitted or facilitated by such possession. Any such implementing agreement shall be executed on behalf of the United States by the Secretary of the Treasury, after consultation with the Secretary of the Interior.

''(2) SECTION 1275(b).—

''(A) IN GENERAL.—The amendment made by section 1275(b) [amending section 7651 of this title] shall apply with respect to—

''(i) any taxable year beginning after December 31, 1986, and

''(ii) any pre-1987 open year.

''(B) SPECIAL RULES.—In the case of any pre-1987 open year—

''(i) the amendment made by section 1275(b) shall not apply to income from sources in the Virgin Islands or income effectively connected with the conduct of a trade or business in the Virgin Islands, and

''(ii) the taxpayer shall be allowed a credit—

''(I) against any additional tax imposed by subtitle A of the Internal Revenue Code of 1954 [now 1986] (by reason of the amendment made by section 1275(b)) on income not described in clause (i),

''(II) for any tax paid to the Virgin Islands before the date of the enactment of this Act [Oct. 22, 1986] and attributable to such income.

For purposes of clause (ii)(II), any tax paid before January 1, 1987, pursuant to a process in effect before August 16, 1986, shall be treated as paid before the date of the enactment of this Act.

''(C) PRE-1987 OPEN YEAR.—For purposes of this paragraph, the term 'pre-1987 open year' means any taxable year beginning before January 1, 1987, if on the date of the enactment of this Act [Oct. 22, 1986] the assessment of a deficiency of income tax for such taxable year is not barred by any law or rule of law.

''(D) EXCEPTION.—In the case of any pre-1987 open year, the amendment made by section 1275(b) shall not apply to any domestic corporation if—

''(i) during the fiscal year which ended May 31, 1986, such corporation was actively engaged directly or through a subsidiary in the conduct of a trade or business in the Virgin Islands and such trade or business consists of business related to marine activities, and

''(ii) such corporation was incorporated on March 31, 1983, in Delaware.

''(E) EXCEPTION FOR CERTAIN TRANSACTIONS.—

''(i) IN GENERAL.—In the case of any pre-1987 open year, the amendment made by section 1275(b) shall not apply to any income derived from transactions described in clause (ii) by 1 or more corporations which were formed in Delaware on or about March 6, 1981, and which have owned 1 or more office buildings in St. Thomas, United States Virgin Islands, for at least 5 years before the date of the enactment of this Act [Oct. 22, 1986].

''(ii) DESCRIPTION OF TRANSACTIONS.—The transactions described in this clause are—

''(I) the redemptions of limited partnership interests for cash and property described in an agreement (as amended) dated March 12, 1981,

''(II) the subsequent disposition of the properties distributed in such redemptions, and

''(III) interest earned before January 1, 1987, on bank deposits of proceeds received from such redemptions to the extent such deposits are located in the United States Virgin Islands.

''(iii) LIMITATION.—The aggregate reduction in tax by reason of this subparagraph shall not exceed $8,312,000. If the taxes which would be payable as the result of the application of the amendment made by section 1275(b) to pre-1987 open years exceeds the limitation of the preceding sentence, such excess shall be treated as attributable to income received in taxable years in reverse chronological order.

''(d) REPORT ON IMPLEMENTING AGREEMENTS.—If, during the 1-year period beginning on the date of the enactment of this Act [Oct. 22, 1986], any implementing agreement described in subsection (b) or (c) is not executed, the Secretary of the Treasury or his delegate shall report to the Committee on Finance of the United States Senate, the Committee on Ways and Means, and the Committee on Interior and Insular Affairs [now Committee on Natural Resources] of the House of Representatives with respect to—

''(1) the status of such negotiations, and

''(2) the reason why such agreement has not been executed.

''(e) TREATMENT OF CERTAIN UNITED STATES PERSONS.—Except as otherwise provided in regulations prescribed by the Secretary of the Treasury or his delegate, if a United States person becomes a resident of Guam, American Samoa, or the Northern Mariana Islands, the rules of section 877(c) of the Internal Revenue Code of 1954 [now 1986] shall apply to such person during the 10-year period beginning when such person became such a resident. Notwithstanding subsection (b), the preceding sentence shall apply to dispositions after December 31, 1985, in taxable years ending after such date.

''(f) EXEMPTION FROM WITHHOLDING.—Notwithstanding subsection (b), the modification of section 884 of the Internal Revenue Code of 1986 by reason of the amendment to section 881 of such Code by section 1273(b)(1) of this Act shall apply to taxable years beginning after December 31, 1986.''

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 1976 AMENDMENT

Amendment by section 1051(c) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1975, with certain exceptions, see section 1051(i) of Pub. L. 94–455, set out as a note under section 27 of this title.

Amendment by section 1901(a)(117) 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 1972 AMENDMENT

Pub. L. 92–606, § 2, Oct. 31, 1972, 86 Stat. 1497, provided in part that: ''The amendments made by section 1 [enacting sections 935 and 6688 of this title, amending this section, sections 932, 7654, and 7701 of this title, and section 1421i of Title 48, Territories and Insular Possessions, and enacting provisions set out as notes under sections 881 and 1442 of this title] (other than section 1(e)) [amending sections 881 and 1442 of this title] shall apply with respect to taxable years beginning after December 31, 1972.''

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 1966 AMENDMENT

Pub. L. 89–809, title I, § 107(b), Nov. 13, 1966, 80 Stat. 1571, provided that: ''The amendment made by this section [amending this section] shall apply with respect to taxable years beginning after December 31, 1966.''

AUTHORITY OF GUAM, AMERICAN SAMOA, AND THE NORTHERN MARIANA ISLANDS TO ENACT REVENUE LAWS

Pub. L. 99–514, title XII, § 1271, Oct. 22, 1986, 100 Stat. 2591, provided that:

''(a) IN GENERAL.—Except as provided in subsection (b), nothing in the laws of the United States shall prevent Guam, American Samoa, or the Northern Mariana Islands from enacting tax laws (which shall apply in lieu of the mirror system) with respect to income—

''(1) from sources within, or effectively connected with the conduct of a trade or business within, any such possession, or

''(2) received or accrued by any resident of such possession.

''(b) AGREEMENTS TO ALLEVIATE CERTAIN PROBLEMS RELATING TO TAX ADMINISTRATION.—Subsection (a) shall apply to Guam, American Samoa, or the Northern Mariana Islands only if (and so long as) an implementing agreement is in effect between the United States and such possession with respect to—

''(1) the elimination of double taxation involving taxation by such possession and taxation by the United States,

''(2) the establishment of rules under which the evasion or avoidance of United States income tax shall not be permitted or facilitated by such possession,

''(3) the exchange of information between such possession and the United States for purposes of tax administration, and

''(4) the resolution of other problems arising in connection with the administration of the tax laws of such possession or the United States.

Any such implementing agreement shall be executed on behalf of the United States by the Secretary of the Treasury after consultation with the Secretary of the Interior.

''(c) REVENUES NOT TO DECREASE.—The total amount of the revenue received by any possession referred to in subsection (a) pursuant to its tax laws during the implementation year and each of the 4 fiscal years thereafter shall not be less than the revenue (adjusted for inflation) which was received by such possession pursuant to tax laws for its last fiscal year before the implementation year.

''(d) NONDISCRIMINATORY TREATMENT REQUIRED.—Nothing in any tax law of a possession referred to in subsection (a) may discriminate against any United States person or any resident (corporate or otherwise) of any other possession.

''(e) ENFORCEMENT.—

''(1) IN GENERAL.—If the Secretary of the Treasury (after consultation with the Secretary of the Interior) determines that any possession has failed to comply with subsection (c) or (d), the Secretary of the Treasury shall so notify the Governor of such possession in writing. If such possession does not comply with subsection (c) or (d) (as the case may be) within 90 days of such notification, the Secretary of the Treasury shall notify the Congress of such noncompliance. Unless the Congress by law provides otherwise, the mirror system of taxation shall be reinstated in such possession and shall be in full force and effect for taxable years beginning after such notification to the Congress.

''(2) SPECIAL RULE FOR REVENUE REQUIREMENTS.—If the failure to comply with subsection (c) is for good cause and does not jeopardize the fiscal integrity of the possession, the Secretary may waive the requirements of subsection (c) for such period as he determines appropriate.

''(f) DEFINITIONS AND SPECIAL RULES.—

''(1) IMPLEMENTATION YEAR.—For purposes of this section, the term ''implementation year'' means the 1st fiscal year of the possession in which the tax laws authorized by subsection (a) take effect.

''(2) MIRROR SYSTEM.—For purposes of this section, the mirror system of taxation consists of the provisions of law (in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]) which make the provisions of the income tax laws of the United States (as in effect from time to time) in effect in a possession of the United States.

''(3) SPECIAL RULE FOR NORTHERN MARIANA ISLANDS.—Notwithstanding the provisions of the last clause of section 601(a) of Public Law 94–241 [48 U.S.C. 1801 note], the Commonwealth of the Northern Mariana Islands may elect to continue its mirror system of taxation without regard to whether Guam enacts tax laws under the authority provided in subsection (a).''

§ 932. Coordination of United States and Virgin Islands income taxes

(a) Treatment of United States residents

(1) Application of subsection

This subsection shall apply to an individual for the taxable year if—

(A) such individual—

(i) is a citizen or resident of the United States (other than a bona fide resident of the Virgin Islands during the entire taxable year), and

(ii) has income derived from sources within the Virgin Islands, or effectively connected with the conduct of a trade or business within such possession, for the taxable year, or

(B) such individual files a joint return for the taxable year with an individual described in subparagraph (A).

(2) Filing requirement

Each individual to whom this subsection applies for the taxable year shall file his income tax return for the taxable year with both the United States and the Virgin Islands.

(3) Extent of income tax liability

In the case of an individual to whom this subsection applies in a taxable year for purposes of so much of this title (other than this section and section 7654) as relates to the taxes imposed by this chapter, the United States shall be treated as including the Virgin Islands.

(b) Portion of United States tax liability payable to the Virgin Islands

(1) In general

Each individual to whom subsection (a) applies for the taxable year shall pay the applicable percentage of the taxes imposed by this chapter for such taxable year (determined without regard to paragraph (3)) to the Virgin Islands.

(2) Applicable percentage

(A) In general

For purposes of paragraph (1), the term ''applicable percentage'' means the percentage which Virgin Islands adjusted gross income bears to adjusted gross income.

(B) Virgin Islands adjusted gross income

For purposes of subparagraph (A), the term ''Virgin Islands adjusted gross income'' means adjusted gross income determined by taking into account only income derived from sources within the Virgin Islands and deductions properly apportioned or allocable thereto.

(3) Amounts paid allowed as credit

There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the taxes required to be paid to the Virgin Islands under paragraph (1) which are so paid.

(c) Treatment of Virgin Islands residents

(1) Application of subsection

This subsection shall apply to an individual for the taxable year if—

(A) such individual is a bona fide resident of the Virgin Islands during the entire taxable year, or

(B) such individual files a joint return for the taxable year with an individual described in subparagraph (A).

(2) Filing requirement

Each individual to whom this subsection applies for the taxable year shall file an income tax return for the taxable year with the Virgin Islands.

(3) Extent of income tax liability

In the case of an individual to whom this subsection applies in a taxable year for pur-

poses of so much of this title (other than this section and section 7654) as relates to the taxes imposed by this chapter, the Virgin Islands shall be treated as including the United States.

(4) Residents of the Virgin Islands

In the case of an individual—

(A) who is a bona fide resident of the Virgin Islands during the entire taxable year,

(B) who, on his return of income tax to the Virgin Islands, reports income from all sources and identifies the source of each item shown on such return, and

(C) who fully pays his tax liability referred to in section 934(a) to the Virgin Islands with respect to such income,

for purposes of calculating income tax liability to the United States, gross income shall not include any amount included in gross income on such return, and allocable deductions and credits shall not be taken into account.

(d) Special rule for joint returns

In the case of a joint return, this section shall be applied on the basis of the residence of the spouse who has the greater adjusted gross income (determined without regard to community property laws) for the taxable year.

(e) Special rule for applying section to tax imposed in Virgin Islands

In applying this section for purposes of determining income tax liability incurred to the Virgin Islands, the provisions of this section shall not be affected by the provisions of Federal law referred to in section 934(a).

(Added Pub. L. 99–514, title XII, § 1274(a), Oct. 22, 1986, 100 Stat. 2596; amended Pub. L. 100–647, title I, § 1012(w)(1)–(3), Nov. 10, 1988, 102 Stat. 3530; Pub. L. 108–357, title VIII, § 908(c)(2), Oct. 22, 2004, 118 Stat. 1656.)

PRIOR PROVISIONS

A prior section 932, acts Aug. 16, 1954, ch. 736, 68A Stat. 292; Nov. 13, 1966, Pub. L. 89–809, title I, § 103(m), 80 Stat. 1554; Oct. 31, 1972, Pub. L. 92–606, § 1(f)(2), (3), 86 Stat. 1497; Apr. 7, 1986, Pub. L. 99–272, title XII, § 12103(a), 100 Stat. 285, related to income taxation of citizens of possessions of the United States, prior to repeal by Pub. L. 99–514, title XII, § 1272(d)(1), Oct. 22, 1986, 100 Stat. 2594.

AMENDMENTS

2004—Subsecs. (a)(1)(A)(i), (c)(1)(A), (4)(A). Pub. L. 108–357 substituted ''during the entire taxable year'' for ''at the close of the taxable year''.

1988—Subsec. (c)(2). Pub. L. 100–647, § 1012(w)(3), substituted ''an income tax return'' for ''his income tax return''.

Subsec. (c)(4). Pub. L. 100–647, § 1012(w)(2), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''In the case of an individual who is a bona fide resident of the Virgin Islands at the close of the taxable year and who, on his return of income tax to the Virgin Islands, reports income from all sources and identifies the source of each item shown on such return, for purposes of calculating income tax liability to the United States gross income shall not include any amount included in gross income on such return.''

Subsec. (e). Pub. L. 100–647, § 1012(w)(1), substituted current heading for ''Section not to apply to tax imposed in Virgin Islands'' and amended text generally. Prior to amendment, text read as follows: ''This section shall not apply for purposes of determining income tax liability incurred to the Virgin Islands.''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years ending after Oct. 22, 2004, see section 908(d)(1) of Pub. L. 108–357, set out as an Effective Date note under section 937 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

Enactment of section 932 and repeal of prior section 932 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 an Effective Date of 1986 Amendment note under section 931 of this title.

REGULATIONS

Pub. L. 99–514, title XII, § 1274(c), Oct. 22, 1986, 100 Stat. 2598, as amended by Pub. L. 100–647, title I, § 1012(w)(4), Nov. 10, 1988, 102 Stat. 3530, provided that: ''The Secretary of the Treasury or his delegate shall prescribe such regulations as may be necessary or appropriate for applying the Internal Revenue Code of 1986 [this title] for purposes of determining tax liability incurred to the Virgin Islands.''

AUTHORITY TO IMPOSE NONDISCRIMINATORY LOCAL INCOME TAXES

Pub. L. 99–514, title XII, § 1274(b), Oct. 22, 1986, 100 Stat. 2597, provided that: ''Nothing in any provision of Federal law shall prevent the Virgin Islands from imposing on any person nondiscriminatory local income taxes. Any taxes so imposed shall be treated in the same manner as State and local income taxes under section 164 of the Internal Revenue Code of 1954 [now 1986] and shall not be treated as taxes to which section 901 of such Code applies.''

§ 933. Income from sources within Puerto Rico

The following items shall not be included in gross income and shall be exempt from taxation under this subtitle:

(1) Resident of Puerto Rico for entire taxable year

In the case of an individual who is a bona fide resident of Puerto Rico during the entire taxable year, income derived from sources within Puerto Rico (except amounts received for services performed as an employee of the United States or any agency thereof); but such individual shall not be allowed as a deduction from his gross income any deductions (other than the deduction under section 151, relating to personal exemptions), or any credit, properly allocable to or chargeable against amounts excluded from gross income under this paragraph.

(2) Taxable year of change of residence from Puerto Rico

In the case of an individual citizen of the United States who has been a bona fide resident of Puerto Rico for a period of at least 2 years before the date on which he changes his residence from Puerto Rico, income derived from sources therein (except amounts received

for services performed as an employee of the United States or any agency thereof) which is attributable to that part of such period of Puerto Rican residence before such date; but such individual shall not be allowed as a deduction from his gross income any deductions (other than the deduction for personal exemptions under section 151), or any credit, properly allocable to or chargeable against amounts excluded from gross income under this paragraph.

(Aug. 16, 1954, ch. 736, 68A Stat. 293; Pub. L. 99–514, title XII, § 1272(d)(3), Oct. 22, 1986, 100 Stat. 2594.)

AMENDMENTS

1986—Pub. L. 99–514 inserted '', or any credit,'' in pars. (1) and (2).

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.

§ 934. Limitation on reduction in income tax liability incurred to the Virgin Islands

(a) General rule

Tax liability incurred to the Virgin Islands pursuant to this subtitle, as made applicable in the Virgin Islands by the Act entitled ''An Act making appropriations for the naval service for the fiscal year ending June 30, 1922, and for other purposes'', approved July 12, 1921 (48 U.S.C. 1397), or pursuant to section 28(a) of the Revised Organic Act of the Virgin Islands, approved July 22, 1954 (48 U.S.C. 1642), shall not be reduced or remitted in any way, directly or indirectly, whether by grant, subsidy, or other similar payment, by any law enacted in the Virgin Islands, except to the extent provided in subsection (b).

(b) Reductions permitted with respect to certain income

(1) In general

Except as provided in paragraph (2), subsection (a) shall not apply with respect to so much of the tax liability referred to in subsection (a) as is attributable to income derived from sources within the Virgin Islands or income effectively connected with the conduct of a trade or business within the Virgin Islands.

(2) Exception for liability paid by citizens or residents of the United States

Paragraph (1) shall not apply to any liability payable to the Virgin Islands under section 932(b).

(3) Special rule for non-United States income of certain foreign corporations

(A) In general

In the case of a qualified foreign corporation, subsection (a) shall not apply with respect to so much of the tax liability referred to in subsection (a) as is attributable to income which is derived from sources outside the United States and which is not effectively connected with the conduct of a trade or business within the United States.

(B) Qualified foreign corporation

For purposes of subparagraph (A), the term ''qualified foreign corporation'' means any foreign corporation if less than 10 percent of—

(i) the total voting power of the stock of such corporation, and

(ii) the total value of the stock of such corporation, is owned or treated as owned (within the meaning of section 958) by 1 or more United States persons.

(4) Determination of income source, etc.

The determination as to whether income is derived from sources within the United States or is effectively connected with the conduct of a trade or business within the United States shall be made under regulations prescribed by the Secretary.

(Added Pub. L. 86–779, § 4(a)(1), Sept. 14, 1960, 74 Stat. 998; amended Pub. L. 94–455, title XIX, §§ 1901(a)(118), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1784, 1834; Pub. L. 97–248, title II, § 213(b), Sept. 3, 1982, 96 Stat. 463; Pub. L. 97–455, § 1(c), Jan. 12, 1983, 96 Stat. 2498; Pub. L. 98–369, div. A, title VIII, § 801(d)(7), July 18, 1984, 98 Stat. 996; Pub. L. 99–514, title XII, § 1275(a)(2)(A), (c)(1), (2), title XVIII, § 1876(f)(2), Oct. 22, 1986, 100 Stat. 2598, 2900; Pub. L. 108–357, title VIII, § 908(c)(3), Oct. 22, 2004, 118 Stat. 1656.)

AMENDMENTS

2004—Subsec. (b)(4). Pub. L. 108–357 struck out ''the Virgin Islands or'' before ''the United States'' in two places.

1986—Subsec. (a). Pub. L. 99–514, § 1275(c)(2)(A), struck out ''or (c) or in section 934A'' after ''subsection (b)''.

Subsec. (b). Pub. L. 99–514, § 1275(c)(1), (2)(B), added subsec. (b) and struck out former subsec. (b) which excepted from subsec. (a) domestic or Virgin Islands corporations to the extent they derived income from sources without the United States under certain conditions.

Subsec. (c). Pub. L. 99–514, § 1275(c)(1), struck out subsec. (c) which provided an exception to subsec. (a) of this section for individual citizens of the United States residing in the Virgin Islands to the extent their income is derived from sources within the Virgin Islands.

Subsec. (d). Pub. L. 99–514, § 1275(c)(1), struck out subsec. (d) which related to requirement to supply information.

Subsec. (e). Pub. L. 99–514, § 1275(a)(2)(A), struck out subsec. (e) which provided for tax treatment of intangible property income of certain domestic corporations.

Subsec. (f). Pub. L. 99–514, § 1275(a)(2)(A), struck out subsec. (f) which provided a transitional rule for applying subsec. (b)(2) of this section with respect to taxable years beginning after Dec. 31, 1982, and before Jan. 1, 1985.

Pub. L. 99–514, § 1876(f)(2), struck out subsec. (f) which provided that subsec. (a) of this section not apply in the case of a Virgin Islands corporation which is a FSC.

1984—Subsec. (f). Pub. L. 98–369 added subsec. (f) relating to FSC.

1983—Subsec. (a). Pub. L. 97–455 inserted ''or in section 934A'' after ''subsection (b) or (c)''.

1982—Subsec. (b)(2). Pub. L. 97–248, § 213(b)(1), substituted ''65 percent'' for ''50 percent''.

Subsec. (e). Pub. L. 97–248, § 213(b)(2), added subsec. (e).

Subsec. (f). Pub. L. 97–248, § 213(b)(2), added a temporary subsec. (f) which provided that in applying subsec. (b)(2) with respect to taxable years beginning after December 31, 1982, and before January 1, 1985, ''55 percent'' shall be substituted for ''65 percent'' for taxable

years beginning in calendar year 1983 and ''60 percent'' shall be substituted for ''65 percent'' for taxable years beginning in calendar year 1984.

1976—Subsec. (b). Pub. L. 94–455, § 1901(a)(118), struck out ''For the purposes of this subsection, all amounts received by such corporation within the United States, whether derived from sources within or without the United States, shall be considered as being derived from sources within the United States''.

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

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years ending after Oct. 22, 2004, see section 908(d)(1) of Pub. L. 108–357, set out as an Effective Date note under section 937 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1275(a)(2)(A), (c)(1), (2) 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 1876(f)(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.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by 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 1983 AMENDMENT

Pub. L. 97–455, § 1(e), Jan. 12, 1983, 96 Stat. 2498, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting section 934A and amending this section] shall apply to amounts received after the date of the enactment of this Act [Jan. 12, 1983] in taxable years ending after such date.

''(2) WITHHOLDING.—The amendment made by subsection (b) [enacting section 1444 of this title] shall apply to payments made after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to taxable years beginning after Dec. 31, 1982, except that so much of this section to which section 936(h)(6) applies by reason of subsec. (e)(4) of this section is applicable to taxable years ending after July 1, 1982, see section 213(e)(1), (2) of Pub. L. 97–248 set out as a note under section 936 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(118) 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

Pub. L. 86–779, § 4(e)(1), Sept. 14, 1960, 74 Stat. 1000, provided that: ''The amendments made by subsection (a) [enacting this section] shall apply to tax liability incurred with respect to taxable years beginning on or after January 1, 1960.''

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.

REPORT ON POSSESSIONS CORPORATIONS

For provisions requiring the Secretary of the Treasury to submit a report to Congress respecting the operation and effect of subsec. (b) of this section for the year 1981 and each second calendar year thereafter, see section 441(a) of Pub. L. 98–369, set out as a note under section 936 of this title.

[§ 934A. Repealed. Pub. L. 99–514, title XII, § 1275(c)(3), Oct. 22, 1986, 100 Stat. 2599]

Section, added Pub. L. 97–455, § 1(a), Jan. 12, 1983, 96 Stat. 2497, related to income tax rate on Virgin Islands source income.

EFFECTIVE DATE OF REPEAL

Repeal 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 an Effective Date of 1986 Amendment note under section 931 of this title.

[§ 935. Repealed. Pub. L. 99–514, title XII, § 1272(d)(2), Oct. 22, 1986, 100 Stat. 2594]

Section, added Pub. L. 92–606, § 1(a), Oct. 31, 1972, 86 Stat. 1494; amended Pub. L. 108–357, title VIII, § 908(c)(4), Oct. 22, 2004, 118 Stat. 1656, related to coordination of United States and Guam individual income taxes.

AMENDMENT SUBSEQUENT TO REPEAL

Pub. L. 108–357, title IX, § 908(c)(4), (d), Oct. 22, 2004, 118 Stat. 1656, 1657, applicable to taxable years ending after Oct. 22, 2004, amended section, as in effect before the effective date of its repeal, in introductory provisions of subsec. (a), by substituting ''who, during the entire taxable year'' for ''for the taxable year who'', in subsecs. (a)(1) and (b)(1)(B), by inserting ''bona fide'' before ''resident'', in subsec. (b)(1)(A), by inserting ''(other a bona fide resident of Guam during the entire taxable year)'' after ''United States'', and, in subsection (b)(2), by striking out ''residence and'' before ''citizenship''.

EFFECTIVE DATE OF REPEAL

Repeal 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 an Effective Date of 1986 Amendment note under section 931 of this title.

§ 936. Puerto Rico and possession tax credit

(a) Allowance of credit

(1) In general

Except as otherwise provided in this section, if a domestic corporation elects the application of this section and if the conditions of both subparagraph (A) and subparagraph (B) of paragraph (2) are satisfied, there shall be allowed as a credit against the tax imposed by this chapter an amount equal to the portion of the tax which is attributable to the sum of—

(A) the taxable income, from sources without the United States, from—

(i) the active conduct of a trade or business within a possession of the United States, or

(ii) the sale or exchange of substantially all of the assets used by the taxpayer in

the active conduct of such trade or business, and

(B) the qualified possession source investment income.

(2) Conditions which must be satisfied

The conditions referred to in paragraph (1) are:

(A) 3-year period

If 80 percent or more of the gross income of such domestic corporation for the 3-year period immediately preceding the close of the taxable year (or for such part of such period immediately preceding the close of such taxable year as may be applicable) was derived from sources within a possession of the United States (determined without regard to subsections (f) and (g) of section 904); and

(B) Trade or business

If 75 percent or more of the gross income of such domestic corporation for such period or such part thereof was derived from the active conduct of a trade or business within a possession of the United States.

(3) Credit not allowed against certain taxes

The credit provided by paragraph (1) shall not be allowed against the tax imposed by—

(A) section 531 (relating to the tax on accumulated earnings),

(B) section 541 (relating to personal holding company tax), or

(C) section 1351 (relating to recoveries of foreign expropriation losses).

(4) Limitations on credit for active business income

(A) In general

The amount of the credit determined under paragraph (1) for any taxable year with respect to income referred to in subparagraph (A) thereof shall not exceed the sum of the following amounts:

(i) 60 percent of the sum of—

(I) the aggregate amount of the possession corporation's qualified possession wages for such taxable year, plus

(II) the allocable employee fringe benefit expenses of the possession corporation for the taxable year.

(ii) The sum of—

(I) 15 percent of the depreciation allowances for the taxable year with respect to short-life qualified tangible property,

(II) 40 percent of the depreciation allowances for the taxable year with respect to medium-life qualified tangible property, and

(III) 65 percent of the depreciation allowances for the taxable year with respect to long-life qualified tangible property.

(iii) If the possession corporation does not have an election to use the method described in subsection (h)(5)(C)(ii) (relating to profit split) in effect for the taxable year, the amount of qualified possession income taxes for the taxable year allocable to nonsheltered income.

(B) Election to take reduced credit

(i) In general

If an election under this subparagraph applies to a possession corporation for any taxable year—

(I) subparagraph (A), and the provisions of subsection (i), shall not apply to such possession corporation for such taxable year, and

(II) the credit determined under paragraph (1) for such taxable year with respect to income referred to in subparagraph (A) thereof shall be the applicable percentage of the credit which would otherwise have been determined under such paragraph with respect to such income.

Notwithstanding subclause (I), a possession corporation to which an election under this subparagraph applies shall be entitled to the benefits of subsection (i)(3)(B) for taxes allocable (on a pro rata basis) to taxable income the tax on which is not offset by reason of this subparagraph.

(ii) Applicable percentage

The term ''applicable percentage'' means the percentage determined in accordance with the following table:

In the case of taxable years beginning in:	The percentage is:
1994	60
1995	55
1996	50
1997	45
1998 and thereafter	40.

(iii) Election

(I) In general

An election under this subparagraph by any possession corporation may be made only for the corporation's first taxable year beginning after December 31, 1993, for which it is a possession corporation.

(II) Period of election

An election under this subparagraph shall apply to the taxable year for which made and all subsequent taxable years unless revoked.

(III) Affiliated groups

If, for any taxable year, an election is not in effect for any possession corporation which is a member of an affiliated group, any election under this subparagraph for any other member of such group is revoked for such taxable year and all subsequent taxable years. For purposes of this subclause, members of an affiliated group shall be determined without regard to the exceptions contained in section 1504(b) and as if the constructive ownership rules of section 1563(e) applied for purposes of section 1504(a). The Secretary may prescribe regulations to prevent the avoidance of this subclause through deconsolidation or otherwise.

(C) Cross reference

For definitions and special rules applicable to this paragraph, see subsection (i).

(b) Amounts received in United States

In determining taxable income for purposes of subsection (a), there shall not be taken into account as income from sources without the United States any gross income which was received by such domestic corporation within the United States, whether derived from sources within or without the United States. This subsection shall not apply to any amount described in subsection (a)(1)(A)(i) received from a person who is not a related person (within the meaning of subsection (h)(3) but without regard to subparagraphs (D)(ii) and (E)(i) thereof) with respect to the domestic corporation.

(c) Treatment of certain foreign taxes

For purposes of this title, any tax of a foreign country or a possession of the United States which is paid or accrued with respect to taxable income which is taken into account in computing the credit under subsection (a) 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 amounts so paid or accrued.

(d) Definitions and special rules

For purposes of this section—

(1) Possession

The term ''possession of the United States'' includes the Commonwealth of Puerto Rico and the Virgin Islands.

(2) Qualified possession source investment income

The term ''qualified possession source investment income'' means gross income which—

(A) is from sources within a possession of the United States in which a trade or business is actively conducted, and

(B) the taxpayer establishes to the satisfaction of the Secretary is attributable to the investment in such possession (for use therein) of funds derived from the active conduct of a trade or business in such possession, or from such investment,

less the deductions properly apportioned or allocated thereto.

(3) Carryover basis property

(A) In general

Income from the sale or exchange of any asset the basis of which is determined in whole or in part by reference to its basis in the hands of another person shall not be treated as income described in subparagraph (A) or (B) of subsection (a)(1).

(B) Exception for possessions corporations, etc.

For purposes of subparagraph (A), the holding of any asset by another person shall not be taken into account if throughout the period for which such asset was held by such person section 931, this section, or 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 person.

(4) Investment in qualified Caribbean Basin countries

(A) In general

For purposes of paragraph (2)(B), an investment in a financial institution shall, subject to such conditions as the Secretary may prescribe by regulations, be treated as for use in Puerto Rico to the extent used by such financial institution (or by the Government Development Bank for Puerto Rico or the Puerto Rico Economic Development Bank)—

(i) for investment, consistent with the goals and purposes of the Caribbean Basin Economic Recovery Act, in—

(I) active business assets in a qualified Caribbean Basin country, or

(II) development projects in a qualified Caribbean Basin country, and

(ii) in accordance with a specific authorization granted by the Commissioner of Financial Institutions of Puerto Rico pursuant to regulations issued by such Commissioner.

A similar rule shall apply in the case of a direct investment in the Government Development Bank for Puerto Rico or the Puerto Rico Economic Development Bank.

(B) Qualified Caribbean Basin country

For purposes of this subsection, the term ''qualified Caribbean Basin country'' means any beneficiary country (within the meaning of section 212(a)(1)(A) of the Caribbean Basin Economic Recovery Act) which meets the requirements of clauses (i) and (ii) of section 274(h)(6)(A) and the Virgin Islands.

(C) Additional requirements

Subparagraph (A) shall not apply to any investment made by a financial institution (or by the Government Development Bank for Puerto Rico or the Puerto Rico Economic Development Bank) unless—

(i) the person in whose trade or business such investment is made (or such other recipient of the investment) and the financial institution or such Bank certify to the Secretary and the Commissioner of Financial Institutions of Puerto Rico that the proceeds of the loan will be promptly used to acquire active business assets or to make other authorized expenditures, and

(ii) the financial institution (or the Government Development Bank for Puerto Rico or the Puerto Rico Economic Development Bank) and the recipient of the investment funds agree to permit the Secretary and the Commissioner of Financial Institutions of Puerto Rico to examine such of their books and records as may be necessary to ensure that the requirements of this paragraph are met.

(D) Requirement for investment in Caribbean Basin countries

(i) In general

For each calendar year, the government of Puerto Rico shall take such steps as

may be necessary to ensure that at least $100,000,000 of qualified Caribbean Basin country investments are made during such calendar year.

(ii) Qualified Caribbean Basin country investment

For purposes of clause (i), the term ''qualified Caribbean Basin country investment'' means any investment if—

(I) the income from such investment is treated as qualified possession source investment income by reason of subparagraph (A), and

(II) such investment is not (directly or indirectly) a refinancing of a prior investment (whether or not such prior investment was a qualified Caribbean Basin country investment).

(e) Election

(1) Period of election

The election provided in subsection (a) shall be made at such time and in such manner as the Secretary may by regulations prescribe. Any such election shall apply to the first taxable year for which such election was made and for which the domestic corporation satisfied the conditions of subparagraphs (A) and (B) of subsection (a)(2) and for each taxable year thereafter until such election is revoked by the domestic corporation under paragraph (2). If any such election is revoked by the domestic corporation under paragraph (2), such domestic corporation may make a subsequent election under subsection (a) for any taxable year thereafter for which such domestic corporation satisfies the conditions of subparagraphs (A) and (B) of subsection (a)(2) and any such subsequent election shall remain in effect until revoked by such domestic corporation under paragraph (2).

(2) Revocation

An election under subsection (a)—

(A) may be revoked for any taxable year beginning before the expiration of the 9th taxable year following the taxable year for which such election first applies only with the consent of the Secretary; and

(B) may be revoked for any taxable year beginning after the expiration of such 9th taxable year without the consent of the Secretary.

(f) Limitation on credit for DISC's and FSC's

No credit shall be allowed under this section to a corporation for any taxable year—

(1) for which it is a DISC or former DISC, or

(2) in which it owns at any time stock in a—

(A) DISC or former DISC, or

(B) former FSC.

(g) Exception to accumulated earnings tax

(1) For purposes of section 535, the term ''accumulated taxable income'' shall not include taxable income entitled to the credit under subsection (a).

(2) For purposes of section 537, the term ''reasonable needs of the business'' includes assets which produce income eligible for the credit under subsection (a).

(h) Tax treatment of intangible property income

(1) In general

(A) Income attributable to shareholders

The intangible property income of a corporation electing the application of this section for any taxable year shall be included on a pro rata basis in the gross income of all shareholders of such electing corporation at the close of the taxable year of such electing corporation as income from sources within the United States for the taxable year of such shareholder in which or with which the taxable year of such electing corporation ends.

(B) Exclusion from the income of an electing corporation

Any intangible property income of a corporation electing the application of this section which is included in the gross income of a shareholder of such corporation by reason of subparagraph (A) shall be excluded from the gross income of such corporation.

(2) Foreign shareholders; shareholders not subject to tax

(A) In general

Paragraph (1)(A) shall not apply with respect to any shareholder—

(i) who is not a United States person, or

(ii) who is not subject to tax under this title on intangible property income which would be allocated to such shareholder (but for this subparagraph).

(B) Treatment of nonallocated intangible property income

For purposes of this subtitle, intangible property income of a corporation electing the application of this section which is not included in the gross income of a shareholder of such corporation by reason of subparagraph (A)—

(i) shall be treated as income from sources within the United States, and

(ii) shall not be taken into account under subsection (a)(2).

(3) Intangible property income

For purposes of this subsection—

(A) In general

The term ''intangible property income'' means the gross income of a corporation attributable to any intangible property other than intangible property which has been licensed to such corporation since prior to 1948 and is in use by such corporation on the date of the enactment of this subparagraph.

(B) Intangible property

The term ''intangible property'' means any—

(i) patent, invention, formula, process, design, pattern, or know-how;

(ii) copyright, literary, musical, or artistic composition;

(iii) trademark, trade name, or brand name;

(iv) franchise, license, or contract;

(v) method, program, system, procedure, campaign, survey, study, forecast, estimate, customer list, or technical data;

(vi) any goodwill, going concern value, or workforce in place (including its composition and terms and conditions (contractual or otherwise) of its employment); or

(vii) any other item the value or potential value of which is not attributable to tangible property or the services of any individual.

(C) Exclusion of reasonable profit

The term ''intangible property income'' shall not include any portion of the income from the sale, exchange or other disposition of any product, or from the rendering of services, by a corporation electing the application of this section which is determined by the Secretary to be a reasonable profit on the direct and indirect costs incurred by such electing corporation which are attributable to such income.

(D) Related person

(i) In general

A person (hereinafter referred to as the ''related person'') is related to any person if—

(I) the related person bears a relationship to such person specified in section 267(b) or section 707(b)(1), or

(II) the related person and such person are members of the same controlled group of corporations.

(ii) Special rule

For purposes of clause (i), section 267(b) and section 707(b)(1) shall be applied by substituting ''10 percent'' for ''50 percent''.

(E) Controlled group of corporations

The term ''controlled group of corporations'' has the meaning given to such term by section 1563(a), except that—

(i) ''more than 10 percent'' shall be substituted for ''at least 80 percent'' and ''more than 50 percent'' each place either appears in section 1563(a), and

(ii) the determination shall be made without regard to subsections (a)(4), (b)(2), and (e)(3)(C) of section 1563.

(4) Distributions to meet qualification requirements

(A) In general

If the Secretary determines that a corporation does not satisfy a condition specified in subparagraph (A) or (B) of subsection (a)(2) for any taxable year by reason of the exclusion from gross income under paragraph (1)(B), such corporation shall nevertheless be treated as satisfying such condition for such year if it makes a pro rata distribution of property after the close of such taxable year to its shareholders (designated at the time of such distribution as a distribution to meet qualification requirements) with respect to their stock in an amount which is equal to—

(i) if the condition of subsection (a)(2)(A) is not satisfied, that portion of the gross income for the period described in subsection (a)(2)(A)—

(I) which was not derived from sources within a possession, and

(II) which exceeds the amount of such income for such period which would enable such corporation to satisfy the condition of subsection (a)(2)(A),

(ii) if the condition of subsection (a)(2)(B) is not satisfied, that portion of the gross income for such period—

(I) which was not derived from the active conduct of a trade or business within a possession, and

(II) which exceeds the amount of such income for such period which would enable such corporation to satisfy the conditions of subsection (a)(2)(B), or

(iii) if neither of such conditions is satisfied, that portion of the gross income which exceeds the amount of gross income for such period which would enable such corporation to satisfy the conditions of subparagraphs (A) and (B) of subsection (a)(2).

(B) Effectively connected income

In the case of a shareholder who is a nonresident alien individual or a foreign corporation, trust, or estate, any distribution described in subparagraph (A) shall be treated as income which is effectively connected with the conduct of a trade or business conducted through a permanent establishment of such shareholder within the United States.

(C) Distribution denied in case of fraud or willful neglect

Subparagraph (A) shall not apply to a corporation if the determination of the Secretary described in subparagraph (A) contains a finding that the failure of such corporation to satisfy the conditions in subsection (a)(2) was due in whole or in part to fraud with intent to evade tax or willful neglect on the part of such corporation.

(5) Election out

(A) In general

The rules contained in paragraphs (1) through (4) do not apply for any taxable year if an election pursuant to subparagraph (F) is in effect to use one of the methods specified in subparagraph (C).

(B) Eligibility

(i) Requirement of significant business presence

An election may be made to use one of the methods specified in subparagraph (C) with respect to a product or type of service only if an electing corporation has a significant business presence in a possession with respect to such product or type of service. An election may remain in effect with respect to such product or type of service for any subsequent taxable year only if such electing corporation maintains a significant business presence in a possession with respect to such product or type of service in such subsequent taxable year. If an election is not in effect for a

taxable year because of the preceding sentence, the electing corporation shall be deemed to have revoked the election on the first day of such taxable year.

(ii) Definition

For purposes of this subparagraph, an electing corporation has a ''significant business presence'' in a possession for a taxable year with respect to a product or type of service if:

(I) the total production costs (other than direct material costs and other than interest excluded by regulations prescribed by the Secretary) incurred by the electing corporation in the possession in producing units of that product sold or otherwise disposed of during the taxable year by the affiliated group to persons who are not members of the affiliated group are not less than 25 percent of the difference between (a) the gross receipts from sales or other dispositions during the taxable year by the affiliated group to persons who are not members of the affiliated group of such units of the product produced, in whole or in part, by the electing corporation in the possession, and (b) the direct material costs of the purchase of materials for such units of that product by all members of the affiliated group from persons who are not members of the affiliated group; or

(II) no less than 65 percent of the direct labor costs of the affiliated group for units of the product produced during the taxable year in whole or in part by the electing corporation or for the type of service rendered by the electing corporation during the taxable year, is incurred by the electing corporation and is compensation for services performed in the possession; or

(III) with respect to purchases and sales by an electing corporation of all goods not produced in whole or in part by any member of the affiliated group and sold by the electing corporation to persons other than members of the affiliated group, no less than 65 percent of the total direct labor costs of the affiliated group in connection with all purchases and sales of such goods sold during the taxable year by such electing corporation is incurred by such electing corporation and is compensation for services performed in the possession.

Notwithstanding satisfaction of one of the foregoing tests, an electing corporation shall not be treated as having a significant business presence in a possession with respect to a product produced in whole or in part by the electing corporation in the possession, for purposes of an election to use the method specified in subparagraph (C)(ii), unless such product is manufactured or produced in the possession by the electing corporation within the meaning of subsection (d)(1)(A) of section 954.

(iii) Special rules

(I) An electing corporation which produces a product or renders a type of service in a possession on the date of the enactment of this clause is not required to meet the significant business presence test in a possession with respect to such product or type of service for its taxable years beginning before January 1, 1986.

(II) For purposes of this subparagraph, the costs incurred by an electing corporation or any other member of the affiliated group in connection with contract manufacturing by a person other than a member of the affiliated group, or in connection with a similar arrangement thereto, shall be treated as direct labor costs of the affiliated group and shall not be treated as production costs incurred by the electing corporation in the possession or as direct material costs or as compensation for services performed in the possession, except to the extent as may be otherwise provided in regulations prescribed by the Secretary.

(iv) Regulations

The Secretary may prescribe regulations setting forth:

(I) an appropriate transitional (but not in excess of three taxable years) significant business presence test for commencement in a possession of operations with respect to products or types of service after the date of the enactment of this clause and not described in subparagraph (B)(iii)(I),

(II) a significant business presence test for other appropriate cases, consistent with the tests specified in subparagraph (B)(ii),

(III) rules for the definition of a product or type of service, and

(IV) rules for treating components produced in whole or in part by a related person as materials, and the costs (including direct labor costs) related thereto as a cost of materials, where there is an independent resale price for such components or where otherwise consistent with the intent of the substantial business presence tests.

(C) Methods of computation of taxable income

If an election of one of the following methods is in effect pursuant to subparagraph (F) with respect to a product or type of service, an electing corporation shall compute its income derived from the active conduct of a trade or business in a possession with respect to such product or type of service in accordance with the method which is elected.

(i) Cost sharing

(I) Payment of cost sharing

If an election of this method is in effect, the electing corporation must make a payment for its share of the cost (if any) of product area research which is

paid or accrued by the affiliated group during that taxable year. Such share shall not be less than the same proportion of 110 percent of the cost of such product area research which the amount of ''possession sales'' bears to the amount of ''total sales'' of the affiliated group. The cost of product area research paid or accrued solely by the electing corporation in a taxable year (excluding amounts paid directly or indirectly to or on behalf of related persons and excluding amounts paid under any cost sharing agreements with related persons) will reduce (but not below zero) the amount of the electing corporation's cost sharing payment under this method for that year. In the case of intangible property described in subsection (h)(3)(B)(i) which the electing corporation is treated as owning under subclause (II), in no event shall the payment required under this subclause be less than the inclusion or payment which would be required under section 367(d)(2)(A)(ii) or section 482 if the electing corporation were a foreign corporation.

(a) Product area research

For purposes of this section, the term ''product area research'' includes (notwithstanding any provision to the contrary) the research, development and experimental costs, losses, expenses and other related deductions—including amounts paid or accrued for the performance of research or similar activities by another person; qualified research expenses within the meaning of section 41(b); amounts paid or accrued for the use of, or the right to use, research or any of the items specified in subsection (h)(3)(B)(i); and a proper allowance for amounts incurred for the acquisition of any of the items specified in subsection (h)(3)(B)(i)—which are properly apportioned or allocated to the same product area as that in which the electing corporation conducts its activities, and a ratable part of any such costs, losses, expenses and other deductions which cannot definitely be allocated to a particular product area.

(b) Affiliated group

For purposes of this subsection, the term ''affiliated group'' shall mean the electing corporation and all other 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, within the meaning of section 482.

(c) Possession sales

For purposes of this section, the term ''possession sales'' means the aggregate sales or other dispositions for the taxable year to persons who are not members of the affiliated group by members of the affiliated group of products produced, in whole or in part, by the electing corporation in the possession which are in the same product area as is used for determining the amount of product area research, and of services rendered, in whole or in part, in the possession in such product area to persons who are not members of the affiliated group.

(d) Total sales

For purposes of this section, the term ''total sales'' means the aggregate sales or other dispositions for the taxable year to persons who are not members of the affiliated group by members of the affiliated group of all products in the same product area as is used for determining the amount of product area research, and of services rendered in such product area to persons who are not members of the affiliated group.

(e) Product area

For purposes of this section, the term ''product area'' shall be defined by reference to the three-digit classification of the Standard Industrial Classification code. The Secretary may provide for the aggregation of two or more three-digit classifications where appropriate, and for a classification system other than the Standard Industrial Classification code in appropriate cases.

(II) Effect of election

For purposes of determining the amount of its gross income derived from the active conduct of a trade or business in a possession with respect to a product produced by, or type of service rendered by, the electing corporation for a taxable year, if an election of this method is in effect, the electing corporation shall be treated as the owner (for purposes of obtaining a return thereon) of intangible property described in subsection (h)(3)(B)(i) which is related to the units of the product produced, or type of service rendered, by the electing corporation. Such electing corporation shall not be treated as the owner (for purposes of obtaining a return thereon) of any intangible property described in subsection (h)(3)(B)(ii) through (v) (to the extent not described in subsection (h)(3)(B)(i)) or of any other nonmanufacturing intangible. Notwithstanding the preceding sentence, an electing corporation shall be treated as the owner (for purposes of obtaining a return thereon) of (a) intangible property which was developed solely by such corporation in a possession and is owned by such corporation, (b) intangible property described in subsection (h)(3)(B)(i) acquired by such corporation from a person who was not related to such corporation (or to any person relat-

ed to such corporation) at the time of, or in connection with, such acquisition, and (c) any intangible property described in subsection (h)(3)(B)(ii) through (v) (to the extent not described in subsection (h)(3)(B)(i)) and other nonmanufacturing intangibles which relate to sales of units of products, or services rendered, to unrelated persons for ultimate consumption or use in the possession in which the electing corporation conducts its trade or business.

(III) Payment provisions

(a) The cost sharing payment determined under subparagraph (C)(i)(I) for any taxable year shall be made to the person or persons specified in subparagraph (C)(i)(IV)(a) not later than the time prescribed by law for filing the electing corporation's return for such taxable year (including any extensions thereof). If all or part of such payment is not timely made, the amount of the cost sharing payment required to be paid shall be increased by the amount of interest that would have been due under section 6601(a) had the portion of the cost sharing payment that is not timely made been an amount of tax imposed by this title and had the last date prescribed for payment been the due date of the electing corporations[1] return (determined without regard to any extension thereof). The amount by which a cost sharing payment determined under subparagraph (C)(i)(I) is increased by reason of the preceding sentence shall not be treated as a cost sharing payment or as interest. If failure to make timely payment is due in whole or in part to fraud or willful neglect, the electing corporation shall be deemed to have revoked the election made under subparagraph (A) on the first day of the taxable year for which the cost sharing payment was required.

(b) For purposes of this title, any tax of a foreign country or possession of the United States which is paid or accrued with respect to the payment or receipt of a cost sharing payment determined under subparagraph (C)(i)(I) or of an amount of increase referred to in subparagraph (C)(i)(III)(a) 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 amounts of such tax so paid or accrued.

(IV) Special rules

(a) The amount of the cost sharing payment determined under subparagraph (C)(i)(I), and any increase in the amount thereof in accordance with subparagraph (C)(i)(III)(a), shall not be treated as income of the recipient, but shall reduce the amount of the deductions (and the amount of reductions in earnings and profits) otherwise allowable to the appropriate domestic member or members (other than an electing corporation) of the affiliated group, or, if there is no such domestic member, to the foreign member or members of such affiliated group as the Secretary may provide under regulations.

(b) If an election of this method is in effect, the electing corporation shall determine its intercompany pricing under the appropriate section 482 method, provided, however, that an electing corporation shall not be denied use of the resale price method for purposes of such intercompany pricing merely because the reseller adds more than an insubstantial amount to the value of the product by the use of intangible property.

(c) The amount of qualified research expenses, within the meaning of section 41, of any member of the controlled group of corporations (as defined in section 41(f)) of which the electing corporation is a member shall not be affected by the cost sharing payment required under this method.

(ii) Profit split

(I) General rule

If an election of this method is in effect, the electing corporation's taxable income derived from the active conduct of a trade or business in a possession with respect to units of a product produced or type of service rendered, in whole or in part, by the electing corporation shall be equal to 50 percent of the combined taxable income of the affiliated group (other than foreign affiliates) derived from covered sales of units of the product produced or type of service rendered, in whole or in part, by the electing corporation in a possession.

(II) Computation of combined taxable income

Combined taxable income shall be computed separately for each product produced or type of service rendered, in whole or in part, by the electing corporation in a possession. Combined taxable income shall be computed (notwithstanding any provision to the contrary) for each such product or type of service rendered by deducting from the gross income of the affiliated group (other than foreign affiliates) derived from covered sales of such product or type of service all expenses, losses, and other deductions properly apportioned or allocated to gross income from such sales or services, and a ratable part of all expenses, losses, or other deductions which cannot definitely be allocated to some item or class of gross income, which are incurred by the affiliated group (other than foreign affiliates). Notwithstanding any other provision to the contrary, in computing

[1] So in original. Probably should be ''corporation's''.

the combined taxable income for each such product or type of service rendered, the research, development, and experimental costs, expenses and related deductions for the taxable year which would otherwise be apportioned or allocated to the gross income of the affiliated group (other than foreign affiliates) derived from covered sales of such product produced or type of service rendered, in whole or in part, by the electing corporation in a possession, shall not be less than the same proportion of the amount of the share of product area research determined under subparagraph (C)(i)(I) (without regard to the third and fourth sentences thereof, but substituting ''120 percent'' for ''110 percent'' in the second sentence thereof) in the product area which includes such product or type of service, that such gross income from the product or type of service bears to such gross income from all products and types of services, within such product area, produced or rendered, in whole or part, by the electing corporation in a possession.

(III) Division of combined taxable income

50 percent of the combined taxable income computed as provided in subparagraph (C)(ii)(II) shall be allocated to the electing corporation. Combined taxable income, computed without regard to the last sentence of subparagraph (C)(ii)(II), less the amount allocated to the electing corporation under the preceding sentence, shall be allocated to the appropriate domestic member or members (other than any electing corporation) of the affiliated group and shall be treated as income from sources within the United States, or, if there is no such domestic member, to a foreign member or members of such affiliated group as the Secretary may provide under regulations.

(IV) Covered sales

For purposes of this paragraph, the term ''covered sales'' means sales by members of the affiliated group (other than foreign affiliates) to persons who are not members of the affiliated group or to foreign affiliates.

(D) Unrelated person

For purposes of this paragraph, the term ''unrelated person'' means any person other than a person related within the meaning of paragraph (3)(D) to the electing corporation.

(E) Electing corporation

For purposes of this subsection, the term ''electing corporation'' means a domestic corporation for which an election under this section is in effect.

(F) Time and manner of election; revocation

(i) In general

An election under subparagraph (A) to use one of the methods under subparagraph (C) shall be made only on or before the due date prescribed by law (including extensions) for filing the tax return of the electing corporation for its first taxable year beginning after December 31, 1982. If an election of one of such methods is made, such election shall be binding on the electing corporation and such method must be used for each taxable year thereafter until such election is revoked by the electing corporation under subparagraph (F)(iii). If any such election is revoked by the electing corporation under subparagraph (F)(iii), such electing corporation may make a subsequent election under subparagraph (A) only with the consent of the Secretary.

(ii) Manner of making election

An election under subparagraph (A) to use one of the methods under subparagraph (C) shall be made by filing a statement to such effect with the return referred to in subparagraph (F)(i) or in such other manner as the Secretary may prescribe by regulations.

(iii) Revocation

(I) Except as provided in subparagraph (F)(iii)(II), an election may be revoked for any taxable year only with the consent of the Secretary.

(II) An election shall be deemed revoked for the year in which the electing corporation is deemed to have revoked such election under subparagraph (B)(i) or (C)(i)(III)(a).

(iv) Aggregation

(I) Where more than one electing corporation in the affiliated group produces any product or renders any services in the same product area, all such electing corporations must elect to compute their taxable income under the same method under subparagraph (C).

(II) All electing corporations in the same affiliated group that produce any products or render any services in the same product area may elect, subject to such terms and conditions as the Secretary may prescribe by regulations, to compute their taxable income from export sales under a different method from that used for all other sales and services. For this purpose, export sales means all sales by the electing corporation of products to foreign persons for use or consumption outside the United States and its possessions, provided such products are manufactured or produced in the possession within the meaning of subsection (d)(1)(A) of section 954, and further provided (except to the extent otherwise provided by regulations) the income derived by such foreign person on resale of such products (in the same state or in an altered state) is not included in foreign base company income for purposes of section 954(a).

(III) All members of an affiliated group must consent to an election under this subsection at such time and in such man-

ner as shall be prescribed by the Secretary by regulations.

(6) Treatment of certain sales made after July 1, 1982

(A) In general

For purposes of this section, in the case of a disposition of intangible property made by a corporation after July 1, 1982, any gain or loss from such disposition shall be treated as gain or loss from sources within the United States to which paragraph (5) does not apply.

(B) Exception

Subparagraph (A) shall not apply to any disposition by a corporation of intangible property if such disposition is to a person who is not a related person to such corporation.

(C) Paragraph does not affect eligibility

This paragraph shall not apply for purposes of determining whether the corporation meets the requirements of subsection (a)(2).

(7) Section 864(e)(1) not to apply

This subsection shall be applied as if section 864(e)(1) (relating to treatment of affiliated groups) had not been enacted.

(8) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, including rules for the application of this subsection to income from leasing of products to unrelated persons.

(i) Definitions and special rules relating to limitations of subsection (a)(4)

(1) Qualified possession wages

For purposes of this section—

(A) In general

The term ''qualified possession wages'' means wages paid or incurred by the possession corporation during the taxable year in connection with the active conduct of a trade or business within a possession of the United States to any employee for services performed in such possession, but only if such services are performed while the principal place of employment of such employee is within such possession.

(B) Limitation on amount of wages taken into account

(i) In general

The amount of wages which may be taken into account under subparagraph (A) with respect to any employee for any taxable year shall not exceed 85 percent of the contribution and benefit base determined under section 230 of the Social Security Act for the calendar year in which such taxable year begins.

(ii) Treatment of part-time employees, etc.

If—

(I) any employee is not employed by the possession corporation on a substantially full-time basis at all times during the taxable year, or

(II) the principal place of employment of any employee with the possession corporation is not within a possession at all times during the taxable year,

the limitation applicable under clause (i) with respect to such employee shall be the appropriate portion (as determined by the Secretary) of the limitation which would otherwise be in effect under clause (i).

(C) Treatment of certain employees

The term ''qualified possession wages'' shall not include any wages paid to employees who are assigned by the employer to perform services for another person, unless the principal trade or business of the employer is to make employees available for temporary periods to other persons in return for compensation. All possession corporations treated as 1 corporation under paragraph (5) shall be treated as 1 employer for purposes of the preceding sentence.

(D) Wages

(i) In general

Except as provided in clause (ii), the term ''wages'' has the meaning given to such term by subsection (b) of section 3306 (determined without regard to any dollar limitation contained in such section). For purposes of the preceding sentence, such subsection (b) shall be applied as if the term ''United States'' included all possessions of the United States.

(ii) Special rule for agricultural labor and railway labor

In any case to which subparagraph (A) or (B) of paragraph (1) of section 51(h) applies, the term ''wages'' has the meaning given to such term by section 51(h)(2).

(2) Allocable employee fringe benefit expenses

(A) In general

The allocable employee fringe benefit expenses of any possession corporation for any taxable year is an amount which bears the same ratio to the amount determined under subparagraph (B) for such taxable year as—

(i) the aggregate amount of the possession corporation's qualified possession wages for such taxable year, bears to

(ii) the aggregate amount of the wages paid or incurred by such possession corporation during such taxable year.

In no event shall the amount determined under the preceding sentence exceed 15 percent of the amount referred to in clause (i).

(B) Expenses taken into account

For purposes of subparagraph (A), the amount determined under this subparagraph for any taxable year is the aggregate amount allowable as a deduction under this chapter to the possession corporation for such taxable year with respect to—

(i) employer contributions under a stock bonus, pension, profit-sharing, or annuity plan,

(ii) employer-provided coverage under any accident or health plan for employees, and

(iii) the cost of life or disability insurance provided to employees.

Any amount treated as wages under paragraph (1)(D) shall not be taken into account under this subparagraph.

(3) Treatment of possession taxes

(A) Amount of credit for possession corporations not using profit split

(i) In general

For purposes of subsection (a)(4)(A)(iii), the amount of the qualified possession income taxes for any taxable year allocable to nonsheltered income shall be an amount which bears the same ratio to the possession income taxes for such taxable year as—

(I) the increase in the tax liability of the possession corporation under this chapter for the taxable year by reason of subsection (a)(4)(A) (without regard to clause (iii) thereof), bears to

(II) the tax liability of the possession corporation under this chapter for the taxable year determined without regard to the credit allowable under this section.

(ii) Limitation on amount of taxes taken into account

Possession income taxes shall not be taken into account under clause (i) for any taxable year to the extent that the amount of such taxes exceeds 9 percent of the amount of the taxable income for such taxable year.

(B) Deduction for possession corporations using profit split

Notwithstanding subsection (c), if a possession corporation is not described in subsection (a)(4)(A)(iii) for the taxable year, such possession corporation shall be allowed a deduction for such taxable year in an amount which bears the same ratio to the possession income taxes for such taxable year as—

(i) the increase in the tax liability of the possession corporation under this chapter for the taxable year by reason of subsection (a)(4)(A), bears to

(ii) the tax liability of the possession corporation under this chapter for the taxable year determined without regard to the credit allowable under this section.

In determining the credit under subsection (a) and in applying the preceding sentence, taxable income shall be determined without regard to the preceding sentence.

(C) Possession income taxes

For purposes of this paragraph, the term ''possession income taxes'' means any taxes of a possession of the United States which are treated as not being income, war profits, or excess profits taxes paid or accrued to a possession of the United States by reason of subsection (c).

(4) Depreciation rules

For purposes of this section—

(A) Depreciation allowances

The term ''depreciation allowances'' means the depreciation deductions allowable under section 167 to the possession corporation.

(B) Categories of property

(i) Qualified tangible property

The term ''qualified tangible property'' means any tangible property used by the possession corporation in a possession of the United States in the active conduct of a trade or business within such possession.

(ii) Short-life qualified tangible property

The term ''short-life qualified tangible property'' means any qualified tangible property to which section 168 applies and which is 3-year property or 5-year property for purposes of such section.

(iii) Medium-life qualified tangible property

The term ''medium-life qualified tangible property'' means any qualified tangible property to which section 168 applies and which is 7-year property or 10-year property for purposes of such section.

(iv) Long-life qualified tangible property

The term ''long-life qualified tangible property'' means any qualified tangible property to which section 168 applies and which is not described in clause (ii) or (iii).

(v) Transitional rule

In the case of any qualified tangible property to which section 168 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) applies, any reference in this paragraph to section 168 shall be treated as a reference to such section as so in effect.

(5) Election to compute credit on consolidated basis

(A) In general

Any affiliated group may elect to treat all possession corporations which would be members of such group but for section 1504(b)(3) or (4) as 1 corporation for purposes of this section. The credit determined under this section with respect to such 1 corporation shall be allocated among such possession corporations in such manner as the Secretary may prescribe.

(B) Election

An election under subparagraph (A) shall apply to the taxable year for which made and all succeeding taxable years unless revoked with the consent of the Secretary.

(6) Possession corporation

The term ''possession corporation'' means a domestic corporation for which the election provided in subsection (a) is in effect.

(j) Termination

(1) In general

Except as otherwise provided in this subsection, this section shall not apply to any

taxable year beginning after December 31, 1995.

(2) Transition rules for active business income credit

Except as provided in paragraph (3)—

(A) Economic activity credit

In the case of an existing credit claimant—

(i) with respect to a possession other than Puerto Rico, and

(ii) to which subsection (a)(4)(B) does not apply,

the credit determined under subsection (a)(1)(A) shall be allowed for taxable years beginning after December 31, 1995, and before January 1, 2002.

(B) Special rule for reduced credit

(i) In general

In the case of an existing credit claimant to which subsection (a)(4)(B) applies, the credit determined under subsection (a)(1)(A) shall be allowed for taxable years beginning after December 31, 1995, and before January 1, 1998.

(ii) Election irrevocable after 1997

An election under subsection (a)(4)(B)(iii) which is in effect for the taxpayer's last taxable year beginning before 1997 may not be revoked unless it is revoked for the taxpayer's first taxable year beginning in 1997 and all subsequent taxable years.

(C) Economic activity credit for Puerto Rico

For economic activity credit for Puerto Rico, see section 30A.

(3) Additional restricted credit

(A) In general

In the case of an existing credit claimant—

(i) the credit under subsection (a)(1)(A) shall be allowed for the period beginning with the first taxable year after the last taxable year to which subparagraph (A) or (B) of paragraph (2), whichever is appropriate, applied and ending with the last taxable year beginning before January 1, 2006, except that

(ii) the aggregate amount of taxable income taken into account under subsection (a)(1)(A) for any such taxable year shall not exceed the adjusted base period income of such claimant.

(B) Coordination with subsection (a)(4)

The amount of income described in subsection (a)(1)(A) which is taken into account in applying subsection (a)(4) shall be such income as reduced under this paragraph.

(4) Adjusted base period income

For purposes of paragraph (3)—

(A) In general

The term ''adjusted base period income'' means the average of the inflation-adjusted possession incomes of the corporation for each base period year.

(B) Inflation-adjusted possession income

For purposes of subparagraph (A), the inflation-adjusted possession income of any corporation for any base period year shall be an amount equal to the sum of—

(i) the possession income of such corporation for such base period year, plus

(ii) such possession income multiplied by the inflation adjustment percentage for such base period year.

(C) Inflation adjustment percentage

For purposes of subparagraph (B), the inflation adjustment percentage for any base period year means the percentage (if any) by which—

(i) the CPI for 1995, exceeds

(ii) the CPI for the calendar year in which the base period year for which the determination is being made ends.

For purposes of the preceding sentence, the CPI for any calendar year is the CPI (as defined in section 1(f)(5)) for such year under section 1(f)(4).

(D) Increase in inflation adjustment percentage for growth during base years

The inflation adjustment percentage (determined under subparagraph (C) without regard to this subparagraph) for each of the 5 taxable years referred to in paragraph (5)(A) shall be increased by—

(i) 5 percentage points in the case of a taxable year ending during the 1-year period ending on October 13, 1995;

(ii) 10.25 percentage points in the case of a taxable year ending during the 1-year period ending on October 13, 1994;

(iii) 15.76 percentage points in the case of a taxable year ending during the 1-year period ending on October 13, 1993;

(iv) 21.55 percentage points in the case of a taxable year ending during the 1-year period ending on October 13, 1992; and

(v) 27.63 percentage points in the case of a taxable year ending during the 1-year period ending on October 13, 1991.

(5) Base period year

For purposes of this subsection—

(A) In general

The term ''base period year'' means each of 3 taxable years which are among the 5 most recent taxable years of the corporation ending before October 14, 1995, determined by disregarding—

(i) one taxable year for which the corporation had the largest inflation-adjusted possession income, and

(ii) one taxable year for which the corporation had the smallest inflation-adjusted possession income.

(B) Corporations not having significant possession income throughout 5-year period

(i) In general

If a corporation does not have significant possession income for each of the most recent 5 taxable years ending before October 14, 1995, then, in lieu of applying subparagraph (A), the term ''base period year'' means only those taxable years (of such 5 taxable years) for which the corporation has significant possession in-

come; except that, if such corporation has significant possession income for 4 of such 5 taxable years, the rule of subparagraph (A)(ii) shall apply.

(ii) Special rule

If there is no year (of such 5 taxable years) for which a corporation has significant possession income—

(I) the term ''base period year'' means the first taxable year ending on or after October 14, 1995, but

(II) the amount of possession income for such year which is taken into account under paragraph (4) shall be the amount which would be determined if such year were a short taxable year ending on September 30, 1995.

(iii) Significant possession income

For purposes of this subparagraph, the term ''significant possession income'' means possession income which exceeds 2 percent of the possession income of the taxpayer for the taxable year (of the period of 6 taxable years ending with the first taxable year ending on or after October 14, 1995) having the greatest possession income.

(C) Election to use one base period year

(i) In general

At the election of the taxpayer, the term ''base period year'' means—

(I) only the last taxable year of the corporation ending in calendar year 1992, or

(II) a deemed taxable year which includes the first ten months of calendar year 1995.

(ii) Base period income for 1995

In determining the adjusted base period income of the corporation for the deemed taxable year under clause (i)(II), the possession income shall be annualized and shall be determined without regard to any extraordinary item.

(iii) Election

An election under this subparagraph by any possession corporation may be made only for the corporation's first taxable year beginning after December 31, 1995, for which it is a possession corporation. The rules of subclauses (II) and (III) of subsection (a)(4)(B)(iii) shall apply to the election under this subparagraph.

(D) Acquisitions and dispositions

Rules similar to the rules of subparagraphs (A) and (B) of section 41(f)(3) shall apply for purposes of this subsection.

(6) Possession income

For purposes of this subsection, the term ''possession income'' means, with respect to any possession, the income referred to in subsection (a)(1)(A) determined with respect to that possession. In no event shall possession income be treated as being less than zero.

(7) Short years

If the current year or a base period year is a short taxable year, the application of this subsection shall be made with such annualizations as the Secretary shall prescribe.

(8) Special rules for certain possessions

(A) In general

In the case of an existing credit claimant with respect to an applicable possession, this section (other than the preceding paragraphs of this subsection) shall apply to such claimant with respect to such applicable possession for taxable years beginning after December 31, 1995, and before January 1, 2006.

(B) Applicable possession

For purposes of this paragraph, the term ''applicable possession'' means Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(9) Existing credit claimant

For purposes of this subsection—

(A) In general

The term ''existing credit claimant'' means a corporation—

(i)(I) which was actively conducting a trade or business in a possession on October 13, 1995, and

(II) with respect to which an election under this section is in effect for the corporation's taxable year which includes October 13, 1995, or

(ii) which acquired all of the assets of a trade or business of a corporation which—

(I) satisfied the requirements of subclause (I) of clause (i) with respect to such trade or business, and

(II) satisfied the requirements of subclause (II) of clause (i).

(B) New lines of business prohibited

If, after October 13, 1995, a corporation which would (but for this subparagraph) be an existing credit claimant adds a substantial new line of business (other than in an acquisition described in subparagraph (A)(ii)), such corporation shall cease to be treated as an existing credit claimant as of the close of the taxable year ending before the date of such addition.

(C) Binding contract exception

If, on October 13, 1995, and at all times thereafter, there is in effect with respect to a corporation a binding contract for the acquisition of assets to be used in, or for the sale of assets to be produced from, a trade or business, the corporation shall be treated for purposes of this paragraph as actively conducting such trade or business on October 13, 1995. The preceding sentence shall not apply if such trade or business is not actively conducted before January 1, 1996.

(10) Separate application to each possession

For purposes of determining—

(A) whether a taxpayer is an existing credit claimant, and

(B) the amount of the credit allowed under this section,

this subsection (and so much of this section as relates to this subsection) shall be applied separately with respect to each possession.

(Added Pub. L. 94–455, title X, §1051(b), Oct. 4, 1976, 90 Stat. 1643; amended Pub. L. 94–455, title XIX, §1901(b)(37)(B), Oct. 4, 1976, 90 Stat. 1803; Pub. L. 95–600, title VII, §701(u)(11)(A), (B), Nov. 6, 1978, 92 Stat. 2917; Pub. L. 97–248, title II, §201(d)(8)(B), formerly §201(c)(8)(B), §213(a), Sept. 3, 1982, 96 Stat. 420, 452, renumbered §201(d)(8)(B), 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)(22), title VII, §712(g), title VIII, §801(d)(11), July 18, 1984, 98 Stat. 843, 947, 997; Pub. L. 99–499, title V, §516(b)(1)(B), Oct. 17, 1986, 100 Stat. 1770; Pub. L. 99–514, title II, §231(d)(3)(G), title VII, §701(e)(4)(I), title XII, §§1231(a)–(d), (f), 1275(a)(1), title XVIII, §1812(c)(4)(C), Oct. 22, 1986, 100 Stat. 2179, 2343, 2561–2563, 2598, 2835; Pub. L. 100–647, title I, §§1002(h)(3), 1012(h)(2)(B), (j), (n)(4), (5), title VI, §6132(a), Nov. 10, 1988, 102 Stat. 3370, 3502, 3512, 3515, 3721; Pub. L. 101–382, title II, §227(a), Aug. 20, 1990, 104 Stat. 661; Pub. L. 101–508, title XI, §11704(a)(11), Nov. 5, 1990, 104 Stat. 1388–518; Pub. L. 103–66, title XIII, §13227(a), (b), Aug. 10, 1993, 107 Stat. 489, 490; Pub. L. 104–188, title I, §§1601(a), 1704(t)(37), (80), Aug. 20, 1996, 110 Stat. 1827, 1889, 1891; Pub. L. 108–357, title IV, §402(b)(2), Oct. 22, 2004, 118 Stat. 1492; Pub. L. 110–172, §11(g)(12), Dec. 29, 2007, 121 Stat. 2490; Pub. L. 113–295, div. A, title II, §221(a)(12)(G), Dec. 19, 2014, 128 Stat. 4038; Pub. L. 115–97, title I, §14221(a), Dec. 22, 2017, 131 Stat. 2218.)

REFERENCES IN TEXT

The date of the enactment of the Tax Reform Act of 1986, referred to in subsecs. (d)(3)(B) and (i)(4)(B)(v), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

The Caribbean Basin Economic Recovery Act, referred to in subsec. (d)(4)(A)(i), (B), is title II of Pub. L. 98–67, Aug. 5, 1983, 97 Stat. 384, which is classified principally to chapter 15 (§2701 et seq.) of Title 19, Customs Duties. Section 212 of that Act is classified to section 2702 of Title 19. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of Title 19 and Tables.

The date of the enactment of this subparagraph, referred to in subsec. (h)(3)(A), means the date of enactment of Pub. L. 97–248, which was approved Sept. 3, 1982.

The date of the enactment of this clause, referred to in subsec. (h)(5)(B)(iii)(I), (iv), means the date of enactment of Pub. L. 97–248, which was approved Sept. 3, 1982.

Section 230 of the Social Security Act, referred to in subsec. (i)(1)(B)(i), is classified to section 430 of Title 42, The Public Health and Welfare.

AMENDMENTS

2017—Subsec. (h)(3)(B). Pub. L. 115–97, §14221(a)(3), struck out concluding provisions which read as follows: ''which has substantial value independent of the services of any individual.''

Subsec. (h)(3)(B)(vi), (vii). Pub. L. 115–97, §14221(a)(1), (2), added cls. (vi) and (vii) and struck out former cl. (vi) which read as follows: ''any similar item,''.

2014—Subsec. (a)(3). Pub. L. 113–295 redesignated subpars. (B) to (D) as (A) to (C), respectively, and struck out former subpar. (A) which read as follows: ''section 59A (relating to environmental tax),''.

2007—Subsec. (f)(2)(B). Pub. L. 110–172 struck out ''FSC or'' before ''former FSC''.

2004—Subsec. (a)(2)(A). Pub. L. 108–357 substituted ''subsections (f) and (g) of section 904'' for ''section 904(f)''.

1996—Subsec. (a)(4)(A)(ii)(I). Pub. L. 104–188, §1704(t)(80), which directed that subcl. (I) be amended by substituting ''depreciation'' for ''deprecation'', could not be executed, because the word ''deprecation'' did not appear in text.

Subsec. (b). Pub. L. 104–188, §1704(t)(37), substituted ''subparagraphs (D)(ii)'' for ''subparagraphs (D)(ii)(I)''.

Subsec. (j). Pub. L. 104–188, §1601(a), added subsec. (j).

1993—Subsec. (a)(1). Pub. L. 103–66, §13227(a)(1), substituted ''Except as otherwise provided in this section'' for ''Except as provided in paragraph (3)''.

Subsec. (a)(4). Pub. L. 103–66, §13227(a)(2), added par. (4).

Subsec. (i). Pub. L. 103–66, §13227(b), added subsec. (i).

1990—Subsec. (d)(4)(D). Pub. L. 101–382 added subpar. (D).

Subsec. (e)(1). Pub. L. 101–508 substituted ''subsection (a)(2)'' for ''subsection (a)(1)'' wherever appearing.

1988—Subsec. (d)(3)(B). 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. (d)(4)(A)(ii). Pub. L. 100–647, §1012(n)(5)(A), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''in accordance with a specific authorization granted by the Government Development Bank for Puerto Rico pursuant to regulations issued by the Secretary of the Treasury of Puerto Rico.''

Subsec. (d)(4)(B). Pub. L. 100–647, §6132(a), inserted ''and the Virgin Islands'' after ''274(h)(6)(A)''.

Subsec. (d)(4)(C)(i), (ii). Pub. L. 100–647, §1012(n)(5)(B), substituted ''Commissioner of Financial Institutions of Puerto Rico'' for ''Secretary of the Treasury of Puerto Rico''.

Subsec. (h)(5)(C)(i)(I). Pub. L. 100–647, §1012(n)(4), amended directory language of Pub. L. 99–514, §1231(a)(1), see 1986 Amendment note below.

Subsec. (h)(5)(C)(i)(IV)(c). Pub. L. 100–647, §1002(h)(3), substituted ''section 41'' and ''section 41(f)'' for ''section 30'' and ''section 30(f)'', respectively.

Subsec. (h)(7), (8). Pub. L. 100–647, §1012(h)(2)(B), added par. (7) and redesignated former par. (7) as (8).

1986—Subsec. (a)(2)(B). Pub. L. 99–514, §1231(d)(1), substituted ''75 percent'' for ''65 percent''.

Subsec. (a)(2)(C). Pub. L. 99–514, §1231(d)(2), struck out subpar. (C), transitional rule, which read as follows: ''In applying subparagraph (B) with respect to taxable years beginning after December 31, 1982, and before January 1, 1985, the following percentage shall be substituted for '65 percent':

''For taxable years beginning in calendar year:	**The percentage is:**
1983	55
1984	60.''

Subsec. (a)(3). Pub. L. 99–499 in par. (3), as amended by Pub. L. 99–514, added subpar. (A) and redesignated former subpars. (A) to (C) as (B) to (D), respectively.

Pub. L. 99–514, §701(e)(4)(I), struck out subpar. (A) which read ''section 56 (relating to corporate minimum tax),'', and redesignated subpars. (B), (C), and (E) as (A), (B), and (C), respectively.

Subsec. (b). Pub. L. 99–514, §1231(b), inserted at end ''This subsection shall not apply to any amount described in subsection (a)(1)(A)(i) received from a person who is not a related person (within the meaning of subsection (h)(3) but without regard to subparagraphs (D)(ii)(I) and (E)(i) thereof) with respect to the domestic corporation.''

Subsec. (d)(1). Pub. L. 99–514, §1275(a)(1), substituted ''and the Virgin Islands'' for '', but does not include the Virgin Islands of the United States''.

Subsec. (d)(4). Pub. L. 99–514, §1231(c), added par. (4).

Subsec. (h)(3)(D)(ii). Pub. L. 99–514, §1812(c)(4)(C), amended cl. (ii) generally. Prior to amendment, cl. (ii), special rules, read as follows: ''For purposes of clause (i)—

''(I) section 267(b) and section 707(b)(1) shall be applied by substituting '10 percent' for '50 percent', and

''(II) section 267(b)(3) shall be applied without regard to whether a person was a personal holding company or a foreign personal holding company.''

Subsec. (h)(5)(C)(i)(I). Pub. L. 99–514, § 1231(a)(1), as amended by Pub. L. 100–647, § 1012(n)(4), in introductory provisions, substituted ''the same proportion of 110 percent of the cost'' for ''the same proportion of the cost'', and inserted at end of material relating to payment of cost sharing ''In the case of intangible property described in subsection (h)(3)(B)(i) which the electing corporation is treated as owning under subclause (II), in no event shall the payment required under this subclause be less than the inclusion or payment which would be required under section 367(d)(2)(A)(ii) or section 482 if the electing corporation were a foreign corporation.''

Subsec. (h)(5)(C)(i)(I)(a). Pub. L. 99–514, § 231(d)(3)(G), substituted ''section 41(b)'' for ''section 30(b)''.

Subsec. (h)(5)(C)(ii)(II). Pub. L. 99–514, § 1231(f), substituted ''all products and types of services, within such product area, produced or rendered'' for ''all products produced and types of service rendered''.

Pub. L. 99–514, § 1231(a)(2), substituted ''the third and fourth sentences thereof, but substituting '120 percent' for '110 percent' in the second sentence thereof)'' for ''the third sentence thereof)''.

1984—Subsec. (a)(2)(C). Pub. L. 98–369, § 712(g), substituted in table heading ''The percentage is'' for ''The percentage tax is''.

Subsec. (f). Pub. L. 98–369, § 801(d)(11), amended subsec. (f) generally, substituting in heading ''Limitation on credit for DISC's and FSC's'' for ''DISC or former DISC corporation ineligible for credit'', and in text striking out reference to section 992(a) and inserting provision disallowing a credit to a corporation for a taxable year in which it owns at any time stock in a FSC or former FSC.

Subsec. (h)(5)(C)(i)(I)(a). Pub. L. 98–369, § 474(r)(22)(A), substituted ''section 30(b)'' for ''section 44F(b)''.

Subsec. (h)(5)(C)(i)(IV)(c). Pub. L. 98–369, § 474(r)(22)(B), substituted ''section 30'' for ''section 44F'' and ''section 30(f)'' for ''section 44F(f)''.

1982—Subsec. (a)(2)(B). Pub. L. 97–248, § 213(a)(1)(A), substituted ''65 percent'' for ''50 percent''.

Subsec. (a)(2)(C). Pub. L. 97–248, § 213(a)(1)(B), added subpar. (C).

Subsec. (a)(3)(A). Pub. L. 97–248, § 201(d)(8)(B), formerly § 201(c)(8)(B), substituted ''(relating to corporate minimum tax)'' for ''(relating to minimum tax)''.

Subsec. (h). Pub. L. 97–248, § 213(a)(2), added subsec. (h).

1978—Subsec. (a). Pub. L. 95–600, § 701(u)(11)(A), reworked provisions of par. (1) into introductory text, substituting reference to par. (3) for reference to par. (2), and subpars. (A) and (B), inserted introductory text of par. (2), redesignated former subpars. (A) and (B) of par. (1) as subpars. (A) and (B) of par. (2), and redesignated former par. (2) as (3).

Subsec. (d). Pub. L. 95–600, § 701(u)(11)(B), substituted in heading ''Definitions and special rules'' for ''Definitions'' and added par. (3).

1976—Subsec. (a)(2)(D). Pub. L. 94–455, § 1901(b)(37)(B), struck out subpar. (D) relating to war loss recoveries.

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 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. 108–357 applicable to losses for taxable years beginning after Dec. 31, 2006, see section 402(c) of Pub. L. 108–357, set out as a note under section 535 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1601(a) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1995, except as otherwise provided, see section 1601(c) of Pub. L. 104–188, set out as an Effective Date note under section 30A of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1993, see section 13227(f) of Pub. L. 103–66, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–382, title II, § 227(b), Aug. 20, 1990, 104 Stat. 661, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to calendar years after 1989.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1002(h)(3) and 1012(h)(2)(B), (j), (n)(4), (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, § 6132(b), Nov. 10, 1988, 102 Stat. 3721, provided that: ''The amendment made by this section [amending this section] shall apply to investments made after the date of the enactment of this Act [Nov. 10, 1988].''

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 231(d)(3)(G) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1985, see section 231(g) of Pub. L. 99–514, set out as a note under section 41 of this title.

Amendment by section 701(e)(4)(I) 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, § 1231(g), Oct. 22, 1986, 100 Stat. 2563, as amended by Pub. L. 100–647, title I, § 1012(n)(1)–(3), Nov. 10, 1988, 102 Stat. 3514, provided that:

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this section and sections 367 and 482 of this title] shall apply to taxable years beginning after December 31, 1986.

''(2) SPECIAL RULE FOR TRANSFER OF INTANGIBLES.—

''(A) IN GENERAL.—The amendments made by subsection (e) [amending sections 367 and 482 of this title] shall apply to taxable years beginning after December 31, 1986, but only with respect to transfers after November 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). In the case of any transfer (or license) which is not to a foreign person, the preceding sentence shall be applied by substituting 'August 16, 1986' for 'November 16, 1985'.

''(B) SPECIAL RULE FOR SECTION 936.—For purposes of section 936(h)(5)(C) of the Internal Revenue Code of 1986 the amendments made by subsection (e) shall apply to taxable years beginning after December 31, 1986, without regard to when the transfer (or license), if any, was made.

''(3) SUBSECTION (f).—The amendment made by subsection (f) [amending this section] shall apply to taxable years beginning after December 31, 1982.

''(4) TRANSITIONAL RULE.—In the case of a corporation—

''(A) with respect to which an election under section 936 of the Internal Revenue Code of 1986 (relating to possessions tax credit) is in effect,

''(B) which produced an end-product form in Puerto Rico on or before September 3, 1982,

''(C) which began manufacturing a component of such product in Puerto Rico in its taxable year beginning in 1983, and

''(D) with respect to which a Puerto Rican tax exemption was granted on June 27, 1983,

such corporation shall treat such component as a separate product for such taxable year for purposes of determining whether such corporation had a significant business presence in Puerto Rico with respect to such product and its income with respect to such product.

''(5) TRANSITIONAL RULE FOR INCREASE IN GROSS INCOME TEST.—

''(A) IN GENERAL.—If—

''(i) a corporation fails to meet the requirements of subparagraph (B) of section 936(a)(2) of the Internal Revenue Code of 1986 (as amended by subsection (d)(1)) for any taxable year beginning in 1987 or 1988,

''(ii) such corporation would have met the requirements of such subparagraph (B) if such subparagraph had been applied without regard to the amendment made by subsection (d)(1), and

''(iii) 75 percent or more of the gross income of such corporation for such taxable year (or, in the case of a taxable year beginning in 1988, for the period consisting of such taxable year and the preceding taxable year) was derived from the active conduct of a trade or business within a possession of the United States, such corporation shall nevertheless be treated as meeting the requirements of such subparagraph (B) for such taxable year if it elects to reduce the amount of the qualified possession source investment income for the taxable year by the amount of the shortfall determined under subparagraph (B) of this paragraph.

''(B) DETERMINATION OF SHORTFALL.—The shortfall determined under this subparagraph for any taxable year is an amount equal to the excess of—

''(i) 75 percent of the gross income of the corporation for the 3-year period (or part thereof) referred to in section 936(a)(2)(A) of such Code, over

''(ii) the amount of the gross income of such corporation for such period (or part thereof) which was derived from the active conduct of a trade or business within a possession of the United States.

''(C) SPECIAL RULE.—Any income attributable to the investment of the amount not treated as qualified possession source investment income under subparagraph (A) shall not be treated as qualified possession source investment income for any taxable year.''

Amendment by section 1275(a)(1) 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 1812(c)(4)(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.

Amendment by Pub. L. 99–499 applicable to taxable years beginning after Dec. 31, 1986, see section 516(c) of Pub. L. 99–499, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(22) 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 712(g) 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)(11) 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)(B) 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.

Pub. L. 97–248, title II, §213(e), Sept. 3, 1982, 96 Stat. 466, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this section and sections 246, 367, and 934 of this title] shall apply to taxable years beginning after December 31, 1982.

''(2) CERTAIN SALES MADE AFTER JULY 1, 1982.—Paragraph (6) of section 936(h) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], and so much of section 934 to which such paragraph applies by reason of section 934(e)(4) of such Code, shall apply to taxable years ending after July 1, 1982.

''(3) CERTAIN TRANSFERS OF INTANGIBLES MADE AFTER AUGUST 14, 1982.—Subsection (d) [amending section 367 of this title] shall apply to taxable years ending after August 14, 1982.''

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title VII, §701(u)(11)(C), Nov. 6, 1978, 92 Stat. 2918, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this paragraph [amending this section] shall apply as if included in section 936 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] at the time of its addition by section 1051(b) of the Tax Reform Act of 1976 [Oct. 4, 1976].''

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

Section applicable to taxable years beginning after Dec. 31, 1975, except that qualified possession source investment income as defined in subsec. (d)(2) of this section shall include income from any source outside the United States if the taxpayer establishes to the satisfaction of the Secretary of the Treasury or his delegate that the income from such sources was earned before Oct. 1, 1976, see section 1051(i) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 27 of this title.

CONSTRUCTION OF 2017 AMENDMENT

Pub. L. 115–97, title I, §14221(c)(2), Dec. 22, 2017, 131 Stat. 2219, provided that: ''Nothing in the amendment made by subsection (a) [amending this section] shall be construed to create any inference with respect to the application of section 936(h)(3) of the Internal Revenue Code of 1986, or the authority of the Secretary of the Treasury to provide regulations for such application, with respect to taxable years beginning before January 1, 2018.''

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)(I) 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.

REPORT ON POSSESSIONS CORPORATIONS

Pub. L. 98–369, div. A, title IV, § 441(a), July 18, 1984, 98 Stat. 815, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–647, title VI, § 6252(b)(1), Nov. 10, 1988, 102 Stat. 3752, which directed Secretary of the Treasury to submit a report to Congress each fourth calendar year on the operation and effect of sections 936 and 934(b) of this title, 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.

§ 937. Residence and source rules involving possessions

(a) Bona fide resident

For purposes of this subpart, section 865(g)(3), section 876, section 881(b), paragraphs (2) and (3) of section 901(b), section 957(c), section 3401(a)(8)(C), and section 7654(a), except as provided in regulations, the term ''bona fide resident'' means a person—

(1) who is present for at least 183 days during the taxable year in Guam, American Samoa, the Northern Mariana Islands, Puerto Rico, or the Virgin Islands, as the case may be, and

(2) who does not have a tax home (determined under the principles of section 911(d)(3) without regard to the second sentence thereof) outside such specified possession during the taxable year and does not have a closer connection (determined under the principles of section 7701(b)(3)(B)(ii)) to the United States or a foreign country than to such specified possession.

For purposes of paragraph (1), the determination as to whether a person is present for any day shall be made under the principles of section 7701(b).

(b) Source rules

Except as provided in regulations, for purposes of this title—

(1) except as provided in paragraph (2), rules similar to the rules for determining whether income is income from sources within the United States or is effectively connected with the conduct of a trade or business within the United States shall apply for purposes of determining whether income is from sources within a possession specified in subsection (a)(1) or effectively connected with the conduct of a trade or business within any such possession, and

(2) any income treated as income from sources within the United States or as effectively connected with the conduct of a trade or business within the United States shall not be treated as income from sources within any such possession or as effectively connected with the conduct of a trade or business within any such possession.

(c) Reporting requirement

(1) In general

If, for any taxable year, an individual takes the position for United States income tax reporting purposes that the individual became, or ceases to be, a bona fide resident of a possession specified in subsection (a)(1), such individual shall file with the Secretary, at such time and in such manner as the Secretary may prescribe, notice of such position.

(2) Transition rule

If, for any of an individual's 3 taxable years ending before the individual's first taxable year ending after the date of the enactment of this subsection, the individual took a position described in paragraph (1), the individual shall file with the Secretary, at such time and in such manner as the Secretary may prescribe, notice of such position.

(Added Pub. L. 108–357, title VIII, § 908(a), Oct. 22, 2004, 118 Stat. 1655.)

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (c)(2), is the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

EFFECTIVE DATE

Pub. L. 108–357, title VIII, § 908(d), Oct. 22, 2004, 118 Stat. 1657, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting this section and amending sections 931, 932, 934, 935, 957, and 6688 of this title] shall apply to taxable years ending after the date of the enactment of this Act [Oct. 22, 2004].

''(2) 183-DAY RULE.—Section 937(a)(1) of the Internal Revenue Code of 1986 (as added by this section) shall apply to taxable years beginning after the date of the enactment of this Act.

''(3) SOURCING.—Section 937(b)(2) of such Code (as so added) shall apply to income earned after the date of the enactment of this Act.''

[SUBPART E—REPEALED]

[§§ 941 to 943. Repealed. Pub. L. 108–357, title I, § 101(b)(1), Oct. 22, 2004, 118 Stat. 1423]

Section 941, added Pub. L. 106–519, § 3(b), Nov. 15, 2000, 114 Stat. 2424, related to qualifying foreign trade income.

A prior section 941, acts Aug. 16, 1954, ch. 736, 68A Stat. 293; Oct. 4, 1976, Pub. L. 94–455, title X, § 1053(a), title XIX, § 1906(b)(1)(A), 90 Stat. 1648, 1834, set forth provisions authorizing special deduction for China Trade Act corporations, prior to repeal by Pub. L. 94–455, title X, § 1053(c), (e), Oct. 4, 1976, 90 Stat. 1649, effective with respect to taxable years beginning after Dec. 31, 1977.

Section 942, added Pub. L. 106–519, § 3(b), Nov. 15, 2000, 114 Stat. 2426, defined ''foreign trading gross receipts'' and set forth economic process requirements.

A prior section 942, act Aug. 16, 1954, ch. 736, 68A Stat. 294, disallowed foreign tax credit authorized by section 901 to any corporation organized under the China Trade Act, prior to repeal by Pub. L. 94–455, title X, § 1053(c), (e), Oct. 4, 1976, 90 Stat. 1649, effective with respect to taxable years beginning after Dec. 31, 1977.

Section 943, added Pub. L. 106–519, § 3(b), Nov. 15, 2000, 114 Stat. 2428; amended Pub. L. 107–147, title IV, § 417(14), Mar. 9, 2002, 116 Stat. 56, set forth other definitions and special rules for purposes of this subpart.

A prior section 943, acts Aug. 16, 1954, ch. 736, 68A Stat. 294; Oct. 4, 1976, Pub. L. 94–455, title X, § 1053(b), 90 Stat. 1648, set forth provisions relating to exclusion from gross income of residents of Formosa or Hong Kong of amounts distributed as dividends by China Trade Act corporations, prior to repeal by Pub. L. 94–455, title X, § 1053(c), (e), Oct. 4, 1976, 90 Stat. 1649, ef-

fective with respect to taxable years beginning after Dec. 31, 1977.

EFFECTIVE DATE OF REPEAL

Repeal applicable to transactions after Dec. 31, 2004, see section 101(c) of Pub. L. 108–357, set out as an Effective Date of 2004 Amendments note under section 56 of this title.

SUBPART F—CONTROLLED FOREIGN CORPORATIONS

Sec.

AMENDMENTS

2017—Pub. L. 115–97, title I, §§14103(b), 14201(c), 14212(b)(6), 14301(c)(39), Dec. 22, 2017, 131 Stat. 2208, 2213, 2217, 2225, added item 951A, substituted ''Deemed paid credit for subpart F inclusions'' for ''Special rules for foreign tax credit'' in item 960 and ''Treatment of deferred foreign income upon transition to participation exemption system of taxation'' for ''Temporary dividends received deduction'' in item 965, and struck out item 955 ''Withdrawal of previously excluded subpart F income from qualified investment''.

2004—Pub. L. 108–357, title IV, §422(c), Oct. 22, 2004, 118 Stat. 1519, added item 965.

1996—Pub. L. 104–188, title I, §1501(c), Aug. 20, 1996, 110 Stat. 1826, which directed that the analysis for subpart F be amended by striking item 956A, could not be executed, because item 956A ''Earnings invested in excess passive assets'' had been editorially supplied.

1986—Pub. L. 99–514, title XII, §1221(b)(3)(E), Oct. 22, 1986, 100 Stat. 2553, substituted ''Insurance income'' for ''Income from insurance of United States risks'' in item 953.

1975—Pub. L. 94–12, title VI, §602(a)(3)(A), (c)(7), (d)(3)(B), Mar. 29, 1975, 89 Stat. 58, 60, 64, struck out existing item 955 and replaced it with an identical item 955 and struck out item 963 ''Receipt of minimum distributions by domestic corporations''.

1962—Pub. L. 87–834, §12(a), Oct. 16, 1962, 76 Stat. 1006, added heading of subpart F, and items 951–964.

§ 951. Amounts included in gross income of United States shareholders

(a) Amounts included

(1) In general

If a foreign corporation is a controlled foreign corporation at any time during any taxable year, every person who is a United States shareholder (as defined in subsection (b)) of such corporation and who owns (within the meaning of section 958(a)) stock in such corporation on the last day, in such year, on which such corporation is a controlled foreign corporation shall include in his gross income, for his taxable year in which or with which such taxable year of the corporation ends—

(A) his pro rata share (determined under paragraph (2)) of the corporation's subpart F income for such year, and

(B) the amount determined under section 956 with respect to such shareholder for such year (but only to the extent not excluded from gross income under section 959(a)(2)).

(2) Pro rata share of subpart F income

The pro rata share referred to in paragraph (1)(A)(i) in the case of any United States shareholder is the amount—

(A) which would have been distributed with respect to the stock which such shareholder owns (within the meaning of section 958(a)) in such corporation if on the last day, in its taxable year, on which the corporation is a controlled foreign corporation it had distributed pro rata to its shareholders an amount (i) which bears the same ratio to its subpart F income for the taxable year, as (ii) the part of such year during which the corporation is a controlled foreign corporation bears to the entire year, reduced by

(B) the amount of distributions received by any other person during such year as a dividend with respect to such stock, but only to the extent of the dividend which would have been received if the distribution by the corporation had been the amount (i) which bears the same ratio to the subpart F income of such corporation for the taxable year, as (ii) the part of such year during which such shareholder did not own (within the meaning of section 958(a)) such stock bears to the entire year.

For purposes of subparagraph (B), any gain included in the gross income of any person as a dividend under section 1248 shall be treated as a distribution received by such person with respect to the stock involved.

(b) United States shareholder defined

For purposes of this title, the term ''United States shareholder'' means, with respect to any foreign corporation, a United States person (as defined in section 957(c)) who owns (within the meaning of section 958(a)), or is considered as owning by applying the rules of ownership of section 958(b), 10 percent or more of the total combined voting power of all classes of stock entitled to vote of such foreign corporation, or 10 percent or more of the total value of shares of all classes of stock of such foreign corporation.

(c) Coordination with passive foreign investment company provisions

If, but for this subsection, an amount would be included in the gross income of a United States shareholder for any taxable year both under subsection (a)(1)(A)(i) and under section 1293 (relating to current taxation of income from certain passive foreign investment companies), such

amount shall be included in the gross income of such shareholder only under subsection (a)(1)(A).

(Added Pub. L. 87–834, §12(a), Oct. 16, 1962, 76 Stat. 1006; amended Pub. L. 94–12, title VI, §602(a)(3)(B), (c)(3), (4), (d)(2), Mar. 29, 1975, 89 Stat. 58, 62; Pub. L. 94–455, title XIX, §1901(a)(119), Oct. 4, 1976, 90 Stat. 1784; Pub. L. 98–369, div. A, title I, §132(c)(1), title VIII, §801(d)(4), July 18, 1984, 98 Stat. 666, 996; Pub. L. 99–514, title XII, §1235(c), title XVIII, §1876(c)(2), Oct. 22, 1986, 100 Stat. 2574, 2898; Pub. L. 100–647, title I, §1012(i)(15), Nov. 10, 1988, 102 Stat. 3510; Pub. L. 103–66, title XIII, §§13231(a), 13232(c), Aug. 10, 1993, 107 Stat. 495, 502; Pub. L. 104–188, title I, §1501(a)(1), Aug. 20, 1996, 110 Stat. 1825; Pub. L. 105–34, title XI, §1112(a)(1), Aug. 5, 1997, 111 Stat. 969; Pub. L. 108–357, title IV, §413(c)(16), Oct. 22, 2004, 118 Stat. 1508; Pub. L. 110–172, §11(g)(13), Dec. 29, 2007, 121 Stat. 2490; Pub. L. 115–97, title I, §§14101(e)(1), 14212(b)(1)(A), (2), 14214(a), 14215(a), Dec. 22, 2017, 131 Stat. 2192, 2217, 2218.)

AMENDMENTS

2017—Subsec. (a)(1). Pub. L. 115–97, §14215(a), substituted ''at any time'' for ''for an uninterrupted period of 30 days or more'' in introductory provisions.

Subsec. (a)(1)(A). Pub. L. 115–97, §14212(b)(1)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''the sum of—

''(i) his pro rata share (determined under paragraph (2)) of the corporation's subpart F income for such year,

''(ii) his pro rata share (determined under section 955(a)(3) as in effect before the enactment of the Tax Reduction Act of 1975) of the corporation's previously excluded subpart F income withdrawn from investment in less developed countries for such year, and

''(iii) his pro rata share (determined under section 955(a)(3)) of the corporation's previously excluded subpart F income withdrawn from foreign base company shipping operations for such year; and''.

Subsec. (a)(3). Pub. L. 115–97, §14212(b)(2), struck out par. (3). Text read as follows: ''For purposes of paragraph (1)(A)(iii), the pro rata share of any United States shareholder of the previously excluded subpart F income of a controlled foreign corporation withdrawn from investment in foreign base company shipping operations shall not exceed an amount—

''(A) which bears the same ratio to his pro rata share of such income withdrawn (as determined under section 955(a)(3)) for the taxable year, as

''(B) the part of such year during which the corporation is a controlled foreign corporation bears to the entire year.''

Subsec. (b). Pub. L. 115–97, §14214(a), inserted '', or 10 percent or more of the total value of shares of all classes of stock of such foreign corporation'' after ''such foreign corporation''.

Pub. L. 115–97, §14101(e)(1), substituted ''title'' for ''subpart''.

2007—Subsecs. (c), (d). Pub. L. 110–172 redesignated subsec. (d) as (c) and struck out heading and text of former subsec. (c). Text read as follows:

''(1) IN GENERAL.—The foreign trade income of a FSC and any deductions which are apportioned or allocated to such income shall not be taken into account under this subpart.

''(2) FOREIGN TRADE INCOME.—For purposes of this subsection, the term 'foreign trade income' has the meaning given such term by section 923(b), but does not include section 923(a)(2) non-exempt income (within the meaning of section 927(d)(6)).''

2004—Subsecs. (c) to (f). Pub. L. 108–357 redesignated subsecs. (e) and (f) as (c) and (d), respectively, and struck out former subsecs. (c) and (d), which related to coordination of provisions with election of a foreign investment company to distribute income and coordination with foreign personal holding company provisions, respectively.

1997—Subsec. (a)(2). Pub. L. 105–34 inserted concluding provisions ''For purposes of subparagraph (B), any gain included in the gross income of any person as a dividend under section 1248 shall be treated as a distribution received by such person with respect to the stock involved.''

1996—Subsec. (a)(1)(A) to (C). Pub. L. 104–188 inserted ''and'' at end of subpar. (A), substituted period for ''; and'' at end of subpar. (B), and struck out subpar. (C) which read as follows: ''the amount determined under section 956A with respect to such shareholder for such year (but only to the extent not excluded from gross income under section 959(a)(3)).''

1993—Subsec. (a)(1)(B). Pub. L. 103–66, §13232(c)(1), substituted ''the amount determined under section 956 with respect to such shareholder for such year (but only to the extent not excluded from gross income under section 959(a)(2)); and'' for ''his pro rata share (determined under section 956(a)(2)) of the corporation's increase in earnings invested in United States property for such year (but only to the extent not excluded from gross income under section 959(a)(2)); and''.

Subsec. (a)(1)(C). Pub. L. 103–66, §13231(a), added subpar. (C).

Subsec. (a)(4). Pub. L. 103–66, §13232(c)(2), struck out heading and text of par. (4). Text read as follows: ''For purposes of paragraph (1)(B), the pro rata share of any United States shareholder in the increase of the earnings of a controlled foreign corporation invested in United States property shall not exceed an amount (A) which bears the same ratio to his pro rata share of such increase (as determined under section 956(a)(2)) for the taxable year, as (B) the part of such year during which the corporation is a controlled foreign corporation bears to the entire year.''

1988—Subsec. (b). Pub. L. 100–647 substituted ''section 957(c)'' for ''section 957(d)''.

1986—Subsec. (e)(1). Pub. L. 99–514, §1876(c)(2), struck out last sentence which read as follows: ''For purposes of the preceding sentence, income described in paragraph (2) or (3) of section 921(d) shall be treated as derived from sources within the United States.''

Subsec. (f). Pub. L. 99–514, §1235(c), added subsec. (f).

1984—Subsec. (d). Pub. L. 98–369, §132(c)(1), amended subsec. (d) generally, substituting provision that, if a United States shareholder is required to include in gross income an amount under both subsec. (a)(1)(A)(ii) of this section and section 551(b) of this title, such amount be included only under subsec. (a)(1)(A)(ii) of this section for provision that, if a United States shareholder is subject to tax under section 551(b) of this title, such shareholder not be required to include as gross income any amount under subsec. (a) of this section.

Subsec. (e). Pub. L. 98–369, §801(d)(4), added subsec. (e).

1976—Subsec. (a)(1). Pub. L. 94–455 struck out ''beginning after December 31, 1962'' after ''during any taxable year''.

1975—Subsec. (a)(1)(A)(i). Pub. L. 94–12, §602(a)(3)(B), struck out ''except as provided in section 963,'' before ''his pro rata share''.

Subsec. (a)(1)(A)(ii). Pub. L. 94–12, §602(c)(3), substituted ''(determined under section 955(a)(3) as in effect before the enactment of the Tax Reduction Act of 1975)'' for ''(determined under section 955(a)(3))''.

Subsec. (a)(1)(A)(iii). Pub. L. 94–12, §602(d)(2)(A), added cl. (iii).

Subsec. (a)(3). Pub. L. 94–12, §602(c)(4), (d)(2)(B), substituted ''paragraph (i)(A)(iii)'' for ''paragraph (1)(A)(ii)'' and ''foreign base company shipping operations'' for ''less developed countries''.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 14101(e)(1) of Pub. L. 115–97 applicable to distributions made after Dec. 31, 2017, see

section 14101(f) of Pub. L. 115–97, set out as an Effective Date note under section 245A of this title.

Amendment by section 14212(b)(1)(A), (2) 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 14212(c) of Pub. L. 115–97, set out as a note under section 851 of this title.

Pub. L. 115–97, title I, §14214(b), Dec. 22, 2017, 131 Stat. 2218, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 2017, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.''

Pub. L. 115–97, title I, §14215(b), Dec. 22, 2017, 131 Stat. 2218, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 2017, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.''

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

Pub. L. 105–34, title XI, §1112(a)(2), Aug. 5, 1997, 111 Stat. 969, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to dispositions after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years of foreign corporations beginning after Dec. 31, 1996, and to taxable years of United States shareholders within which or with which such taxable years of foreign corporations end, see section 1501(d) of Pub. L. 104–188, set out as a note under section 904 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13231(e), Aug. 10, 1993, 107 Stat. 501, provided that: ''The amendments made by this section [enacting section 956A of this title and amending this section and sections 959, 989, 1293, 1296, and 1297 of this title] shall apply to taxable years of foreign corporations beginning after September 30, 1993, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end.''

Pub. L. 103–66, title XIII, §13232(d), Aug. 10, 1993, 107 Stat. 502, provided that: ''The amendments made by this section [amending this section and section 956 of this title] shall apply to taxable years of controlled foreign corporations beginning after September 30, 1993, and to taxable years of United States shareholders in which or with which such taxable years of controlled foreign corporations end.''

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 1235(c) 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.

Amendment by section 1876(c)(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.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §132(d)(2)(A), July 18, 1984, 98 Stat. 667, provided that: ''The amendment made by paragraph (1) of subsection (c) [amending this section] shall apply to taxable years of United States shareholders beginning after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 801(d)(4) 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 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 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 a note under section 954 of this title.

EFFECTIVE DATE

Pub. L. 87–834, §12(c), Oct. 16, 1962, 76 Stat. 1031, provided that: ''The amendments made by this section [enacting this section and sections 952 to 964 and 970 to 972 of this title and amending sections 901, 904, and 1016 of this title] shall apply with respect to taxable years of foreign corporations beginning after December 31, 1962, and to taxable year of United States shareholders within which or with which such taxable years of such foreign corporations end.''

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.

§ 951A. Global intangible low-taxed income included in gross income of United States shareholders

(a) In general

Each person who is a United States shareholder of any controlled foreign corporation for any taxable year of such United States shareholder shall include in gross income such shareholder's global intangible low-taxed income for such taxable year.

(b) Global intangible low-taxed income

For purposes of this section—

(1) In general

The term ''global intangible low-taxed income'' means, with respect to any United States shareholder for any taxable year of such United States shareholder, the excess (if any) of—

(A) such shareholder's net CFC tested income for such taxable year, over

(B) such shareholder's net deemed tangible income return for such taxable year.

(2) Net deemed tangible income return

The term ''net deemed tangible income return'' means, with respect to any United States shareholder for any taxable year, the excess of—

(A) 10 percent of the aggregate of such shareholder's pro rata share of the qualified business asset investment of each controlled foreign corporation with respect to which such shareholder is a United States shareholder for such taxable year (determined for each taxable year of each such controlled foreign corporation which ends in or with such taxable year of such United States shareholder), over

(B) the amount of interest expense taken into account under subsection (c)(2)(A)(ii) in determining the shareholder's net CFC tested income for the taxable year to the extent the interest income attributable to such expense is not taken into account in determining such shareholder's net CFC tested income.

(c) Net CFC tested income

For purposes of this section—

(1) In general

The term ''net CFC tested income'' means, with respect to any United States shareholder for any taxable year of such United States shareholder, the excess (if any) of—

(A) the aggregate of such shareholder's pro rata share of the tested income of each controlled foreign corporation with respect to which such shareholder is a United States shareholder for such taxable year of such United States shareholder (determined for each taxable year of such controlled foreign corporation which ends in or with such taxable year of such United States shareholder), over

(B) the aggregate of such shareholder's pro rata share of the tested loss of each controlled foreign corporation with respect to which such shareholder is a United States shareholder for such taxable year of such United States shareholder (determined for each taxable year of such controlled foreign corporation which ends in or with such taxable year of such United States shareholder).

(2) Tested income; tested loss

For purposes of this section—

(A) Tested income

The term ''tested income'' means, with respect to any controlled foreign corporation for any taxable year of such controlled foreign corporation, the excess (if any) of—

(i) the gross income of such corporation determined without regard to—

(I) any item of income described in section 952(b),

(II) any gross income taken into account in determining the subpart F income of such corporation,

(III) any gross income excluded from the foreign base company income (as defined in section 954) and the insurance income (as defined in section 953) of such corporation by reason of section 954(b)(4),

(IV) any dividend received from a related person (as defined in section 954(d)(3)), and

(V) any foreign oil and gas extraction income (as defined in section 907(c)(1)) of such corporation, over

(ii) the deductions (including taxes) properly allocable to such gross income under rules similar to the rules of section 954(b)(5) (or to which such deductions would be allocable if there were such gross income).

(B) Tested loss

(i) In general

The term ''tested loss'' means, with respect to any controlled foreign corporation for any taxable year of such controlled foreign corporation, the excess (if any) of the amount described in subparagraph (A)(ii) over the amount described in subparagraph (A)(i).

(ii) Coordination with subpart F to deny double benefit of losses

Section 952(c)(1)(A) shall be applied by increasing the earnings and profits of the controlled foreign corporation by the tested loss of such corporation.

(d) Qualified business asset investment

For purposes of this section—

(1) In general

The term ''qualified business asset investment'' means, with respect to any controlled foreign corporation for any taxable year, the average of such corporation's aggregate adjusted bases as of the close of each quarter of such taxable year in specified tangible property—

(A) used in a trade or business of the corporation, and

(B) of a type with respect to which a deduction is allowable under section 167.

(2) Specified tangible property

(A) In general

The term ''specified tangible property'' means, except as provided in subparagraph (B), any tangible property used in the production of tested income.

(B) Dual use property

In the case of property used both in the production of tested income and income which is not tested income, such property shall be treated as specified tangible property in the same proportion that the gross income described in subsection (c)(1)(A) produced with respect to such property bears to the total gross income produced with respect to such property.

(3)[1] Determination of adjusted basis

For purposes of this subsection, notwithstanding any provision of this title (or any other provision of law) which is enacted after the date of the enactment of this section, the adjusted basis in any property shall be determined—

[1] So in original. There are two pars. designated (3).

(A) by using the alternative depreciation system under section 168(g), and

(B) by allocating the depreciation deduction with respect to such property ratably to each day during the period in the taxable year to which such depreciation relates.

(3) [1] Partnership property

For purposes of this subsection, if a controlled foreign corporation holds an interest in a partnership at the close of such taxable year of the controlled foreign corporation, such controlled foreign corporation shall take into account under paragraph (1) the controlled foreign corporation's distributive share of the aggregate of the partnership's adjusted bases (determined as of such date in the hands of the partnership) in tangible property held by such partnership to the extent such property—

(A) is used in the trade or business of the partnership,

(B) is of a type with respect to which a deduction is allowable under section 167, and

(C) is used in the production of tested income (determined with respect to such controlled foreign corporation's distributive share of income with respect to such property).

For purposes of this paragraph, the controlled foreign corporation's distributive share of the adjusted basis of any property shall be the controlled foreign corporation's distributive share of income with respect to such property.

(4) Regulations

The Secretary shall issue such regulations or other guidance as the Secretary determines appropriate to prevent the avoidance of the purposes of this subsection, including regulations or other guidance which provide for the treatment of property if—

(A) such property is transferred, or held, temporarily, or

(B) the avoidance of the purposes of this paragraph is a factor in the transfer or holding of such property.

(e) Determination of pro rata share, etc.

For purposes of this section—

(1) In general

The pro rata shares referred to in subsections (b), (c)(1)(A), and (c)(1)(B), respectively, shall be determined under the rules of section 951(a)(2) in the same manner as such section applies to subpart F income and shall be taken into account in the taxable year of the United States shareholder in which or with which the taxable year of the controlled foreign corporation ends.

(2) Treatment as United States shareholder

A person shall be treated as a United States shareholder of a controlled foreign corporation for any taxable year of such person only if such person owns (within the meaning of section 958(a)) stock in such foreign corporation on the last day in the taxable year of such foreign corporation on which such foreign corporation is a controlled foreign corporation.

(3) Treatment as controlled foreign corporation

A foreign corporation shall be treated as a controlled foreign corporation for any taxable year if such foreign corporation is a controlled foreign corporation at any time during such taxable year.

(f) Treatment as subpart F income for certain purposes

(1) In general

(A) Application

Except as provided in subparagraph (B), any global intangible low-taxed income included in gross income under subsection (a) shall be treated in the same manner as an amount included under section 951(a)(1)(A) for purposes of applying sections 168(h)(2)(B), 535(b)(10), 851(b), 904(h)(1), 959, 961, 962, 993(a)(1)(E), 996(f)(1), 1248(b)(1), 1248(d)(1), 6501(e)(1)(C), 6654(d)(2)(D), and 6655(e)(4).

(B) Exception

The Secretary shall provide rules for the application of subparagraph (A) to other provisions of this title in any case in which the determination of subpart F income is required to be made at the level of the controlled foreign corporation.

(2) Allocation of global intangible low-taxed income to controlled foreign corporations

For purposes of the sections referred to in paragraph (1), with respect to any controlled foreign corporation any pro rata amount from which is taken into account in determining the global intangible low-taxed income included in gross income of a United States shareholder under subsection (a), the portion of such global intangible low-taxed income which is treated as being with respect to such controlled foreign corporation is—

(A) in the case of a controlled foreign corporation with no tested income, zero, and

(B) in the case of a controlled foreign corporation with tested income, the portion of such global intangible low-taxed income which bears the same ratio to such global intangible low-taxed income as—

(i) such United States shareholder's pro rata amount of the tested income of such controlled foreign corporation, bears to

(ii) the aggregate amount described in subsection (c)(1)(A) with respect to such United States shareholder.

(Added Pub. L. 115–97, title I, §14201(a), Dec. 22, 2017, 131 Stat. 2208.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (d)(3), is the date of the enactment of Pub. L. 115–97, which was approved Dec. 22, 2017.

EFFECTIVE DATE

Section 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 14201(d) of Pub. L. 115–97, set out as an Effective Date of 2017 Amendment note under section 904 of this title.

§ 952. Subpart F income defined

(a) In general

For purposes of this subpart, the term ''subpart F income'' means, in the case of any controlled foreign corporation, the sum of—

(1) insurance income (as defined under section 953),

(2) the foreign base company income (as determined under section 954),

(3) an amount equal to the product of—

(A) the income of such corporation other than income which—

(i) is attributable to earnings and profits of the foreign corporation included in the gross income of a United States person under section 951 (other than by reason of this paragraph), or

(ii) is described in subsection (b),

multiplied by

(B) the international boycott factor (as determined under section 999),

(4) the sum of the amounts of any illegal bribes, kickbacks, or other payments (within the meaning of section 162(c)) paid by or on behalf of the corporation during the taxable year of the corporation directly or indirectly to an official, employee, or agent in fact of a government, and

(5) the income of such corporation derived from any foreign country during any period during which section 901(j) applies to such foreign country.

The payments referred to in paragraph (4) are payments which would be unlawful under the Foreign Corrupt Practices Act of 1977 if the payor were a United States person. For purposes of paragraph (5), the income described therein shall be reduced, under regulations prescribed by the Secretary, so as to take into account deductions (including taxes) properly allocable to such income.

(b) Exclusion of United States income

In the case of a controlled foreign corporation, subpart F income does not include any item of income from sources within the United States which is effectively connected with the conduct by such corporation of a trade or business within the United States unless such item is exempt from taxation (or is subject to a reduced rate of tax) pursuant to a treaty obligation of the United States. For purposes of this subsection, any exemption (or reduction) with respect to the tax imposed by section 884 shall not be taken into account.

(c) Limitation

(1) In general

(A) Subpart F income limited to current earnings and profits

For purposes of subsection (a), the subpart F income of any controlled foreign corporation for any taxable year shall not exceed the earnings and profits of such corporation for such taxable year.

(B) Certain prior year deficits may be taken into account

(i) In general

The amount included in the gross income of any United States shareholder under section 951(a)(1)(A) for any taxable year and attributable to a qualified activity shall be reduced by the amount of such shareholder's pro rata share of any qualified deficit.

(ii) Qualified deficit

The term ''qualified deficit'' means any deficit in earnings and profits of the controlled foreign corporation for any prior taxable year which began after December 31, 1986, and for which the controlled foreign corporation was a controlled foreign corporation; but only to the extent such deficit—

(I) is attributable to the same qualified activity as the activity giving rise to the income being offset, and

(II) has not previously been taken into account under this subparagraph.

In determining the deficit attributable to qualified activities described in subclause (II) or (III) of clause (iii),[1] deficits in earnings and profits (to the extent not previously taken into account under this section) for taxable years beginning after 1962 and before 1987 also shall be taken into account. In the case of the qualified activity described in clause (iii)(I),[1] the rule of the preceding sentence shall apply, except that ''1982'' shall be substituted for ''1962''.

(iii) Qualified activity

For purposes of this paragraph, the term ''qualified activity'' means any activity giving rise to—

(I) foreign base company sales income,

(II) foreign base company services income,

(III) in the case of a qualified insurance company, insurance income or foreign personal holding company income, or

(IV) in the case of a qualified financial institution, foreign personal holding company income.

(iv) Pro rata share

For purposes of this paragraph, the shareholder's pro rata share of any deficit for any prior taxable year shall be determined under rules similar to rules under section 951(a)(2) for whichever of the following yields the smaller share:

(I) the close of the taxable year, or

(II) the close of the taxable year in which the deficit arose.

(v) Qualified insurance company

For purposes of this subparagraph, the term ''qualified insurance company'' means any controlled foreign corporation predominantly engaged in the active conduct of an insurance business in the taxable year and in the prior taxable years in which the deficit arose.

(vi) Qualified financial institution

For purposes of this paragraph, the term ''qualified financial institution'' means any controlled foreign corporation predominantly engaged in the active conduct of a banking, financing, or similar business in the taxable year and in the prior taxable year in which the deficit arose.

[1] See References in Text note below.

(vii) Special rules for insurance income

(I) In general

An election may be made under this clause to have section 953(a) applied for purposes of this title without regard to the same country exception under paragraph (1)(A) thereof. Such election, once made, may be revoked only with the consent of the Secretary.

(II) Special rules for affiliated groups

In the case of an affiliated group of corporations (within the meaning of section 1504 but without regard to section 1504(b)(3) and by substituting ''more than 50 percent'' for ''at least 80 percent'' each place it appears), no election may be made under subclause (I) for any controlled foreign corporation unless such election is made for all other controlled foreign corporations who are members of such group and who were created or organized under the laws of the same country as such controlled foreign corporation. For purposes of clause (v), in determining whether any controlled corporation described in the preceding sentence is a qualified insurance company, all such corporations shall be treated as 1 corporation.

(C) Certain deficits of member of the same chain of corporations may be taken into account

(i) In general

A controlled foreign corporation may elect to reduce the amount of its subpart F income for any taxable year which is attributable to any qualified activity by the amount of any deficit in earnings and profits of a qualified chain member for a taxable year ending with (or within) the taxable year of such controlled foreign corporation to the extent such deficit is attributable to such activity. To the extent any deficit reduces subpart F income under the preceding sentence, such deficit shall not be taken into account under subparagraph (B).

(ii) Qualified chain member

For purposes of this subparagraph, the term ''qualified chain member'' means, with respect to any controlled foreign corporation, any other corporation which is created or organized under the laws of the same foreign country as the controlled foreign corporation but only if—

(I) all the stock of such other corporation (other than directors' qualifying shares) is owned at all times during the taxable year in which the deficit arose (directly or through 1 or more corporations other than the common parent) by such controlled foreign corporation, or

(II) all the stock of such controlled foreign corporation (other than directors' qualifying shares) is owned at all times during the taxable year in which the deficit arose (directly or through 1 or more corporations other than the common parent) by such other corporation.

(iii) Coordination

This subparagraph shall be applied after subparagraphs (A) and (B).

(2) Recharacterization in subsequent taxable years

If the subpart F income of any controlled foreign corporation for any taxable year was reduced by reason of paragraph (1)(A), any excess of the earnings and profits of such corporation for any subsequent taxable year over the subpart F income of such foreign corporation for such taxable year shall be recharacterized as subpart F income under rules similar to the rules applicable under section 904(f)(5).

(3) Special rule for determining earnings and profits

For purposes of this subsection, earnings and profits of any controlled foreign corporation shall be determined without regard to paragraphs (4), (5), and (6) of section 312(n). Under regulations, the preceding sentence shall not apply to the extent it would increase earnings and profits by an amount which was previously distributed by the controlled foreign corporation.

(d) Income derived from foreign country

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of subsection (a)(5), including regulations which treat income paid through 1 or more entities as derived from a foreign country to which section 901(j) applies if such income was, without regard to such entities, derived from such country.

(Added Pub. L. 87–834, §12(a), Oct. 16, 1962, 76 Stat. 1008; amended Pub. L. 89–809, title I, §104(j), Nov. 13, 1966, 80 Stat. 1562; Pub. L. 94–455, title X, §§1062, 1065(a)(1), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1650, 1653, 1834; Pub. L. 97–248, title II, §288(b)(1), Sept. 3, 1982, 96 Stat. 571; Pub. L. 99–509, title VIII, §8041(b), Oct. 21, 1986, 100 Stat. 1963; Pub. L. 99–514, title XII, §1221(b)(3)(A), (f), title XVIII, §1876(c)(1), Oct. 22, 1986, 100 Stat. 2552, 2554, 2898; Pub. L. 100–647, title I, §1012(i)(16), (22)–(25)(A), title VI, §6131(a), Nov. 10, 1988, 102 Stat. 3510–3512, 3720; Pub. L. 105–34, title XI, §1112(c)(1), Aug. 5, 1997, 111 Stat. 969; Pub. L. 108–357, title IV, §415(c)(1), Oct. 22, 2004, 118 Stat. 1511; Pub. L. 109–135, title IV, §412(kk), Dec. 21, 2005, 119 Stat. 2639; Pub. L. 110–172, §11(g)(14), Dec. 29, 2007, 121 Stat. 2490; Pub. L. 115–97, title I, §§14211(b)(1), 14212(b)(1)(C), Dec. 22, 2017, 131 Stat. 2217.)

REFERENCES IN TEXT

The Foreign Corrupt Practices Act of 1977, referred to in subsec. (a), is title I of Pub. L. 95–213, Dec. 19, 1977, 91 Stat. 1494, as amended, which enacted sections 78dd–1 to 78dd–3 of Title 15, Commerce and Trade, and amended sections 78m and 78ff of Title 15. For complete classification of this Act to the Code, see Short Title of 1977 Amendment note set out under section 78a of Title 15 and Tables.

Clause (iii), referred to in subsec. (c)(1)(B)(ii), means cl. (iii) of subsec. (c)(1)(B), which was amended by Pub. L. 115–97, §14211(b)(1). As amended, subcl. (I) was struck out and subcls. (II) and (III) were redesignated (I) and (II), respectively. See 2017 Amendment note below.

AMENDMENTS

2017—Subsec. (c)(1)(B)(i). Pub. L. 115–97, § 14212(b)(1)(C), substituted ''section 951(a)(1)(A)'' for ''section 951(a)(1)(A)(i)''.

Subsec. (c)(1)(B)(iii). Pub. L. 115–97, § 14211(b)(1), redesignated subcls. (II) to (V) as (I) to (IV), respectively, and struck out former subcl. (I) which read as follows: ''foreign base company oil related income,''.

2007—Subsec. (b). Pub. L. 110–172 struck out second sentence which read as follows: ''For purposes of the preceding sentence, income described in paragraph (2) or (3) of section 921(d) shall be treated as derived from sources within the United States.''

2005—Subsec. (c)(1)(B)(ii). Pub. L. 109–135 substituted ''subclause (II) or (III) of clause (iii)'' for ''clause (iii)(III) or (IV)'' and ''clause (iii)(I)'' for ''clause (iii)(II)'' in concluding provisions.

2004—Subsec. (c)(1)(B)(iii). Pub. L. 108–357 redesignated subcls. (II) to (VI) as (I) to (V), respectively, and struck out former subcl. (I) which read as follows: ''foreign base company shipping income,''.

1997—Subsec. (b). Pub. L. 105–34 inserted at end ''For purposes of this subsection, any exemption (or reduction) with respect to the tax imposed by section 884 shall not be taken into account.''

1988—Subsec. (c)(1)(B)(ii). Pub. L. 100–647, § 1012(i)(24), inserted at end ''In determining the deficit attributable to qualified activities described in clause (iii)(III) or (IV), deficits in earnings and profits (to the extent not previously taken into account under this section) for taxable years beginning after 1962 and before 1987 also shall be taken into account. In the case of the qualified activity described in clause (iii)(II), the rule of the preceding sentence shall apply, except that '1982' shall be substituted for '1962'.''

Subsec. (c)(1)(B)(iii)(III) to (VI). Pub. L. 100–647, § 1012(i)(22), (23), added subcls. (III) and (IV), redesignated former subcl. (III) as (V) and substituted ''insurance income or foreign personal holding company income,'' for ''insurance income'', and redesignated former subcl. (IV) as (VI).

Subsec. (c)(1)(B)(vii). Pub. L. 100–647, § 6131(a), added cl. (vii).

Subsec. (c)(1)(C). Pub. L. 100–647, § 1012(i)(25)(A), added subpar. (C).

Subsec. (c)(3). Pub. L. 100–647, § 1012(i)(16), added par. (3).

1986—Subsec. (a). Pub. L. 99–509, § 8041(b)(1), added par. (5) and last sentence.

Subsec. (a)(1). Pub. L. 99–514, § 1221(b)(3)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''the income derived from the insurance of United States risks (as determined under section 953), and''.

Subsec. (b). Pub. L. 99–514, § 1876(c)(1), inserted last sentence.

Subsec. (c). Pub. L. 99–514, § 1221(f), added subsec. (c) and struck out former subsec. (c) which read as follows: ''For purposes of subsection (a), the subpart F income of any controlled foreign corporation for any taxable year shall not exceed the earnings and profits of such corporation for such year reduced by the amount (if any) by which—

''(1) an amount equal to—

''(A) the sum of the deficits in earnings and profits for prior taxable years beginning after December 31, 1962, plus

''(B) the sum of the deficits in earnings and profits for taxable years beginning after December 31, 1959, and before January 1, 1963 (reduced by the sum of the earnings and profits for such taxable years); exceeds

''(2) an amount equal to the sum of the earnings and profits for prior taxable years beginning after December 31, 1962, allocated to other earnings and profits under section 959(c)(3).

For purposes of the preceding sentence, any deficit in earnings and profits for any prior taxable year shall be taken into account under paragraph (1) for any taxable year only to the extent it has not been taken into account under such paragraph for any preceding taxable year to reduce earnings and profits of such preceding year.''

Subsec. (d). Pub. L. 99–509, § 8041(b)(2), added subsec. (d).

Pub. L. 99–514, § 1221(f), struck out subsec. (d), special rule in case of indirect ownership, which read as follows: ''For purposes of subsection (c), if—

''(1) a United States shareholder owns (within the meaning of section 958(a)) stock of a foreign corporation, and by reason of such ownership owns (within the meaning of such section) stock of any other foreign corporation, and

''(2) any of such foreign corporations has a deficit in earnings and profits for the taxable year,

then the earnings and profits for the taxable year of each such foreign corporation which is a controlled foreign corporation shall, with respect to such United States shareholder, be properly reduced to take into account any deficit described in paragraph (2) in such manner as the Secretary shall prescribe by regulations.''

1982—Subsec. (a). Pub. L. 97–248 inserted provision that the payments referred to in par. (4) are payments which would be unlawful under the Foreign Corrupt Practices Act of 1977 if the payor were a United States person.

1976—Subsec. (a)(3). Pub. L. 94–455, § 1062(a), added par. (3).

Subsec. (a)(4). Pub. L. 94–455, § 1065(a)(1), added par. (4).

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

1966—Subsec. (b). Pub. L. 89–809 substituted ''In the case of a controlled foreign corporation, subpart F income does not include any item of income from sources within the United States which is effectively connected with the conduct by such corporation of a trade or business within the United States unless such item is exempt from taxation (or is subject to a reduced rate of tax) pursuant to a treaty obligation of the United States'' for ''Subpart F income does not include any item includible in gross income under this chapter (other than this subpart) as income derived from sources within the United States of a foreign corporation engaged in trade or business in the United States''.

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–97, title I, § 14211(c), Dec. 22, 2017, 131 Stat. 2217, provided that: ''The amendments made by this section [amending this section and section 954 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 2017, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.''

Amendment by section 14212(b)(1)(C) 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 14212(c) of Pub. L. 115–97, set out as a note under section 851 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title IV, § 415(d), Oct. 22, 2004, 118 Stat. 1511, provided that: ''The amendments made by this section [amending this section and section 954 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.''

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XI, § 1112(c)(2), Aug. 5, 1997, 111 Stat. 970, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1986.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1012(i)(16), (22)–(25)(A) 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, §6131(b), Nov. 10, 1988, 102 Stat. 3720, provided that: ''The amendment made by this section [amending this section] shall take effect as if included in the amendments made by section 1221(f) of the Reform Act [Pub. L. 99–514].''

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 1221(b)(3)(A), (f) 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.

Amendment by section 1876(c)(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.

Amendment by Pub. L. 99–509 effective Jan. 1, 1987, see section 8041(c) of Pub. L. 99–509, set out as a note under section 901 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to payments made after Sept. 3, 1982, see section 288(c) of Pub. L. 97–248, set out as a note under section 162 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1062 of Pub. L. 94–455 applicable to participation in or cooperation with an international boycott more than 30 days after Oct. 4, 1976, see section 1066(a) of Pub. L. 94–455, set out as a note under section 908 of this title.

Pub. L. 94–455, title X, §1066(b), Oct. 4, 1976, 90 Stat. 1654, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by section 1065 [amending this section and sections 995 and 964 of this title] apply to payments described in section 162(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] made more than 30 days after the date of enactment of this Act [Oct. 4, 1976].''

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.

DETERMINATION OF CORPORATE EARNINGS AND PROFITS FOR PURPOSES OF APPLYING SUBSECTION (c)(1)(A)

Pub. L. 100–647, title I, §1012(i)(6), Nov. 10, 1988, 102 Stat. 3508, provided that: ''For purposes of applying section 952(c)(1)(A) of the 1986 Code, the earnings and profits of any corporation shall be determined without regard to any increase in earnings and profits under section 1023(e)(3)(C) of the Reform Act [Pub. L. 99–514, set out as an Effective Date note under section 846 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.

§ 953. Insurance income

(a) Insurance income

(1) In general

For purposes of section 952(a)(1), the term ''insurance income'' means any income which—

(A) is attributable to the issuing (or reinsuring) of an insurance or annuity contract, and

(B) would (subject to the modifications provided by subsection (b)) be taxed under subchapter L of this chapter if such income were the income of a domestic insurance company.

(2) Exception

Such term shall not include any exempt insurance income (as defined in subsection (e)).

(b) Special rules

For purposes of subsection (a)—

(1) The following provisions of subchapter L shall not apply:

(A) So much of section 805(a)(8) as relates to the deduction allowed under section 172.

(B) Section 832(c)(5) (relating to certain capital losses).

(2) The items referred to in—

(A) section 803(a)(1) (relating to gross amount of premiums and other considerations),

(B) section 803(a)(2) (relating to net decrease in reserves),

(C) section 805(a)(2) (relating to net increase in reserves), and

(D) section 832(b)(4) (relating to premiums earned on insurance contracts),

shall be taken into account only to the extent they are in respect of any reinsurance or the issuing of any insurance or annuity contract described in subsection (a)(1).

(3) Reserves for any insurance or annuity contract shall be determined in the same manner as under section 954(i).

(4) All items of income, expenses, losses, and deductions shall be properly allocated or apportioned under regulations prescribed by the Secretary.

(c) Special rule for certain captive insurance companies

(1) In general

For purposes only of taking into account related person insurance income—

(A) the term ''United States shareholder'' means, with respect to any foreign corporation, a United States person (as defined in section 957(c)) who owns (within the meaning of section 958(a)) any stock of the foreign corporation,

(B) the term ''controlled foreign corporation'' has the meaning given to such term by section 957(a) determined by substituting ''25 percent or more'' for ''more than 50 percent'', and

(C) the pro rata share referred to in section 951(a)(1)(A) shall be determined under paragraph (5) of this subsection.

(2) Related person insurance income

For purposes of this subsection, the term ''related person insurance income'' means any insurance income (within the meaning of subsection (a)) attributable to a policy of insurance or reinsurance with respect to which the person (directly or indirectly) insured is a United States shareholder in the foreign cor-

poration or a related person to such a shareholder.

(3) Exceptions

(A) Corporations not held by insureds

Paragraph (1) shall not apply to any foreign corporation if at all times during the taxable year of such foreign corporation—

(i) less than 20 percent of the total combined voting power of all classes of stock of such corporation entitled to vote, and

(ii) less than 20 percent of the total value of such corporation,

is owned (directly or indirectly under the principles of section 883(c)(4)) by persons who are (directly or indirectly) insured under any policy of insurance or reinsurance issued by such corporation or who are related persons to any such person.

(B) De minimis exception

Paragraph (1) shall not apply to any foreign corporation for a taxable year of such corporation if the related person insurance income (determined on a gross basis) of such corporation for such taxable year is less than 20 percent of its insurance income (as so determined) for such taxable year determined without regard to those provisions of subsection (a)(1) which limit insurance income to income from countries other than the country in which the corporation was created or organized.

(C) Election to treat income as effectively connected

Paragraph (1) shall not apply to any foreign corporation for any taxable year if—

(i) such corporation elects (at such time and in such manner as the Secretary may prescribe)—

(I) to treat its related person insurance income for such taxable year as income effectively connected with the conduct of a trade or business in the United States, and

(II) to waive all benefits (other than with respect to section 884) with respect to related person insurance income granted by the United States under any treaty between the United States and any foreign country, and

(ii) such corporation meets such requirements as the Secretary shall prescribe to ensure that the tax imposed by this chapter on such income is paid.

An election under this subparagraph made for any taxable year shall not be effective if the corporation (or any predecessor thereof) was a disqualified corporation for the taxable year for which the election was made or for any prior taxable year beginning after 1986.

(D) Special rules for subparagraph (C)

(i) Period during which election in effect

(I) In general

Except as provided in subclause (II), any election under subparagraph (C) shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

(II) Termination

If a foreign corporation which made an election under subparagraph (C) for any taxable year is a disqualified corporation for any subsequent taxable year, such election shall not apply to any taxable year beginning after such subsequent taxable year.

(ii) Exemption from tax imposed by section 4371

The tax imposed by section 4371 shall not apply with respect to any related person insurance income treated as effectively connected with the conduct of a trade or business within the United States under subparagraph (C).

(E) Disqualified corporation

For purposes of this paragraph the term ''disqualified corporation'' means, with respect to any taxable year, any foreign corporation which is a controlled foreign corporation for an uninterrupted period of 30 days or more during such taxable year (determined without regard to this subsection) but only if a United States shareholder (determined without regard to this subsection) owns (within the meaning of section 958(a)) stock in such corporation at some time during such taxable year.

(4) Treatment of mutual insurance companies

In the case of a mutual insurance company—

(A) this subsection shall apply,

(B) policyholders of such company shall be treated as shareholders, and

(C) appropriate adjustments in the application of this subpart shall be made under regulations prescribed by the Secretary.

(5) Determination of pro rata share

(A) In general

The pro rata share determined under this paragraph for any United States shareholder is the lesser of—

(i) the amount which would be determined under paragraph (2) of section 951(a) if—

(I) only related person insurance income were taken into account,

(II) stock owned (within the meaning of section 958(a)) by United States shareholders on the last day of the taxable year were the only stock in the foreign corporation, and

(III) only distributions received by United States shareholders were taken into account under subparagraph (B) of such paragraph (2), or

(ii) the amount which would be determined under paragraph (2) of section 951(a) if the entire earnings and profits of the foreign corporation for the taxable year were subpart F income.

(B) Coordination with other provisions

The Secretary shall prescribe regulations providing for such modifications to the pro-

visions of this subpart as may be necessary or appropriate by reason of subparagraph (A).

(6) Related person

For purposes of this subsection—

(A) In general

Except as provided in subparagraph (B), the term ''related person'' has the meaning given such term by section 954(d)(3).

(B) Treatment of certain liability insurance policies

In the case of any policy of insurance covering liability arising from services performed as a director, officer, or employee of a corporation or as a partner or employee of a partnership, the person performing such services and the entity for which such services are performed shall be treated as related persons.

(7) Coordination with section 1248

For purposes of section 1248, if any person is (or would be but for paragraph (3)) treated under paragraph (1) as a United States shareholder with respect to any foreign corporation which would be taxed under subchapter L if it were a domestic corporation and which is (or would be but for paragraph (3)) treated under paragraph (1) as a controlled foreign corporation—

(A) such person shall be treated as meeting the stock ownership requirements of section 1248(a)(2) with respect to such foreign corporation, and

(B) such foreign corporation shall be treated as a controlled foreign corporation.

(8) Regulations

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

(A) regulations preventing the avoidance of this subsection through cross insurance arrangements or otherwise, and

(B) regulations which may provide that a person will not be treated as a United States shareholder under paragraph (1) with respect to any foreign corporation if neither such person (nor any related person to such person) is (directly or indirectly) insured under any policy of insurance or reinsurance issued by such foreign corporation.

(d) Election by foreign insurance company to be treated as domestic corporation

(1) In general

If—

(A) a foreign corporation is a controlled foreign corporation (as defined in section 957(a) by substituting ''25 percent or more'' for ''more than 50 percent'' and by using the definition of United States shareholder under 953(c)(1)(A)),

(B) such foreign corporation would qualify under part I or II of subchapter L for the taxable year if it were a domestic corporation,

(C) such foreign corporation meets such requirements as the Secretary shall prescribe to ensure that the taxes imposed by this chapter on such foreign corporation are paid, and

(D) such foreign corporation makes an election to have this paragraph apply and waives all benefits to such corporation granted by the United States under any treaty,

for purposes of this title, such corporation shall be treated as a domestic corporation.

(2) Period during which election is in effect

(A) In general

Except as provided in subparagraph (B), an election under paragraph (1) shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

(B) Termination

If a corporation which made an election under paragraph (1) for any taxable year fails to meet the requirements of subparagraphs (A), (B), and (C), of paragraph (1) for any subsequent taxable year, such election shall not apply to any taxable year beginning after such subsequent taxable year.

(3) Treatment of losses

If any corporation treated as a domestic corporation under this subsection is treated as a member of an affiliated group for purposes of chapter 6 (relating to consolidated returns), any loss of such corporation shall be treated as a dual consolidated loss for purposes of section 1503(d) without regard to paragraph (2)(B) thereof.

(4) Effect of election

(A) In general

For purposes of section 367, any foreign corporation making an election under paragraph (1) shall be treated as transferring (as of the 1st day of the 1st taxable year to which such election applies) all of its assets to a domestic corporation in connection with an exchange to which section 354 applies.

(B) Exception for pre-1988 earnings and profit

(i) In general

Earnings and profits of the foreign corporation accumulated in taxable years beginning before January 1, 1988, shall not be included in the gross income of the persons holding stock in such corporation by reason of subparagraph (A).

(ii) Treatment of distributions

For purposes of this title, any distribution made by a corporation to which an election under paragraph (1) applies out of earnings and profits accumulated in taxable years beginning before January 1, 1988, shall be treated as a distribution made by a foreign corporation.

(iii) Certain rules to continue to apply to pre-1988 earnings

The provisions specified in clause (iv) shall be applied without regard to paragraph (1), except that, in the case of a cor-

poration to which an election under paragraph (1) applies, only earnings and profits accumulated in taxable years beginning before January 1, 1988, shall be taken into account.

(iv) Specified provisions

The provisions specified in this clause are:

(I) Section 1248 (relating to gain from certain sales or exchanges of stock in certain foreign corporations).

(II) Subpart F of part III of subchapter N to the extent such subpart relates to earnings invested in United States property.

(III) Section 884 to the extent the foreign corporation reinvested 1987 earnings and profits in United States assets.

(5) Effect of termination

For purposes of section 367, if—

(A) an election is made by a corporation under paragraph (1) for any taxable year, and

(B) such election ceases to apply for any subsequent taxable year,

such corporation shall be treated as a domestic corporation transferring (as of the 1st day of such subsequent taxable year) all of its property to a foreign corporation in connection with an exchange to which section 354 applies.

(6) Additional tax on corporation making election

(A) In general

If a corporation makes an election under paragraph (1), the amount of tax imposed by this chapter for the 1st taxable year to which such election applies shall be increased by the amount determined under subparagraph (B).

(B) Amount of tax

The amount of tax determined under this paragraph shall be equal to the lesser of—

(i) ¾ of 1 percent of the aggregate amount of capital and accumulated surplus of the corporation as of December 31, 1987, or

(ii) $1,500,000.

(e) Exempt insurance income

For purposes of this section—

(1) Exempt insurance income defined

(A) In general

The term ''exempt insurance income'' means income derived by a qualifying insurance company which—

(i) is attributable to the issuing (or reinsuring) of an exempt contract by such company or a qualifying insurance company branch of such company, and

(ii) is treated as earned by such company or branch in its home country for purposes of such country's tax laws.

(B) Exception for certain arrangements

Such term shall not include income attributable to the issuing (or reinsuring) of an exempt contract as the result of any arrangement whereby another corporation receives a substantially equal amount of premiums or other consideration in respect of issuing (or reinsuring) a contract which is not an exempt contract.

(C) Determinations made separately

For purposes of this subsection and section 954(i), the exempt insurance income and exempt contracts of a qualifying insurance company or any qualifying insurance company branch of such company shall be determined separately for such company and each such branch by taking into account—

(i) in the case of the qualifying insurance company, only items of income, deduction, gain, or loss, and activities of such company not properly allocable or attributable to any qualifying insurance company branch of such company, and

(ii) in the case of a qualifying insurance company branch, only items of income, deduction, gain, or loss and activities properly allocable or attributable to such branch.

(2) Exempt contract

(A) In general

The term ''exempt contract'' means an insurance or annuity contract issued or reinsured by a qualifying insurance company or qualifying insurance company branch in connection with property in, liability arising out of activity in, or the lives or health of residents of, a country other than the United States.

(B) Minimum home country income required

(i) In general

No contract of a qualifying insurance company or of a qualifying insurance company branch shall be treated as an exempt contract unless such company or branch derives more than 30 percent of its net written premiums from exempt contracts (determined without regard to this subparagraph)—

(I) which cover applicable home country risks, and

(II) with respect to which no policyholder, insured, annuitant, or beneficiary is a related person (as defined in section 954(d)(3)).

(ii) Applicable home country risks

The term ''applicable home country risks'' means risks in connection with property in, liability arising out of activity in, or the lives or health of residents of, the home country of the qualifying insurance company or qualifying insurance company branch, as the case may be, issuing or reinsuring the contract covering the risks.

(C) Substantial activity requirements for cross border risks

A contract issued by a qualifying insurance company or qualifying insurance company branch which covers risks other than applicable home country risks (as defined in

subparagraph (B)(ii)) shall not be treated as an exempt contract unless such company or branch, as the case may be—

(i) conducts substantial activity with respect to an insurance business in its home country, and

(ii) performs in its home country substantially all of the activities necessary to give rise to the income generated by such contract.

(3) Qualifying insurance company

The term ''qualifying insurance company'' means any controlled foreign corporation which—

(A) is subject to regulation as an insurance (or reinsurance) company by its home country, and is licensed, authorized, or regulated by the applicable insurance regulatory body for its home country to sell insurance, reinsurance, or annuity contracts to persons other than related persons (within the meaning of section 954(d)(3)) in such home country,

(B) derives more than 50 percent of its aggregate net written premiums from the issuance or reinsurance by such controlled foreign corporation and each of its qualifying insurance company branches of contracts—

(i) covering applicable home country risks (as defined in paragraph (2)) of such corporation or branch, as the case may be, and

(ii) with respect to which no policyholder, insured, annuitant, or beneficiary is a related person (as defined in section 954(d)(3)),

except that in the case of a branch, such premiums shall only be taken into account to the extent such premiums are treated as earned by such branch in its home country for purposes of such country's tax laws, and

(C) is engaged in the insurance business and would be subject to tax under subchapter L if it were a domestic corporation.

(4) Qualifying insurance company branch

The term ''qualifying insurance company branch'' means a qualified business unit (within the meaning of section 989(a)) of a controlled foreign corporation if—

(A) such unit is licensed, authorized, or regulated by the applicable insurance regulatory body for its home country to sell insurance, reinsurance, or annuity contracts to persons other than related persons (within the meaning of section 954(d)(3)) in such home country, and

(B) such controlled foreign corporation is a qualifying insurance company, determined under paragraph (3) as if such unit were a qualifying insurance company branch.

(5) Life insurance or annuity contract

For purposes of this section and section 954, the determination of whether a contract issued by a controlled foreign corporation or a qualified business unit (within the meaning of section 989(a)) is a life insurance contract or an annuity contract shall be made without regard to sections 72(s), 101(f), 817(h), and 7702 if—

(A) such contract is regulated as a life insurance or annuity contract by the corporation's or unit's home country, and

(B) no policyholder, insured, annuitant, or beneficiary with respect to the contract is a United States person.

(6) Home country

For purposes of this subsection, except as provided in regulations—

(A) Controlled foreign corporation

The term ''home country'' means, with respect to a controlled foreign corporation, the country in which such corporation is created or organized.

(B) Qualified business unit

The term ''home country'' means, with respect to a qualified business unit (as defined in section 989(a)), the country in which the principal office of such unit is located and in which such unit is licensed, authorized, or regulated by the applicable insurance regulatory body to sell insurance, reinsurance, or annuity contracts to persons other than related persons (as defined in section 954(d)(3)) in such country.

(7) Anti-abuse rules

For purposes of applying this subsection and section 954(i)—

(A) the rules of section 954(h)(7) (other than subparagraph (B) thereof) shall apply,

(B) there shall be disregarded any item of income, gain, loss, or deduction of, or derived from, an entity which is not engaged in regular and continuous transactions with persons which are not related persons,

(C) there shall be disregarded any change in the method of computing reserves a principal purpose of which is the acceleration or deferral of any item in order to claim the benefits of this subsection or section 954(i),

(D) a contract of insurance or reinsurance shall not be treated as an exempt contract (and premiums from such contract shall not be taken into account for purposes of paragraph (2)(B) or (3)) if—

(i) any policyholder, insured, annuitant, or beneficiary is a resident of the United States and such contract was marketed to such resident and was written to cover a risk outside the United States, or

(ii) the contract covers risks located within and without the United States and the qualifying insurance company or qualifying insurance company branch does not maintain such contemporaneous records, and file such reports, with respect to such contract as the Secretary may require,

(E) the Secretary may prescribe rules for the allocation of contracts (and income from contracts) among 2 or more qualifying insurance company branches of a qualifying insurance company in order to clearly reflect the income of such branches, and

(F) premiums from a contract shall not be taken into account for purposes of paragraph (2)(B) or (3) if such contract reinsures a contract issued or reinsured by a related person (as defined in section 954(d)(3)).

For purposes of subparagraph (D), the determination of where risks are located shall be made under the principles of section 953.

(8) Coordination with subsection (c)

In determining insurance income for purposes of subsection (c), exempt insurance income shall not include income derived from exempt contracts which cover risks other than applicable home country risks.

(9) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection and section 954(i).

(10) Cross reference

For income exempt from foreign personal holding company income, see section 954(i).

(Added Pub. L. 87–834, §12(a), Oct. 16, 1962, 76 Stat. 1008; amended Pub. L. 89–809, title I, §104(m)(2), Nov. 13, 1966, 80 Stat. 1563; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title II, §211(b)(13), July 18, 1984, 98 Stat. 755; Pub. L. 99–514, title XII, §1221(b)(1), (2), (3)(D), Oct. 22, 1986, 100 Stat. 2551, 2553; Pub. L. 100–647, title I, §1012(i)(1)–(3)(B), (4), (5), (7)–(9), (21), title VI, §6135(a), Nov. 10, 1988, 102 Stat. 3507–3509, 3511, 3721; Pub. L. 101–239, title VII, §7816(p), Dec. 19, 1989, 103 Stat. 2423; Pub. L. 105–277, div. J, title I, §1005(b)(1), (3), Oct. 21, 1998, 112 Stat. 2681–893, 2681–899; Pub. L. 106–170, title V, §503(a), (b), Dec. 17, 1999, 113 Stat. 1921; Pub. L. 107–147, title VI, §614(a)(1), Mar. 9, 2002, 116 Stat. 61; Pub. L. 109–222, title I, §103(a)(1), May 17, 2006, 120 Stat. 346; Pub. L. 110–343, div. C, title III, §303(a), Oct. 3, 2008, 122 Stat. 3866; Pub. L. 111–312, title VII, §750(a), (b), Dec. 17, 2010, 124 Stat. 3320; Pub. L. 112–240, title III, §322(a), Jan. 2, 2013, 126 Stat. 2332; Pub. L. 113–295, div. A, title I, §134(a), Dec. 19, 2014, 128 Stat. 4019; Pub. L. 114–113, div. Q, title I, §128(a), Dec. 18, 2015, 129 Stat. 3054; Pub. L. 115–97, title I, §§13511(b)(7), 13512(b)(8), 14212(b)(1)(D), (3), Dec. 22, 2017, 131 Stat. 2142, 2143, 2217.)

AMENDMENTS

2017—Subsec. (b)(1)(A). Pub. L. 115–97, §13512(b)(8), redesignated subpar. (B) as (A) and struck out former subpar. (A) which read as follows: ''The small life insurance company deduction.''

Subsec. (b)(1)(B). Pub. L. 115–97, §13512(b)(8), redesignated subpar. (C) as (B). Former subpar. (B) redesignated (A).

Pub. L. 115–97, §13511(b)(7), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''Section 805(a)(5) (relating to operations loss deduction).''

Subsec. (b)(1)(C). Pub. L. 115–97, §13512(b)(8), redesignated subpar. (C) as (B).

Subsec. (c)(1)(C). Pub. L. 115–97, §14212(b)(1)(D), substituted ''section 951(a)(1)(A)'' for ''section 951(a)(1)(A)(i)''.

Subsec. (d)(4)(B)(iv)(II). Pub. L. 115–97, §14212(b)(3), struck out before period at end ''or amounts referred to in clause (ii) or (iii) of section 951(a)(1)(A)''.

2015—Subsec. (e)(10), (11). Pub. L. 114–113 redesignated par. (11) as (10) and struck out former par. (10). Prior to amendment, text of par. (10) read as follows: ''This subsection and section 954(i) shall apply only to taxable years of a foreign corporation beginning after December 31, 1998, and before January 1, 2015, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends. If this subsection does not apply to a taxable year of a foreign corporation beginning after December 31, 2014 (and taxable years of United States shareholders ending with or within such taxable year), then, notwithstanding the preceding sentence, subsection (a) shall be applied to such taxable years in the same manner as it would if the taxable year of the foreign corporation began in 1998.''

2014—Subsec. (e)(10). Pub. L. 113–295 substituted ''January 1, 2015'' for ''January 1, 2014'' and ''December 31, 2014'' for ''December 31, 2013''.

2013—Subsec. (e)(10). Pub. L. 112–240 substituted ''January 1, 2014'' for ''January 1, 2012'' and ''December 31, 2013'' for ''December 31, 2011''.

2010—Subsec. (e)(10). Pub. L. 111–312 substituted ''January 1, 2012'' for ''January 1, 2010'' and ''December 31, 2011'' for ''December 31, 2009''.

2008—Subsec. (e)(10). Pub. L. 110–343 substituted ''January 1, 2010'' for ''January 1, 2009'' and ''December 31, 2009'' for ''December 31, 2008''.

2006—Subsec. (e)(10). Pub. L. 109–222 substituted ''January 1, 2009'' for ''January 1, 2007'' and ''December 31, 2008'' for ''December 31, 2006''.

2002—Subsec. (e)(10). Pub. L. 107–147 substituted ''January 1, 2007'' for ''January 1, 2002'' and ''December 31, 2006'' for ''December 31, 2001''.

1999—Subsec. (e)(10). Pub. L. 106–170 substituted ''taxable years'' for ''the first taxable year'', ''January 1, 2002'' for ''January 1, 2000'', and ''within which any such'' for ''within which such'', and inserted at end ''If this subsection does not apply to a taxable year of a foreign corporation beginning after December 31, 2001 (and taxable years of United States shareholders ending with or within such taxable year), then, notwithstanding the preceding sentence, subsection (a) shall be applied to such taxable years in the same manner as it would if the taxable year of the foreign corporation began in 1998.''

1998—Subsec. (a). Pub. L. 105–277, §1005(b)(1)(A), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: ''For purposes of section 952(a)(1), the term 'insurance income' means any income which—

''(1) is attributable to the issuing (or reinsuring) of any insurance or annuity contract—

''(A) in connection with property in, liability arising out of activity in, or in connection with the lives or health of residents of, a country other than the country under the laws of which the controlled foreign corporation is created or organized, or

''(B) in connection with risks not described in subparagraph (A) as the result of any arrangement whereby another corporation receives a substantially equal amount of premiums or other consideration in respect of issuing (or reinsuring) a contract described in subparagraph (A), and

''(2) would (subject to the modifications provided by paragraphs (1) and (2) of subsection (b)) be taxed under subchapter L of this chapter if such income were the income of a domestic insurance company.''

Subsec. (b)(3), (4). Pub. L. 105–277, §1005(b)(3), added par. (3) and redesignated former par. (3) as (4).

Subsec. (e). Pub. L. 105–277, §1005(b)(1)(B), added subsec. (e).

1989—Subsec. (d)(3). Pub. L. 101–239 substituted ''for purposes of section 1503(d) without regard to paragraph (2)(B) thereof'' for ''(as defined in section 1503(d))''.

1988—Subsec. (b)(1). Pub. L. 100–647, §1012(i)(7)(A), redesignated par. (2) as (1) and struck out former par. (1) which read as follows: ''A corporation which would, if it were a domestic insurance corporation, be taxable under part II of subchapter L shall apply subsection (a) as if it were taxable under part III of subchapter L.''

Subsec. (b)(1)(A). Pub. L. 100–647, §1012(i)(7)(B), added subpar. (A) and struck out former subpar. (A) which read as follows: ''The special life insurance company deduction and the small life insurance company deduction.''

Subsec. (b)(2) to (4). Pub. L. 100–647, §1012(i)(7)(A), (C), redesignated pars. (3) and (4) as (2) and (3), respectively, and struck out ''(other than those taken into account under paragraph (3))'' after ''and deductions'' in par. (3). Former par. (2) redesignated (1).

Subsec. (c)(1)(C). Pub. L. 100–647, §1012(i)(2)(A), added subpar. (C).

Subsec. (c)(2). Pub. L. 100–647, §1012(i)(3)(A), (4)(B), (5), substituted ''insurance income (within the meaning of subsection (a)) attributable'' for ''insurance income attributable'', ''with respect to which the person (directly or indirectly) insured is'' for ''with respect to which the primary insured is'', and ''related person'' for ''related person (within the meaning of section 954(d)(3))''.

Subsec. (c)(3)(A). Pub. L. 100–647, §1012(i)(3)(B), (4)(B), substituted ''persons who are (directly or indirectly) insured'' for ''persons who are the primary insured'' and ''to any such person'' for ''(within the meaning of section 954(d)(3)) to any such primary insured''.

Subsec. (c)(3)(B). Pub. L. 100–647, §1012(i)(8), substituted ''related person insurance income (determined on a gross basis)'' for ''related person insurance income'' and ''its insurance income (as so determined)'' for ''its insurance income''.

Subsec. (c)(3)(C). Pub. L. 100–647, §1012(i)(1)(A), (9), substituted ''all benefits (other than with respect to section 884)'' for ''all benefits'' and ''granted by the United States under any treaty'' for ''under any income tax treaty'' in cl. (i)(II) and inserted at end ''An election under this subparagraph made for any taxable year shall not be effective if the corporation (or any predecessor thereof) was a disqualified corporation for the taxable year for which the election was made or for any prior taxable year beginning after 1986.''

Subsec. (c)(3)(D)(i). Pub. L. 100–647, §1012(i)(1)(B), substituted ''Period during which election in effect'' for ''Election irrevocable'' in heading and amended text generally. Prior to amendment, text read as follows: ''Any election under subparagraph (C) shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.''

Subsec. (c)(3)(E). Pub. L. 100–647, §1012(i)(1)(C), added subpar. (E).

Subsec. (c)(5). Pub. L. 100–647, §1012(i)(2)(B), added par. (5) and redesignated former par. (5) as (6).

Subsec. (c)(6). Pub. L. 100–647, §1012(i)(4)(A), added par. (6) and redesignated former par. (6) as (7).

Pub. L. 100–647, §1012(i)(2)(B), redesignated former par. (5) as (6).

Subsec. (c)(7). Pub. L. 100–647, §1012(i)(21), added par. (7) and struck out former par. (7) ''Regulations'', which read as follows: ''The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations preventing the avoidance of this subsection through cross insurance arrangements or otherwise.''

Pub. L. 100–647, §1012(i)(4)(A), redesignated former par. (6) as (7).

Subsec. (c)(8). Pub. L. 100–647, §1012(i)(21), added par. (8).

Subsec. (d). Pub. L. 100–647, §6135(a), added subsec. (d).

1986—Pub. L. 99–514, §1221(b)(3)(D), substituted ''Insurance income'' for ''Income from insurance of United States risks'' in section catchline.

Subsec. (a). Pub. L. 99–514, §1221(b)(1), amended subsec. (a) generally, substituting provisions defining ''insurance income'' for former provisions defining ''income derived from the insurance of United States risks''.

Subsec. (c). Pub. L. 99–514, §1221(b)(2), added subsec. (c).

1984—Subsec. (a)(2). Pub. L. 98–369, §211(b)(13)(D), substituted ''and (2)'' for '', (2), and (3)''.

Subsec. (b)(1). Pub. L. 98–369, §211(b)(13)(A), redesignated par. (2) as (1). Former par. (1), which provided that the application of part I of subchapter L of this chapter, life insurance company taxable income was the gain from operations as defined in section 809(b), was struck out.

Subsec. (b)(2). Pub. L. 98–369, §211(b)(13)(B), in amending par. (2) generally, substituted

''(A) The special life insurance company deduction and the small life insurance company deduction.

''(B) Section 805(a)(5) (relating to operations loss deduction).

''(C) Section 832(c)(5) (relating to certain capital losses).''

for

''(A) Section 809(d)(4) (operations loss deduction).

''(B) Section 809(d)(5) (certain nonparticipating contracts).

''(C) Section 809(d)(6) (group life, accident, and health insurance).''

and struck out

''(D) Section 809(d)(10) (small business deduction).

''(E) Section 817(b) (gain on property held on December 31, 1958, and certain substituted property acquired after 1958).

''(F) Section 832(c)(5) (certain capital losses).''

Pub. L. 98–369, §211(b)(13)(A), redesignated par. (3) as (2). Former par. (2) redesignated (1).

Subsec. (b)(3). Pub. L. 98–369, §211(b)(13)(A), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Subsec. (b)(3)(A). Pub. L. 98–369, §211(b)(13)(C)(i), substituted ''section 803(a)(1)'' for ''section 809(c)(1)''.

Subsec. (b)(3)(B). Pub. L. 98–369, §211(b)(13)(C)(ii), substituted ''section 803(a)(2)'' for ''section 809(c)(2)''.

Subsec. (b)(3)(C). Pub. L. 98–369, §211(b)(13)(C)(iii), substituted ''section 805(a)(2)'' for ''section 809(d)(2)''.

Subsec. (b)(4), (5). Pub. L. 98–369, §211(b)(13)(A), (E), redesignated par. (5) as (4) and substituted ''paragraph (3)'' for ''paragraph (4)''. Former par. (4) redesignated (3).

1976—Subsec. (b)(5). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

1966—Subsec. (b)(3)(F). Pub. L. 89–809 substituted ''832(c)(5)'' for ''832(b)(5)''.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 13511(b)(7) 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.

Amendment by section 13512(b)(8) 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.

Amendment by section 14212(b)(1)(D), (3) 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 14212(c) of Pub. L. 115–97, set out as a note under section 851 of this title.

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114–113, div. Q, title I, §128(c), Dec. 18, 2015, 129 Stat. 3054, provided that: ''The amendments made by this section [amending this section and section 954 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 2014, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends.''

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113–295, div. A, title I, §134(c), Dec. 19, 2014, 128 Stat. 4019, provided that: ''The amendments made by this section [amending this section and section 954 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 2013, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends.''

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title III, §322(c), Jan. 2, 2013, 126 Stat. 2332, provided that: ''The amendments made by this

section [amending this section and section 954 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 2011, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends.''

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, § 750(c), Dec. 17, 2010, 124 Stat. 3320, provided that: ''The amendments made by this section [amending this section and section 954 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 2009, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends.''

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title VI, § 614(c), Mar. 9, 2002, 116 Stat. 62, provided that: ''The amendments made by this section [amending this section and section 954 of this title] shall apply to taxable years beginning after December 31, 2001.''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title V, § 503(c), Dec. 17, 1999, 113 Stat. 1921, provided that: ''The amendments made by this section [amending this section and section 954 of this title] shall apply to taxable years beginning after December 31, 1999.''

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, § 1012(i)(3)(C), Nov. 10, 1988, 102 Stat. 3508, provided that: ''The amendments made by this paragraph [amending this section] to the extent such amendments add the phrase '(directly or indirectly)' shall apply only to taxable years beginning after December 31, 1987.''

Amendment by section 1012(i)(1), (2), (4), (5), (7)–(9), (21) 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, § 6135(b), Nov. 10, 1988, 102 Stat. 3723, 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

Amendment by 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.

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.

§ 954. Foreign base company income

(a) Foreign base company income

For purposes of section 952(a)(2), the term ''foreign base company income'' means for any taxable year the sum of—

(1) the foreign personal holding company income for the taxable year (determined under subsection (c) and reduced as provided in subsection (b)(5)),

(2) the foreign base company sales income for the taxable year (determined under subsection (d) and reduced as provided in subsection (b)(5)), and

(3) the foreign base company services income for the taxable year (determined under subsection (e) and reduced as provided in subsection (b)(5)).

(b) Exclusion and special rules

[(1) Repealed. Pub. L. 94–12, title VI, § 602(c)(1), Mar. 29, 1975, 89 Stat. 58]

[(2) Repealed. Pub. L. 99–514, title XII, § 1221(c)(1), Oct. 22, 1986, 100 Stat. 2553]

(3) De minimis, etc., rules

For purposes of subsection (a) and section 953—

(A) De minimis rule

If the sum of foreign base company income (determined without regard to paragraph (5)) and the gross insurance income for the taxable year is less than the lesser of—

(i) 5 percent of gross income, or

(ii) $1,000,000,

no part of the gross income for the taxable year shall be treated as foreign base company income or insurance income.

(B) Foreign base company income and insurance income in excess of 70 percent of gross income

If the sum of the foreign base company income (determined without regard to paragraph (5)) and the gross insurance income for the taxable year exceeds 70 percent of gross income, the entire gross income for the taxable year shall, subject to the provisions of paragraphs (4) and (5), be treated as foreign base company income or insurance income (whichever is appropriate).

(C) Gross insurance income

For purposes of subparagraphs (A) and (B), the term ''gross insurance income'' means any item of gross income taken into account in determining insurance income under section 953.

(4) Exception for certain income subject to high foreign taxes

For purposes of subsection (a) and section 953, foreign base company income and insurance income shall not include any item of income received by a controlled foreign corporation if the taxpayer establishes to the satisfaction of the Secretary that such income was subject to an effective rate of income tax imposed by a foreign country greater than 90 percent of the maximum rate of tax specified in section 11.

(5) Deductions to be taken into account

For purposes of subsection (a), the foreign personal holding company income, the foreign base company sales income, and the foreign base company services income shall be reduced, under regulations prescribed by the Secretary, so as to take into account deductions (including taxes) properly allocable to such income. Except to the extent provided in regulations prescribed by the Secretary, any interest which is paid or accrued by the controlled foreign corporation to any United States shareholder in such corporation (or any controlled foreign corporation related to such a shareholder) shall be allocated first to foreign personal holding company income which is passive income (within the meaning of section 904(d)(2)) of such corporation to the extent thereof. The Secretary may, by regulations, provide that the preceding sentence shall apply also to interest paid or accrued to other persons.

(c) Foreign personal holding company income

(1) In general

For purposes of subsection (a)(1), the term ''foreign personal holding company income'' means the portion of the gross income which consists of:

(A) Dividends, etc.

Dividends, interest, royalties, rents, and annuities.

(B) Certain property transactions

The excess of gains over losses from the sale or exchange of property—

(i) which gives rise to income described in subparagraph (A) (after application of paragraph (2)(A)) other than property which gives rise to income not treated as foreign personal holding company income by reason of subsection (h) or (i) for the taxable year,

(ii) which is an interest in a trust, partnership, or REMIC, or

(iii) which does not give rise to any income.

Gains and losses from the sale or exchange of any property which, in the hands of the controlled foreign corporation, is property described in section 1221(a)(1) shall not be taken into account under this subparagraph.

(C) Commodities transactions

The excess of gains over losses from transactions (including futures, forward, and similar transactions) in any commodities. This subparagraph shall not apply to gains or losses which—

(i) arise out of commodity hedging transactions (as defined in paragraph (5)(A)),

(ii) are active business gains or losses from the sale of commodities, but only if substantially all of the controlled foreign corporation's commodities are property described in paragraph (1), (2), or (8) of section 1221(a), or

(iii) are foreign currency gains or losses (as defined in section 988(b)) attributable to any section 988 transactions.

(D) Foreign currency gains

The excess of foreign currency gains over foreign currency losses (as defined in section 988(b)) attributable to any section 988 transactions. This subparagraph shall not apply in the case of any transaction directly related to the business needs of the controlled foreign corporation.

(E) Income equivalent to interest

Any income equivalent to interest, including income from commitment fees (or similar amounts) for loans actually made.

(F) Income from notional principal contracts

(i) In general

Net income from notional principal contracts.

(ii) Coordination with other categories of foreign personal holding company income

Any item of income, gain, deduction, or loss from a notional principal contract entered into for purposes of hedging any item described in any preceding subparagraph shall not be taken into account for purposes of this subparagraph but shall be taken into account under such other subparagraph.

(G) Payments in lieu of dividends

Payments in lieu of dividends which are made pursuant to an agreement to which section 1058 applies.

(H) Personal service contracts

(i) Amounts received under a contract under which the corporation is to furnish personal services if—

(I) 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

(II) the individual who is to perform the services is designated (by name or by description) in the contract, and

(ii) amounts received from the sale or other disposition of such a contract.

This subparagraph 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.

(2) Exception for certain amounts

(A) Rents and royalties derived in active business

Foreign personal holding company income shall not include rents and royalties which are derived in the active conduct of a trade or business and which are received from a person other than a related person (within the meaning of subsection (d)(3)). For purposes of the preceding sentence, rents derived from leasing an aircraft or vessel in

foreign commerce shall not fail to be treated as derived in the active conduct of a trade or business if, as determined under regulations prescribed by the Secretary, the active leasing expenses are not less than 10 percent of the profit on the lease.

(B) Certain export financing

Foreign personal holding company income shall not include any interest which is derived in the conduct of a banking business and which is export financing interest (as defined in section 904(d)(2)(G)).

(C) Exception for dealers

Except as provided by regulations, in the case of a regular dealer in property which is property described in paragraph (1)(B), forward contracts, option contracts, or similar financial instruments (including notional principal contracts and all instruments referenced to commodities), there shall not be taken into account in computing foreign personal holding company income—

(i) any item of income, gain, deduction, or loss (other than any item described in subparagraph (A), (E), or (G) of paragraph (1)) from any transaction (including hedging transactions and transactions involving physical settlement) entered into in the ordinary course of such dealer's trade or business as such a dealer, and

(ii) if such dealer is a dealer in securities (within the meaning of section 475), any interest or dividend or equivalent amount described in subparagraph (E) or (G) of paragraph (1) from any transaction (including any hedging transaction or transaction described in section 956(c)(2)(I)) entered into in the ordinary course of such dealer's trade or business as such a dealer in securities, but only if the income from the transaction is attributable to activities of the dealer in the country under the laws of which the dealer is created or organized (or in the case of a qualified business unit described in section 989(a), is attributable to activities of the unit in the country in which the unit both maintains its principal office and conducts substantial business activity).

(3) Certain income received from related persons

(A) In general

Except as provided in subparagraph (B), the term ''foreign personal holding company income'' does not include—

(i) dividends and interest received from a related person which (I) is a corporation created or organized under the laws of the same foreign country under the laws of which the controlled foreign corporation is created or organized, and (II) has a substantial part of its assets used in its trade or business located in such same foreign country, and

(ii) rents and royalties received from a corporation which is a related person for the use of, or the privilege of using, property within the country under the laws of which the controlled foreign corporation is created or organized.

To the extent provided in regulations, payments made by a partnership with 1 or more corporate partners shall be treated as made by such corporate partners in proportion to their respective interests in the partnership.

(B) Exception not to apply to items which reduce subpart F income

Subparagraph (A) shall not apply in the case of any interest, rent, or royalty to the extent such interest, rent, or royalty reduces the payor's subpart F income or creates (or increases) a deficit which under section 952(c) may reduce the subpart F income of the payor or another controlled foreign corporation.

(C) Exception for certain dividends

Subparagraph (A)(i) shall not apply to any dividend with respect to any stock which is attributable to earnings and profits of the distributing corporation accumulated during any period during which the person receiving such dividend did not hold such stock either directly, or indirectly through a chain of one or more subsidiaries each of which meets the requirements of subparagraph (A)(i).

(4) Look-thru rule for certain partnership sales

(A) In general

In the case of any sale by a controlled foreign corporation of an interest in a partnership with respect to which such corporation is a 25-percent owner, such corporation shall be treated for purposes of this subsection as selling the proportionate share of the assets of the partnership attributable to such interest. The Secretary shall prescribe such regulations as may be appropriate to prevent abuse of the purposes of this paragraph, including regulations providing for coordination of this paragraph with the provisions of subchapter K.

(B) 25-percent owner

For purposes of this paragraph, the term ''25-percent owner'' means a controlled foreign corporation which owns directly 25 percent or more of the capital or profits interest in a partnership. For purposes of the preceding sentence, if a controlled foreign corporation is a shareholder or partner of a corporation or partnership, the controlled foreign corporation shall be treated as owning directly its proportionate share of any such capital or profits interest held directly or indirectly by such corporation or partnership. If a controlled foreign corporation is treated as owning a capital or profits interest in a partnership under constructive ownership rules similar to the rules of section 958(b), the controlled foreign corporation shall be treated as owning such interest directly for purposes of this subparagraph.

(5) Definition and special rules relating to commodity transactions

(A) Commodity hedging transactions

For purposes of paragraph (1)(C)(i), the term ''commodity hedging transaction'' means any transaction with respect to a commodity if such transaction—

(i) is a hedging transaction as defined in section 1221(b)(2), determined—

(I) without regard to subparagraph (A)(ii) thereof,

(II) by applying subparagraph (A)(i) thereof by substituting ''ordinary property or property described in section 1231(b)'' for ''ordinary property'', and

(III) by substituting ''controlled foreign corporation'' for ''taxpayer'' each place it appears, and

(ii) is clearly identified as such in accordance with section 1221(a)(7).

(B) Treatment of dealer activities under paragraph (1)(C)

Commodities with respect to which gains and losses are not taken into account under paragraph (2)(C) in computing a controlled foreign corporation's foreign personal holding company income shall not be taken into account in applying the substantially all test under paragraph (1)(C)(ii) to such corporation.

(C) Regulations

The Secretary shall prescribe such regulations as are appropriate to carry out the purposes of paragraph (1)(C) in the case of transactions involving related parties.

(6) Look-thru rule for related controlled foreign corporations

(A) In general

For purposes of this subsection, dividends, interest, rents, and royalties received or accrued from a controlled foreign corporation which is a related person shall not be treated as foreign personal holding company income to the extent attributable or properly allocable (determined under rules similar to the rules of subparagraphs (C) and (D) of section 904(d)(3)) to income of the related person which is neither subpart F income nor income treated as effectively connected with the conduct of a trade or business in the United States. For purposes of this subparagraph, interest shall include factoring income which is treated as income equivalent to interest for purposes of paragraph (1)(E). The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this paragraph, including such regulations as may be necessary or appropriate to prevent the abuse of the purposes of this paragraph.

(B) Exception

Subparagraph (A) shall not apply in the case of any interest, rent, or royalty to the extent such interest, rent, or royalty creates (or increases) a deficit which under section 952(c) may reduce the subpart F income of the payor or another controlled foreign corporation.

(C) Application

Subparagraph (A) shall apply to taxable years of foreign corporations beginning after December 31, 2005, and before January 1, 2020, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

(d) Foreign base company sales income

(1) In general

For purposes of subsection (a)(2), the term ''foreign base company sales income'' means income (whether in the form of profits, commissions, fees, or otherwise) derived in connection with the purchase of personal property from a related person and its sale to any person, the sale of personal property to any person on behalf of a related person, the purchase of personal property from any person and its sale to a related person, or the purchase of personal property from any person on behalf of a related person where—

(A) the property which is purchased (or in the case of property sold on behalf of a related person, the property which is sold) is manufactured, produced, grown, or extracted outside the country under the laws of which the controlled foreign corporation is created or organized, and

(B) the property is sold for use, consumption, or disposition outside such foreign country, or, in the case of property purchased on behalf of a related person, is purchased for use, consumption, or disposition outside such foreign country.

For purposes of this subsection, personal property does not include agricultural commodities which are not grown in the United States in commercially marketable quantities.

(2) Certain branch income

For purposes of determining foreign base company sales income in situations in which the carrying on of activities by a controlled foreign corporation through a branch or similar establishment outside the country of incorporation of the controlled foreign corporation has substantially the same effect as if such branch or similar establishment were a wholly owned subsidiary corporation deriving such income, under regulations prescribed by the Secretary the income attributable to the carrying on of such activities of such branch or similar establishment shall be treated as income derived by a wholly owned subsidiary of the controlled foreign corporation and shall constitute foreign base company sales income of the controlled foreign corporation.

(3) Related person defined

For purposes of this section, a person is a related person with respect to a controlled foreign corporation, if—

(A) such person is an individual, corporation, partnership, trust, or estate which controls, or is controlled by, the controlled foreign corporation, or

(B) such person is a corporation, partnership, trust, or estate which is controlled by the same person or persons which control the controlled foreign corporation.

For purposes of the preceding sentence, control means, with respect to a corporation, the ownership, directly or indirectly, of stock possessing more than 50 percent of the total voting power of all classes of stock entitled to vote or of the total value of stock of such corporation. In the case of a partnership, trust, or

estate, control means the ownership, directly or indirectly, of more than 50 percent (by value) of the beneficial interests in such partnership, trust, or estate. For purposes of this paragraph, rules similar to the rules of section 958 shall apply.

(4) Special rule for certain timber products

For purposes of subsection (a)(2), the term ''foreign base company sales income'' includes any income (whether in the form of profits, commissions, fees, or otherwise) derived in connection with—

(A) the sale of any unprocessed timber referred to in section 865(b), or

(B) the milling of any such timber outside the United States.

Subpart G shall not apply to any amount treated as subpart F income by reason of this paragraph.

(e) Foreign base company services income

(1) In general

For purposes of subsection (a)(3), the term ''foreign base company services income'' means income (whether in the form of compensation, commissions, fees, or otherwise) derived in connection with the performance of technical, managerial, engineering, architectural, scientific, skilled, industrial, commercial, or like services which—

(A) are performed for or on behalf of any related person (within the meaning of subsection (d)(3)), and

(B) are performed outside the country under the laws of which the controlled foreign corporation is created or organized.

(2) Exception

Paragraph (1) shall not apply to income derived in connection with the performance of services which are directly related to—

(A) the sale or exchange by the controlled foreign corporation of property manufactured, produced, grown, or extracted by it and which are performed before the time of the sale or exchange, or

(B) an offer or effort to sell or exchange such property.

Paragraph (1) shall also not apply to income which is exempt insurance income (as defined in section 953(e)) or which is not treated as foreign personal holding income by reason of subsection (c)(2)(C)(ii), (h), or (i).

[(f) Repealed. Pub. L. 108–357, title IV, § 415(a)(2), Oct. 22, 2004, 118 Stat. 1511]

[(g) Repealed. Pub. L. 115–97, title I, § 14211(b)(3), Dec. 22, 2017, 131 Stat. 2217]

(h) Special rule for income derived in the active conduct of banking, financing, or similar businesses

(1) In general

For purposes of subsection (c)(1), foreign personal holding company income shall not include qualified banking or financing income of an eligible controlled foreign corporation.

(2) Eligible controlled foreign corporation

For purposes of this subsection—

(A) In general

The term ''eligible controlled foreign corporation'' means a controlled foreign corporation which—

(i) is predominantly engaged in the active conduct of a banking, financing, or similar business, and

(ii) conducts substantial activity with respect to such business.

(B) Predominantly engaged

A controlled foreign corporation shall be treated as predominantly engaged in the active conduct of a banking, financing, or similar business if—

(i) more than 70 percent of the gross income of the controlled foreign corporation is derived directly from the active and regular conduct of a lending or finance business from transactions with customers which are not related persons,

(ii) it is engaged in the active conduct of a banking business and is an institution licensed to do business as a bank in the United States (or is any other corporation not so licensed which is specified by the Secretary in regulations), or

(iii) it is engaged in the active conduct of a securities business and is registered as a securities broker or dealer under section 15(a) of the Securities Exchange Act of 1934 or is registered as a Government securities broker or dealer under section 15C(a) of such Act (or is any other corporation not so registered which is specified by the Secretary in regulations).

(3) Qualified banking or financing income

For purposes of this subsection—

(A) In general

The term ''qualified banking or financing income'' means income of an eligible controlled foreign corporation which—

(i) is derived in the active conduct of a banking, financing, or similar business by—

(I) such eligible controlled foreign corporation, or

(II) a qualified business unit of such eligible controlled foreign corporation,

(ii) is derived from one or more transactions—

(I) with customers located in a country other than the United States, and

(II) substantially all of the activities in connection with which are conducted directly by the corporation or unit in its home country, and

(iii) is treated as earned by such corporation or unit in its home country for purposes of such country's tax laws.

(B) Limitation on nonbanking and nonsecurities businesses

No income of an eligible controlled foreign corporation not described in clause (ii) or (iii) of paragraph (2)(B) (or of a qualified business unit of such corporation) shall be treated as qualified banking or financing income unless more than 30 percent of such

corporation's or unit's gross income is derived directly from the active and regular conduct of a lending or finance business from transactions with customers which are not related persons and which are located within such corporation's or unit's home country.

(C) Substantial activity requirement for cross border income

The term ''qualified banking or financing income'' shall not include income derived from 1 or more transactions with customers located in a country other than the home country of the eligible controlled foreign corporation or a qualified business unit of such corporation unless such corporation or unit conducts substantial activity with respect to a banking, financing, or similar business in its home country.

(D) Determinations made separately

For purposes of this paragraph, the qualified banking or financing income of an eligible controlled foreign corporation and each qualified business unit of such corporation shall be determined separately for such corporation and each such unit by taking into account—

(i) in the case of the eligible controlled foreign corporation, only items of income, deduction, gain, or loss and activities of such corporation not properly allocable or attributable to any qualified business unit of such corporation, and

(ii) in the case of a qualified business unit, only items of income, deduction, gain, or loss and activities properly allocable or attributable to such unit.

(E) Direct conduct of activities

For purposes of subparagraph (A)(ii)(II), an activity shall be treated as conducted directly by an eligible controlled foreign corporation or qualified business unit in its home country if the activity is performed by employees of a related person and—

(i) the related person is an eligible controlled foreign corporation the home country of which is the same as the home country of the corporation or unit to which subparagraph (A)(ii)(II) is being applied,

(ii) the activity is performed in the home country of the related person, and

(iii) the related person is compensated on an arm's-length basis for the performance of the activity by its employees and such compensation is treated as earned by such person in its home country for purposes of the home country's tax laws.

(4) Lending or finance business

For purposes of this subsection, the term ''lending or finance business'' means the business of—

(A) making loans,

(B) purchasing or discounting accounts receivable, notes, or installment obligations,

(C) engaging in leasing (including entering into leases and purchasing, servicing, and disposing of leases and leased assets),

(D) issuing letters of credit or providing guarantees,

(E) providing charge and credit card services, or

(F) rendering services or making facilities available in connection with activities described in subparagraphs (A) through (E) carried on by—

(i) the corporation (or qualified business unit) rendering services or making facilities available, or

(ii) another corporation (or qualified business unit of a corporation) which is a member of the same affiliated group (as defined in section 1504, but determined without regard to section 1504(b)(3)).

(5) Other definitions

For purposes of this subsection—

(A) Customer

The term ''customer'' means, with respect to any controlled foreign corporation or qualified business unit, any person which has a customer relationship with such corporation or unit and which is acting in its capacity as such.

(B) Home country

Except as provided in regulations—

(i) Controlled foreign corporation

The term ''home country'' means, with respect to any controlled foreign corporation, the country under the laws of which the corporation was created or organized.

(ii) Qualified business unit

The term ''home country'' means, with respect to any qualified business unit, the country in which such unit maintains its principal office.

(C) Located

The determination of where a customer is located shall be made under rules prescribed by the Secretary.

(D) Qualified business unit

The term ''qualified business unit'' has the meaning given such term by section 989(a).

(E) Related person

The term ''related person'' has the meaning given such term by subsection (d)(3).

(6) Coordination with exception for dealers

Paragraph (1) shall not apply to income described in subsection (c)(2)(C)(ii) of a dealer in securities (within the meaning of section 475) which is an eligible controlled foreign corporation described in paragraph (2)(B)(iii).

(7) Anti-abuse rules

For purposes of applying this subsection and subsection (c)(2)(C)(ii)—

(A) there shall be disregarded any item of income, gain, loss, or deduction with respect to any transaction or series of transactions one of the principal purposes of which is qualifying income or gain for the exclusion under this section, including any transaction or series of transactions a principal purpose of which is the acceleration or deferral of any item in order to claim the benefits of such exclusion through the application of this subsection,

(B) there shall be disregarded any item of income, gain, loss, or deduction of an entity which is not engaged in regular and continuous transactions with customers which are not related persons,

(C) there shall be disregarded any item of income, gain, loss, or deduction with respect to any transaction or series of transactions utilizing, or doing business with—

(i) one or more entities in order to satisfy any home country requirement under this subsection, or

(ii) a special purpose entity or arrangement, including a securitization, financing, or similar entity or arrangement,

if one of the principal purposes of such transaction or series of transactions is qualifying income or gain for the exclusion under this subsection, and

(D) a related person, an officer, a director, or an employee with respect to any controlled foreign corporation (or qualified business unit) which would otherwise be treated as a customer of such corporation or unit with respect to any transaction shall not be so treated if a principal purpose of such transaction is to satisfy any requirement of this subsection.

(8) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, subsection (c)(1)(B)(i), subsection (c)(2)(C)(ii), and the last sentence of subsection (e)(2).

(i) Special rule for income derived in the active conduct of insurance business

(1) In general

For purposes of subsection (c)(1), foreign personal holding company income shall not include qualified insurance income of a qualifying insurance company.

(2) Qualified insurance income

The term ''qualified insurance income'' means income of a qualifying insurance company which is—

(A) received from a person other than a related person (within the meaning of subsection (d)(3)) and derived from the investments made by a qualifying insurance company or a qualifying insurance company branch of its reserves allocable to exempt contracts or of 80 percent of its unearned premiums from exempt contracts (as both are determined in the manner prescribed under paragraph (4)), or

(B) received from a person other than a related person (within the meaning of subsection (d)(3)) and derived from investments made by a qualifying insurance company or a qualifying insurance company branch of an amount of its assets allocable to exempt contracts equal to—

(i) in the case of property, casualty, or health insurance contracts, one-third of its premiums earned on such insurance contracts during the taxable year (as defined in section 832(b)(4)), and

(ii) in the case of life insurance or annuity contracts, 10 percent of the reserves described in subparagraph (A) for such contracts.

(3) Principles for determining insurance income

Except as provided by the Secretary, for purposes of subparagraphs (A) and (B) of paragraph (2)—

(A) in the case of any contract which is a separate account-type contract (including any variable contract not meeting the requirements of section 817), income credited under such contract shall be allocable only to such contract, and

(B) income not allocable under subparagraph (A) shall be allocated ratably among contracts not described in subparagraph (A).

(4) Methods for determining unearned premiums and reserves

For purposes of paragraph (2)(A)—

(A) Property and casualty contracts

The unearned premiums and reserves of a qualifying insurance company or a qualifying insurance company branch with respect to property, casualty, or health insurance contracts shall be determined using the same methods and interest rates which would be used if such company or branch were subject to tax under subchapter L, except that—

(i) the interest rate determined for the functional currency of the company or branch, and which, except as provided by the Secretary, is calculated in the same manner as the Federal mid-term rate under section 1274(d), shall be substituted for the applicable Federal interest rate, and

(ii) such company or branch shall use the appropriate foreign loss payment pattern.

(B) Life insurance and annuity contracts

(i) In general

Except as provided in clause (ii), the amount of the reserve of a qualifying insurance company or qualifying insurance company branch for any life insurance or annuity contract shall be equal to the greater of—

(I) the net surrender value of such contract (as defined in section 807(e)(1)(A)), or

(II) the reserve determined under paragraph (5).

(ii) Ruling request, etc.

The amount of the reserve under clause (i) shall be the foreign statement reserve for the contract (less any catastrophe, deficiency, equalization, or similar reserves), if, pursuant to a ruling request submitted by the taxpayer or as provided in published guidance, the Secretary determines that the factors taken into account in determining the foreign statement reserve provide an appropriate means of measuring income.

(C) Limitation on reserves

In no event shall the reserve determined under this paragraph 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 foreign statement reserves (less any catastrophe, deficiency, equalization, or similar reserves).

(5) Amount of reserve

The amount of the reserve determined under this paragraph with respect to any contract shall be determined in the same manner as it would be determined if the qualifying insurance company or qualifying insurance company branch were subject to tax under subchapter L, except that in applying such subchapter—

(A) the interest rate determined for the functional currency of the company or branch, and which, except as provided by the Secretary, is calculated in the same manner as the Federal mid-term rate under section 1274(d), shall be substituted for the applicable Federal interest rate,

(B) the highest assumed interest rate permitted to be used in determining foreign statement reserves shall apply, and

(C) tables for mortality and morbidity which reasonably reflect the current mortality and morbidity risks in the company's or branch's home country shall be substituted for the mortality and morbidity tables otherwise used for such subchapter.

The Secretary may provide that the interest rate and mortality and morbidity tables of a qualifying insurance company may be used for 1 or more of its qualifying insurance company branches when appropriate.

(6) Definitions

For purposes of this subsection, any term used in this subsection which is also used in section 953(e) shall have the meaning given such term by section 953.

(Added Pub. L. 87–834, §12(a), Oct. 16, 1962, 76 Stat. 1009; amended Pub. L. 91–172, title IX, §909(a), Dec. 30, 1969, 83 Stat. 718; Pub. L. 94–12, title VI, §602(b), (c)(1), (2), (d)(1), (e), Mar. 29, 1975, 89 Stat. 58, 60, 64; Pub. L. 94–455, title X, §§1023(a), 1024(a), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1620, 1834; Pub. L. 97–248, title II, §212(a)–(e), Sept. 3, 1982, 96 Stat. 451, 452; Pub. L. 98–369, div. A, title I, §137(a), title VII, §712(f), July 18, 1984, 98 Stat. 672, 947; Pub. L. 99–514, title XII, §§1201(c), 1221(a)(1), (b)(3)(B), (c)(1)–(3)(A), (d), (e), 1223(a), title XVIII, §1810(k), Oct. 22, 1986, 100 Stat. 2525, 2549, 2553, 2557, 2830; Pub. L. 100–647, title I, §§1012(i)(12), (14)(A), (18), (20), (25)(B), 1018(u)(38), Nov. 10, 1988, 102 Stat. 3509–3512, 3592; Pub. L. 101–239, title VII, §7811(i)(3), Dec. 19, 1989, 103 Stat. 2409; Pub. L. 103–66, title XIII, §§13233(a)(1), 13235(a)(3), (b), 13239(d), Aug. 10, 1993, 107 Stat. 502, 504, 505, 509; Pub. L. 104–188, title I, §1704(t)(25), Aug. 20, 1996, 110 Stat. 1888; Pub. L. 105–34, title X, §1051(a), (b), title XI, §1175(a), (b), Aug. 5, 1997, 111 Stat. 940, 990, 993; Pub. L. 105–277, div. J, title I, §1005(a), (b)(2), (c)–(e), title IV, §4003(j), Oct. 21, 1998, 112 Stat. 2681–890, 2681–897, 2681–899, 2681–900, 2681–910; Pub. L. 106–170, title V, §§503(a), 532(c)(2)(Q), Dec. 17, 1999, 113 Stat. 1921, 1931; Pub. L. 107–147, title IV, §417(24)(B)(ii), title VI, §614(a)(2), (b)(1), Mar. 9, 2002, 116 Stat. 57, 61; Pub. L. 108–357, title IV, §§412(a), 413(b)(2), 414(a)–(c), 415(a), (b), (c)(2), 416(a), Oct. 22, 2004, 118 Stat. 1505, 1506, 1510, 1511; Pub. L. 109–135, title IV, §§403(m), 412(*ll*), (mm), Dec. 21, 2005, 119 Stat. 2626, 2639; Pub. L. 109–222, title I, §103(a)(2), (b)(1), May 17, 2006, 120 Stat. 346; Pub. L. 109–432, div. A, title IV, §426(a)(1), Dec. 20, 2006, 120 Stat. 2974; Pub. L. 110–172, §§4(a), 11(a)(19), (20), (g)(15)(B), Dec. 29, 2007, 121 Stat. 2475, 2486, 2491; Pub. L. 110–343, div. C, title III, §§303(b), 304(a), Oct. 3, 2008, 122 Stat. 3866, 3867; Pub. L. 111–312, title VII, §§750(a), 751(a), Dec. 17, 2010, 124 Stat. 3320, 3321; Pub. L. 112–240, title III, §§322(b), 323(a), Jan. 2, 2013, 126 Stat. 2332, 2333; Pub. L. 113–295, div. A, title I, §§134(b), 135(a), Dec. 19, 2014, 128 Stat. 4019; Pub. L. 114–113, div. Q, title I, §§128(b), 144(a), Dec. 18, 2015, 129 Stat. 3054, 3065; Pub. L. 115–97, title I, §§13517(b)(5), 14211(a), (b)(2), (3), Dec. 22, 2017, 131 Stat. 2147, 2216, 2217.)

REFERENCES IN TEXT

Sections 15(a) and 15C(a) of the Securities Exchange Act of 1934, referred to in subsec. (h)(2)(B)(iii), are classified to sections 78*o*(a) and 78*o*–5(a), respectively, of Title 15, Commerce and Trade.

AMENDMENTS

2017—Subsec. (a)(5). Pub. L. 115–97, §14211(a), struck out par. (5) which read as follows: ''the foreign base company oil related income for the taxable year (determined under subsection (g) and reduced as provided in subsection (b)(5)).''

Subsec. (b)(4). Pub. L. 115–97, §14211(b)(2)(A), struck out at end ''The preceding sentence shall not apply to foreign base company oil-related income described in subsection (a)(5).''

Subsec. (b)(5). Pub. L. 115–97, §14211(b)(2)(B), which directed substitution of ''and the foreign base company services income'' for ''the foreign base company services income, and the foreign base company oil related income'', was executed by making the substitution for ''the foreign base company services income,, and the foreign base company oil related income'' to reflect the probable intent of Congress.

Subsec. (b)(6). Pub. L. 115–97, §14211(b)(2)(C), struck out par. (6). Text read as follows: ''Income of a corporation which is foreign base company oil related income shall not be considered foreign base company income of such corporation under paragraph (2), or (3) of subsection (a).''

Subsec. (g). Pub. L. 115–97, §14211(b)(3), struck out subsec. (g) which related to foreign base company oil related income.

Subsec. (i)(5)(B). Pub. L. 115–97, §13517(b)(5), substituted ''shall apply,'' for ''shall be substituted for the prevailing State assumed interest rate,''.

2015—Subsec. (c)(6)(C). Pub. L. 114–113, §144(a), substituted ''January 1, 2020'' for ''January 1, 2015''.

Subsec. (h)(9). Pub. L. 114–113, §128(b), struck out par. (9). Text read as follows: ''This subsection, subsection (c)(2)(C)(ii), and the last sentence of subsection (e)(2) shall apply only to taxable years of a foreign corporation beginning after December 31, 1998, and before January 1, 2015, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends.''

2014—Subsec. (c)(6)(C). Pub. L. 113–295, §135(a), substituted ''January 1, 2015'' for ''January 1, 2014''.

Subsec. (h)(9). Pub. L. 113–295, §134(b), substituted ''January 1, 2015'' for ''January 1, 2014''.

2013—Subsec. (c)(6)(C). Pub. L. 112–240, §323(a), substituted ''January 1, 2014'' for ''January 1, 2012''.

Subsec. (h)(9). Pub. L. 112–240, §322(b), substituted ''January 1, 2014'' for ''January 1, 2012''.

2010—Subsec. (c)(6)(C). Pub. L. 111–312, §751(a), substituted ''January 1, 2012'' for ''January 1, 2010''.

Subsec. (h)(9). Pub. L. 111–312, §750(a), substituted ''January 1, 2012'' for ''January 1, 2010''.

2008—Subsec. (c)(6)(C). Pub. L. 110–343, §304(a), substituted ''January 1, 2010'' for ''January 1, 2009''.

Subsec. (h)(9). Pub. L. 110–343, §303(b), substituted ''January 1, 2010'' for ''January 1, 2009''.

2007—Subsec. (c)(1)(F). Pub. L. 110–172, §11(a)(19), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Any item of income, gain, deduction, or loss from a notional principal contract entered into for purposes of hedging any item described in any preceding subparagraph shall not be taken into account for purposes of this subparagraph but shall be taken into account under such other subparagraph.''

Subsec. (c)(1)(H), (I). Pub. L. 110–172, §11(a)(20), redesignated subpar. (I) as (H).

Subsec. (c)(2)(C)(ii). Pub. L. 110–172, §11(g)(15)(B), substituted ''section 956(c)(2)(I)'' for ''section 956(c)(2)(J)''.

Subsec. (c)(6)(B), (C). Pub. L. 110–172, §4(a), added subpar. (B) and redesignated former subpar. (B) as (C).

2006—Subsec. (c)(6). Pub. L. 109–222, §103(b)(1), added par.(6).

Subsec. (c)(6)(A). Pub. L. 109–432, in first sentence, substituted ''which is neither subpart F income nor income treated as effectively connected with the conduct of a trade or business in the United States'' for ''which is not subpart F income'' and, in last sentence, substituted ''The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this paragraph, including such regulations as may be necessary or appropriate to prevent the abuse of the purposes of this paragraph'' for ''The Secretary shall prescribe such regulations as may be appropriate to prevent the abuse of the purposes of this paragraph''.

Subsec. (h)(9). Pub. L. 109–222, §103(a)(2), substituted ''January 1, 2009'' for ''January 1, 2007''.

2005—Subsec. (c)(1)(C)(i). Pub. L. 109–135, §412(*ll*), substituted ''paragraph (5)(A)'' for ''paragraph (4)(A)''.

Subsec. (c)(1)(F). Pub. L. 109–135, §412(mm), struck out ''Net income from notional principal contracts.'' before ''Any item of income''.

Subsec. (c)(4)(B). Pub. L. 109–135, §403(m), inserted at end ''If a controlled foreign corporation is treated as owning a capital or profits interest in a partnership under constructive ownership rules similar to the rules of section 958(b), the controlled foreign corporation shall be treated as owning such interest directly for purposes of this subparagraph.''

2004—Subsec. (a)(4). Pub. L. 108–357, §415(a)(1), struck out par. (4) which read as follows: ''the foreign base company shipping income for the taxable year (determined under subsection (f) and reduced as provided in subsection (b)(5)), and''.

Subsec. (b)(5). Pub. L. 108–357, §415(c)(2)(A), struck out ''the foreign base company shipping income,'' after ''the foreign base company services income,,''.

Subsec. (b)(6) to (8). Pub. L. 108–357, §415(c)(2)(B), (C), redesignated par. (8) as (6) and struck out former pars. (6) and (7) which set forth special rules and special exclusion for foreign base company shipping income.

Subsec. (c)(1)(C)(i), (ii). Pub. L. 108–357, §414(a), amended cls. (i) and (ii) generally. Prior to amendment, cls. (i) and (ii) read as follows:

''(i) arise out of bona fide hedging transactions reasonably necessary to the conduct of any business by a producer, processor, merchant, or handler of a commodity in the manner in which such business is customarily and usually conducted by others,

''(ii) are active business gains or losses from the sale of commodities, but only if substantially all of the controlled foreign corporation's business is as an active producer, processor, merchant, or handler of commodities, or''.

Subsec. (c)(1)(I). Pub. L. 108–357, §413(b)(2), added subpar. (I).

Subsec. (c)(2)(A). Pub. L. 108–357, §415(b), inserted at end ''For purposes of the preceding sentence, rents derived from leasing an aircraft or vessel in foreign commerce shall not fail to be treated as derived in the active conduct of a trade or business if, as determined under regulations prescribed by the Secretary, the active leasing expenses are not less than 10 percent of the profit on the lease.''

Subsec. (c)(2)(C)(i). Pub. L. 108–357, §414(c), inserted ''and transactions involving physical settlement'' after ''(including hedging transactions''.

Subsec. (c)(4). Pub. L. 108–357, §412(a), added par. (4).

Subsec. (c)(5). Pub. L. 108–357, §414(b), added par. (5).

Subsec. (f). Pub. L. 108–357, §415(a)(2), struck out subsec. (f) which defined ''foreign base company shipping income'' for purposes of subsec. (a)(4).

Subsec. (h)(3)(E). Pub. L. 108–357, §416(a), added subpar. (E).

2002—Subsec. (c)(1)(B). Pub. L. 107–147, §417(24)(B)(ii), which directed the amendment of Pub. L. 106–170, §532(c)(2)(Q), was executed to that section as if the amendment were retroactive to the effective date of the amendment by Pub. L. 106–170 to reflect the probable intent of Congress. See 1999 Amendment note below.

Subsec. (h)(9). Pub. L. 107–147, §614(a)(2), substituted ''January 1, 2007'' for ''January 1, 2002''.

Subsec. (i)(4)(B). Pub. L. 107–147, §614(b)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The amount of the reserve of a qualifying insurance company or qualifying insurance company branch for any life insurance or annuity contract shall be equal to the greater of—

''(i) the net surrender value of such contract (as defined in section 807(e)(1)(A)), or

''(ii) the reserve determined under paragraph (5).''

1999—Subsec. (c)(1)(B). Pub. L. 106–170, §532(c)(2)(Q), as amended by Pub. L. 107–147, §417(24)(B)(ii), substituted ''section 1221(a)(1)'' for ''section 1221(1)'' in concluding provisions.

Subsec. (h)(9). Pub. L. 106–170, §503(a), substituted ''taxable years'' for ''the first taxable year'', ''January 1, 2002'' for ''January 1, 2000'', and ''within which any such'' for ''within which such''.

1998—Subsec. (c)(1)(B)(i). Pub. L. 105–277, §1005(e), inserted ''other than property which gives rise to income not treated as foreign personal holding company income by reason of subsection (h) or (i) for the taxable year'' before comma at end.

Subsec. (c)(2)(C). Pub. L. 105–277, §1005(c), amended heading and text of subpar. (C), generally. Prior to amendment, text read as follows: ''Except as provided in subparagraph (A), (E), or (G) of paragraph (1) or by regulations, in the case of a regular dealer in property (within the meaning of paragraph (1)(B)), forward contracts, option contracts, or similar financial instruments (including notional principal contracts and all instruments referenced to commodities), there shall not be taken into account in computing foreign personal holding income any item of income, gain, deduction, or loss from any transaction (including hedging transactions) entered into in the ordinary course of such dealer's trade or business as such a dealer.''

Subsec. (e)(2). Pub. L. 105–277, §1005(d), inserted ''or'' at end of subpar. (A), substituted a period for '', or'' at end of subpar. (B), and inserted concluding provisions.

Subsec. (e)(2)(C). Pub. L. 105–277, §4003(j), substituted ''(h)(9)'' for ''(h)(8)''.

Pub. L. 105–277, §1005(d), struck out subpar. (C) which read as follows: ''in the case of taxable years described in subsection (h)(9), the active conduct by a controlled foreign corporation of a banking, financing, insurance, or similar business, but only if the corporation is predominantly engaged in the active conduct of such business (within the meaning of subsection (h)(3)) or is a qualifying insurance company.''

Subsec. (h). Pub. L. 105–277, §1005(a), amended heading and text of subsec. (h) generally. Prior to amendment, text consisted of pars. (1) to (9) relating to special rule for income derived in active conduct of banking, financing, or similar businesses, principles for determining applicable income, meaning of ''predominantly engaged'' for purposes of the special rule, methods of determining unearned premiums and reserves, definitions of certain terms for purposes of subsec. (h), anti-abuse

rules, coordination with section 953 of this title, and taxable year applicability of subsec. (h).

Subsec. (i). Pub. L. 105–277, §1005(b)(2), added subsec. (i).

1997—Subsec. (c)(1)(B). Pub. L. 105–34, §1051(a)(2), in concluding provisions, struck out ''In the case of any regular dealer in property, gains and losses from the sale or exchange of any such property or arising out of bona fide hedging transactions reasonably necessary to the conduct of the business of being a dealer in such property shall not be taken into account under this subparagraph.'' before ''Gains and losses'' and ''also'' after ''section 1221(1)''.

Subsec. (c)(1)(F), (G). Pub. L. 105–34, §1051(a)(1), added subpars. (F) and (G).

Subsec. (c)(2)(C). Pub. L. 105–34, §1051(b), added subpar. (C).

Subsec. (e)(2)(C). Pub. L. 105–34, §1175(b), added subpar. (C).

Subsec. (h). Pub. L. 105–34, §1175(a), added subsec. (h).

1996—Subsec. (c)(3)(A)(i). Pub. L. 104–188 amended directory language of Pub. L. 101–239, §7811(i)(3)(A). See 1989 Amendment note below.

1993—Subsec. (b)(8). Pub. L. 103–66, §13235(a)(3)(B), struck out ''(1),'' after ''such corporation under paragraph''.

Subsec. (c)(3)(C). Pub. L. 103–66, §13233(a)(1), added subpar. (C).

Subsec. (d)(4). Pub. L. 103–66, §13239(d), added par. (4).

Subsec. (f). Pub. L. 103–66, §13235(b), inserted at end of concluding provisions ''Except as provided in paragraph (1), such term shall not include any dividend or interest income which is foreign personal holding company income (as defined in subsection (c)).''

Subsec. (g)(1). Pub. L. 103–66, §13235(a)(3)(A), inserted at end ''Such term shall not include any foreign personal holding company income (as defined in subsection (c)).''

1989—Subsec. (c)(3)(A). Pub. L. 101–239, §7811(i)(3)(C), inserted at end ''To the extent provided in regulations, payments made by a partnership with 1 or more corporate partners shall be treated as made by such corporate partners in proportion to their respective interests in the partnership.''

Subsec. (c)(3)(A)(i). Pub. L. 101–239, §7811(i)(3)(A), as amended by Pub. L. 104–188, substituted ''is a corporation created'' for ''is created'' after ''person which (I)''.

Subsec. (c)(3)(A)(ii). Pub. L. 101–239, §7811(i)(3)(B), substituted ''from a corporation which is a related person'' for ''from a related person''.

1988—Subsec. (b)(6), (7). Pub. L. 100–647, §1012(i)(12), struck out ''(determined without regard to the exclusion under paragraph (2) of this subsection)'' after ''paragraph (4) of subsection (a)''.

Subsec. (c)(1)(B). Pub. L. 100–647, §1012(i)(18), (20), added cl. (ii), redesignated former cl. (ii) as (iii), added closing provisions, and struck out former closing provisions which read as follows: ''This subparagraph shall not apply to gain from the sale or exchange of any property which, in the hands of the taxpayer, is property described in section 1221(1) or to gain from the sale or exchange of any property by a regular dealer in such property.''

Subsec. (c)(3)(B). Pub. L. 100–647, §1012(i)(25)(B), inserted before period at end ''or creates (or increases) a deficit which under section 952(c) may reduce the subpart F income of the payor or another controlled foreign corporation''.

Subsec. (d)(3). Pub. L. 100–647, §1012(i)(14)(A), substituted ''more than 50 percent'' for ''50 percent or more'' in last two sentences.

Subsec. (e)(3). Pub. L. 100–647, §1018(u)(38), related to execution of amendment by Pub. L. 99–514, §1221(b)(3)(B), see 1986 Amendment note below.

1986—Subsec. (a)(5). Pub. L. 99–514, §1221(c)(3)(A)(ii), substituted ''determined under subsection (g)'' for ''determined under subsection (h)''.

Subsec. (b)(2). Pub. L. 99–514, §1221(c)(1), struck out par. (2), exclusion for reinvested shipping income, which read as follows: ''For purposes of subsection (a), foreign base company income does not include foreign base company shipping income to the extent that the amount of such income does not exceed the increase for the taxable year in qualified investments in foreign base company shipping operations of the controlled foreign corporation (as determined under subsection (g)).''

Subsec. (b)(3). Pub. L. 99–514, §1223(a), amended par. (3) generally. Prior to amendment, par. (3), special rule where foreign base company income is less than 10 percent or more than 70 percent of gross income, read as follows: ''For purposes of subsection (a)—

''(A) If the foreign base company income (determined without regard to paragraphs (2) and (5)) is less than 10 percent of gross income, no part of the gross income of the taxable year shall be treated as foreign base company income.

''(B) If the foreign base company income (determined without regard to paragraphs (2) and (5)) exceeds 70 percent of gross income, the entire gross income of the taxable year shall, subject to the provisions of paragraphs (2), (4), and (5), be treated as foreign base company income.''

Subsec. (b)(4). Pub. L. 99–514, §1221(d), amended par. (4) generally. Prior to amendment, par. (4), exception for foreign corporations not availed of to reduce taxes, read as follows: ''For purposes of subsection (a), foreign base company income does not include any item of income received by a controlled foreign corporation if it is established to the satisfaction of the Secretary that neither—

''(A) the creation or organization of such controlled foreign corporation under the laws of the foreign country in which it is incorporated (or, in the case of a controlled foreign corporation which is an acquired corporation, the acquisition of such corporation created or organized under the laws of the foreign country in which it is incorporated), nor

''(B) the effecting of the transaction giving rise to such income through the controlled foreign corporation,

has as one of its significant purposes a substantial reduction of income, war profits, or excess profits or similar taxes. The preceding sentence shall not apply to foreign base company oil related income described in subsection (a)(5).''

Subsec. (b)(5). Pub. L. 99–514, §1201(c), inserted at end ''Except to the extent provided in regulations prescribed by the Secretary, any interest which is paid or accrued by the controlled foreign corporation to any United States shareholder in such corporation (or any controlled foreign corporation related to such a shareholder) shall be allocated first to foreign personal holding company income which is passive income (within the meaning of section 904(d)(2)) of such corporation to the extent thereof. The Secretary may, by regulations, provide that the preceding sentence shall apply also to interest paid or accrued to other persons.''

Subsec. (c). Pub. L. 99–514, §1221(a)(1), amended subsec. (c) generally, substituting pars. (1) to (3) for former provisions which had provided: in par. (1), a reference to definition of ''foreign personal holding company income'' contained in section 553; in par. (2), that all rents would be included in ''foreign personal holding company income'' without regard to whether or not such rents constituted 50 percent or more of gross income; in par. (3), for exclusion of certain income derived in active conduct of a trade or business; and in par. (4), exclusion of certain income received from related persons from being included in ''foreign personal holding company income''. See subsec. (c)(3).

Subsec. (d)(3). Pub. L. 99–514, §1221(e), added subpars. (A) and (B) and concluding provisions and struck out former subpars. (A) to (C) and concluding provisions which read as follows:

''(A) such person is an individual, partnership, trust, or estate which controls the controlled foreign corporation;

''(B) such person is a corporation which controls, or is controlled by, the controlled foreign corporation; or

''(C) such person is a corporation which is controlled by the same person or persons which control the controlled foreign corporation.

For purposes of the preceding sentence, control means the ownership, directly or indirectly, of stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote. For purposes of this paragraph, the rules for determining ownership of stock prescribed by section 958 shall apply.''

Subsec. (e). Pub. L. 99–514, §1810(k), in amending subsec. (e) generally, designated existing provisions as par. (1), added par. heading, and substituted subpar. (A) and (B) designations for prior par. (1) and (2) designations, struck out provisions relating to nonapplicability of preceding sentence to services performed in connection with manufactured or grown or extracted property, and provisions determining the place of performance of services for purposes of paragraph (2) with respect to any policy of insurance and reinsurance, and added pars. (2) and (3).

Subsec. (e)(3). Pub. L. 99–514, §1221(b)(3)(B), and Pub. L. 100–647, §1018(u)(38), struck out par. (3) as enacted by section 1810(k) of Pub. L. 99–514, which read as follows: ''For purposes of paragraph (1), in the case of any services performed with respect to any policy of insurance or reinsurance with respect to which the primary insured is a related person (within the meaning of section 864(d)(4))—

''(A) such primary insured shall be treated as a related person for purposes of paragraph (1)(A) (whether or not the requirements of subsection (d)(3) are met),

''(B) such services shall be treated as performed in the country within which the insured hazards, risks, losses, or liabilities occur, and

''(C) except as otherwise provided in regulations by the Secretary, rules similar to the rules of section 953(b) shall be applied in determining the income from such services.''

Subsec. (f). Pub. L. 99–514, §1221(c)(2), inserted last sentence.

Subsecs. (g), (h). Pub. L. 99–514, §1221(c)(3)(A)(i), redesignated subsec. (h) as (g) and struck out former subsec. (g), increase in qualified investments in foreign base company shipping operations, which read as follows: ''For purposes of subsection (b)(2), the increase for any taxable year in qualified investments in foreign base company shipping operations of any controlled foreign corporation is the amount by which—

''(1) the qualified investments in foreign base company shipping operations (as defined in section 955(b)) of the controlled foreign corporation at the close of the taxable year, exceed

''(2) the qualified investments in foreign base company shipping operations (as so defined) of the controlled foreign corporation at the close of the preceding taxable year.''

1984—Subsec. (e). Pub. L. 98–369, §137(a), inserted provision that for purposes of par. (2) services performed with respect to any insurance or reinsurance policy be treated as performed in the country of risk.

Subsec. (h)(1). Pub. L. 98–369, §712(f), substituted ''paragraphs (2) and (3) of section 907(c)'' for ''section 907(c)(2)''.

1982—Subsec. (a)(5). Pub. L. 97–248, §212(a), (e), added par. (5).

Subsec. (b)(4). Pub. L. 97–248, §212(d), inserted at end ''The preceding sentence shall not apply to foreign base company oil related income described in subsection (a)(5).''

Subsec. (b)(5). Pub. L. 97–248, §212(b)(1), substituted '', the foreign base company shipping income, and the foreign base company oil related income'' for ''and the foreign base company shipping income''.

Subsec. (b)(8). Pub. L. 97–248, §212(b)(2), added par. (8).

Subsec. (h). Pub. L. 97–248, §212(c), added subsec. (h).

1976—Subsecs. (b)(4), (5). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (b)(7). Pub. L. 94–455, §1024(a), added par. (7).

Subsec. (c)(3)(C). Pub. L. 94–455, §1023(a), added subpar. (C).

1975—Subsec. (a)(4). Pub. L. 94–12, §602(d)(1)(A), added par. (4).

Subsec. (b)(1). Pub. L. 94–12, §602(c)(1), struck out subsec. (b)(1) which related to the exclusion of certain dividends, interest, and gains from qualified investments in less developed countries.

Subsec. (b)(2). Pub. L. 94–12, §602(d)(1)(B), substituted ''foreign base company shipping income to the extent that the amount of such income does not exceed the increase for the taxable year in qualified investments in foreign base company shipping operations of the controlled foreign corporation (as determined under subsection (g))'' for ''income derived from, or in connection with, the use (or hiring or leasing for use) of any aircraft or vessel in foreign commerce, or the performance of services directly related to the use of any such aircraft or vessel'' in text and ''Exclusion for reinvested shipping income'' for ''Exclusion of certain shipping income'' in heading.

Subsec. (b)(3). Pub. L. 94–12, §602(d)(1)(C), (D), (e), substituted ''10 percent'' for ''30 percent'' in heading, substituted ''paragraphs (2) and (5)'' for ''paragraphs (1) and (5)'' and ''10 percent'' for ''30 percent'' in subpar. (A), and substituted ''paragraphs (2) and (5)'' for ''paragraphs (1) and (5)'' and ''paragraphs (2), (4), and (5)'' for ''paragraphs (1), (2), (4), and (5)'' in subpar. (B).

Subsec. (b)(5). Pub. L. 94–12, §602(d)(1)(E), substituted ''the foreign base company services income, and the foreign base company shipping income'' for ''and the foreign base company services income''.

Subsec. (b)(6). Pub. L. 94–12, §602(d)(1)(F), added par. (6).

Subsec. (d)(1). Pub. L. 94–12, §602(b), provided that for purposes of subsec. (d) personal property does not include agricultural commodities which are not grown in the United States in commercially marketable quantities.

Subsecs. (f), (g). Pub. L. 94–12, §602(c)(2), (d)(1)(G), added subsecs. (f) and (g).

1969—Subsec. (b)(4). Pub. L. 91–172 inserted reference to a foreign corporation which is an acquired corporation, and made the effecting of a transaction giving rise to foreign base income through the controlled foreign corporation subject to the Secretary's power to disallow inclusion of any item of such income where such inclusion will have one of the effects prescribed by this section.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 13517(b)(5) 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.

Amendment by section 14211(a), (b)(2), (3) 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 with or within which such taxable years of foreign corporations end, see section 14211(c) of Pub. L. 115–97, set out as a note under section 952 of this title.

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by section 128(b) of Pub. L. 114–113 applicable to taxable years of foreign corporations beginning after Dec. 31, 2014, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends, see section 128(c) of Pub. L. 114–113, set out as a note under section 953 of this title.

Pub. L. 114–113, div. Q, title I, §144(b), Dec. 18, 2015, 129 Stat. 3065, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 2014, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.''

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by section 134(b) of Pub. L. 113–295 applicable to taxable years of foreign corporations begin-

ning after Dec. 31, 2013, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends, see section 134(c) of Pub. L. 113–295, set out as a note under section 953 of this title.

Pub. L. 113–295, div. A, title I, §135(b), Dec. 19, 2014, 128 Stat. 4019, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 2013, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.''

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by section 322(b) of Pub. L. 112–240 applicable to taxable years of foreign corporations beginning after Dec. 31, 2011, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends, see section 322(c) of Pub. L. 112–240, set out as a note under section 953 of this title.

Pub. L. 112–240, title III, §323(b), Jan. 2, 2013, 126 Stat. 2333, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 2011, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.''

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 750(a) of Pub. L. 111–312 applicable to taxable years of foreign corporations beginning after Dec. 31, 2009, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends, see section 750(c) of Pub. L. 111–312, set out as a note under section 953 of this title.

Pub. L. 111–312, title VII, §751(b), Dec. 17, 2010, 124 Stat. 3321, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 2009, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title III, §304(b), Oct. 3, 2008, 122 Stat. 3867, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 2007, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.''

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by section 4(a) of Pub. L. 110–172 effective as if included in the provisions of the Tax Increase Prevention and Reconciliation Act of 2005, Pub. L. 109–222, to which such amendment relates, with certain exceptions, see section 4(d) of Pub. L. 110–172, set out as a note under section 355 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title IV, §426(a)(2), Dec. 20, 2006, 120 Stat. 2974, provided that: ''The amendments made by this subsection [amending this section] shall take effect as if included in section 103(b) of the Tax Increase Prevention and Reconciliation Act of 2005 [Pub. L. 109–222].''

Pub. L. 109–222, title I, §103(b)(2), May 17, 2006, 120 Stat. 347, provided that: ''The amendment made by this subsection [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 2005, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 403(m) 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 AMENDMENT

Pub. L. 108–357, title IV, §412(b), Oct. 22, 2004, 118 Stat. 1506, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.''

Amendment by section 413(b)(2) 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 IV, §414(d), Oct. 22, 2004, 118 Stat. 1511, provided that: ''The amendments made by this section [amending this section] shall apply to transactions entered into after December 31, 2004.''

Amendment by section 415(a), (b), (c)(2) 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 415(d) of Pub. L. 108–357, set out as a note under section 952 of this title.

Pub. L. 108–357, title IV, §416(b), Oct. 22, 2004, 118 Stat. 1512, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years of such foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of such foreign corporations end.''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by section 614(a)(2), (b)(1) of Pub. L. 107–147 applicable to taxable years beginning after Dec. 31, 2001, see section 614(c) of Pub. L. 107–147, set out as a note under section 953 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 503(a) of Pub. L. 106–170 applicable to taxable years beginning after Dec. 31, 1999, see section 503(c) of Pub. L. 106–170, set out as a note under section 953 of this title.

Amendment by section 532(c)(2)(Q) 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.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 4003(j) of 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 1997 AMENDMENT

Pub. L. 105–34, title X, §1051(c), Aug. 5, 1997, 111 Stat. 940, 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 XI, §1175(c), Aug. 5, 1997, 111 Stat. 993, provided that: ''The amendments made by this section [amending this section] shall apply to the first full taxable year of a foreign corporation beginning after December 31, 1997, and before January 1, 1999, and to taxable years of United States shareholders with or within which such taxable year of such foreign corporation ends.''

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, § 13233(a)(2), Aug. 10, 1993, 107 Stat. 502, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to taxable years of controlled foreign corporations beginning after September 30, 1993, and to taxable years of United States shareholders in which or with which such taxable years of controlled foreign corporations end.''

Amendment by section 13235(a)(3) and (b) of Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1992, see section 13235(c) of Pub. L. 103–66, set out as a note under section 904 of this title.

Amendment by section 13239(d) of Pub. L. 103–66 applicable to sales, exchanges, or other dispositions after Aug. 10, 1993, see section 13239(e) of Pub. L. 103–66, set out as a note under section 865 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 1201(c) 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.

Pub. L. 99–514, title XII, § 1221(g), Oct. 22, 1986, 100 Stat. 2555, as amended by Pub. L. 100–647, title I, § 1012(i)(13), Nov. 10, 1988, 102 Stat. 3509, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 864, 952, 953, 955, and 957 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 1986.

''(2) SPECIAL RULE FOR REPEAL OF EXCLUSION FOR REINVESTMENT SHIPPING INCOME.—

''(A) IN GENERAL.—In the case of any qualified controlled foreign corporation—

''(i) the amendments made by subsection (c) [amending this section and section 955 of this title] shall apply to taxable years ending on or after January 1, 1992, and

''(ii) [former] sections 955(a)(1)(A) and 955(a)(2)(A) of the Internal Revenue Code of 1986 (as amended by subsection (c)(3)) shall be applied by substituting 'ending before 1992' for 'beginning before 1987'.

''(B) QUALIFIED CONTROLLED FOREIGN CORPORATION.—For purposes of subparagraph (A), the term 'qualified controlled foreign corporation' means any controlled foreign corporation (as defined in section 957 of such Code)—

''(i) if the United States agent of such corporation is a domestic corporation incorporated on March 13, 1951, and

''(ii) if—

''(I) the certificate of incorporation of such corporation is dated November 23, 1963, and

''(II) such corporation has a wholly owned subsidiary and its certificate of incorporation is dated November 2, 1965.

''(3) EXCEPTION FOR CERTAIN REINSURANCE CONTRACTS.—

''(A) IN GENERAL.—In the case of the 1st 3 taxable years of a qualified controlled foreign insurer beginning after December 31, 1986, the amendments made by this section shall not apply to the phase-in percentage of any qualified reinsurance income.

''(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.

''(C) QUALIFIED CONTROLLED FOREIGN INSURER.—For purposes of this paragraph, the term 'qualified controlled foreign insurer' means—

''(i) any controlled foreign corporation which on August 16, 1986, was a member of an affiliated group (as defined in section 1504(a) of the Internal Revenue Code of 1986 without regard to subsection (b)(3) thereof) which had as its common parent a corporation incorporated in Delaware on June 9, 1967, with executive offices in New York, New York, or

''(ii) any controlled foreign corporation which on August 16, 1986, was a member of an affiliated group (as so defined) which had as its common parent a corporation incorporated in Delaware on November 3, 1981, with executive offices in Philadelphia, Pennsylvania.

''(D) QUALIFIED REINSURANCE INCOME.—For purposes of this paragraph, the term 'qualified reinsurance income' means any insurance income attributable to risks (other than risks described in section 953(a) or 954(e) of such Code as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]) assumed under a reinsurance contract. For purposes of this subparagraph, insurance income shall mean the underwriting income (as defined in section 832(b)(3) of such Code) and investment income derived from an amount of assets (to be segregated and separately identified) equivalent to the ordinary and necessary insurance reserves and necessary surplus equal to ⅓ of earned premium attributable to such contracts. For purposes of this paragraph, the amount of qualified reinsurance income shall not exceed the amount of insurance income from reinsurance contracts for calendar year 1985. In the case of controlled foreign corporations described in subparagraph (C)(ii), the preceding sentence shall not apply and the qualified reinsurance income of any such corporation shall not exceed such corporation's proportionate share of $27,000,000 (determined on the basis of respective amounts of qualified reinsurance income determined without regard to this subparagraph).''

Amendment by section 1223(a) 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 1810(k) 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, § 137(b), July 18, 1984, 98 Stat. 672, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to taxable years of controlled foreign corporations beginning after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 712(f) 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.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title II, § 212(f), Sept. 3, 1982, 96 Stat. 452, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 1982, and to taxable years of United States share-

holders in which, or with which, such taxable years of foreign corporations end.''

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title X, §1023(b), Oct. 4, 1976, 90 Stat. 1620, 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 taxable years of foreign corporations beginning after December 31, 1975, and to taxable years of United States shareholders (within the meaning of section 951(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) within which or with which such taxable years of such foreign corporations end.''

Pub. L. 94–455, title X, §1024(b), Oct. 4, 1976, 90 Stat. 1620, 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 taxable years of foreign corporations beginning after December 31, 1975, and to taxable years of United States shareholders (within the meaning of section 951(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) within which or with which such taxable years of such foreign corporations end.''

EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 94–12, title VI, §602(f), Mar. 29, 1975, 89 Stat. 64, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [enacting section 955 of this title, amending this section and sections 851, 902, and 951 of this title, and repealing section 963 and former section 955 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 1975, and to taxable years of United States shareholders (within the meaning of 951(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) within which or with which such taxable years of such foreign corporations end.''

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title IX, §909(b), Dec. 30, 1969, 83 Stat. 718, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after October 9, 1969.''

LINE ITEM VETO

Pub. L. 105–34, title XI, §1175, Aug. 5, 1997, 111 Stat. 990, amending this section and enacting provisions set out as a note above, was subject to line item veto by the President, Cancellation No. 97–1, signed Aug. 11, 1997, 62 F.R. 43266, Aug. 12, 1997. For decision holding line item veto unconstitutional, see *Clinton v. City of New York*, 524 U.S. 417, 118 S.Ct. 2091, 141 L.Ed.2d 393 (1998).

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 1201(c) 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 APPLICATION OF SECTION 954 TO CERTAIN DIVIDENDS

Pub. L. 99–514, title XII, §1227, Oct. 22, 1986, 100 Stat. 2560, provided that:

''(a) IN GENERAL.—For purposes of section 954(c)(3)(A) of the Internal Revenue Code of 1986, any dividends received by a qualified controlled foreign corporation (within the meaning of section 951 of such Code) during any of its 1st 5 taxable years beginning after December 31, 1986, with respect to its 32.7 percent interest in a Brazilian corporation shall be treated as if such Brazilian corporation were a related person to the qualified controlled foreign corporation to the extent the Brazilian corporation's income is attributable to its interest in the trade or business of mining in Brazil.

''(b) QUALIFIED CONTROLLED FOREIGN CORPORATION.—For purposes of this section, a qualified controlled foreign corporation is a corporation the greater than 99 percent shareholder of which is a company originally incorporated in Montana on July 9, 1951 (the name of which was changed on August 10, 1966).

''(c) EFFECTIVE DATE.—The amendment made by this section shall apply to dividends received after December 31, 1986.''

[§ 955. Repealed. Pub. L. 115–97, title I, § 14212(a), Dec. 22, 2017, 131 Stat. 2217]

Section, added Pub. L. 94–12, title VI, §602(d)(3)(A), Mar. 29, 1975, 89 Stat. 62; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 99–514, title XII, §1221(c)(3)(B), (C), Oct. 22, 1986, 100 Stat. 2553; Pub. L. 100–647, title I, §1012(i)(11), Nov. 10, 1988, 102 Stat. 3509, related to withdrawal of previously excluded subpart F income from qualified investment.

A prior section 955, added Pub. L. 87–834, §12(a), Oct. 16, 1962, 76 Stat. 1013, related to investments in less developed countries and dealing with less developed country corporations, prior to repeal by Pub. L. 94–12, title VI, §602(c)(5), Mar. 29, 1975, 89 Stat. 59.

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 14212(c) of Pub. L. 115–97, set out as an Effective Date of 2017 Amendment note under section 851 of this title.

§ 956. Investment of earnings in United States property

(a) General rule

In the case of any controlled foreign corporation, the amount determined under this section with respect to any United States shareholder for any taxable year is the lesser of—

(1) the excess (if any) of—

(A) such shareholder's pro rata share of the average of the amounts of United States property held (directly or indirectly) by the controlled foreign corporation as of the close of each quarter of such taxable year, over

(B) the amount of earnings and profits described in section 959(c)(1)(A) with respect to such shareholder, or

(2) such shareholder's pro rata share of the applicable earnings of such controlled foreign corporation.

The amount taken into account under paragraph (1) with respect to any property shall be its adjusted basis as determined for purposes of computing earnings and profits, reduced by any liability to which the property is subject.

(b) Special rules

(1) Applicable earnings

For purposes of this section, the term ''applicable earnings'' means, with respect to any controlled foreign corporation, the sum of—

(A) the amount (not including a deficit) referred to in section 316(a)(1) to the extent such amount was accumulated in prior taxable years, and

(B) the amount referred to in section 316(a)(2),

but reduced by distributions made during the taxable year and by earnings and profits described in section 959(c)(1).

(2) Special rule for U.S. property acquired before corporation is a controlled foreign corporation

In applying subsection (a) to any taxable year, there shall be disregarded any item of United States property which was acquired by the controlled foreign corporation before the first day on which such corporation was treated as a controlled foreign corporation. The aggregate amount of property disregarded under the preceding sentence shall not exceed the portion of the applicable earnings of such controlled foreign corporation which were accumulated during periods before such first day.

(3) Special rule where corporation ceases to be controlled foreign corporation

If any foreign corporation ceases to be a controlled foreign corporation during any taxable year—

(A) the determination of any United States shareholder's pro rata share shall be made on the basis of stock owned (within the meaning of section 958(a)) by such shareholder on the last day during the taxable year on which the foreign corporation is a controlled foreign corporation,

(B) the average referred to in subsection (a)(1)(A) for such taxable year shall be determined by only taking into account quarters ending on or before such last day, and

(C) in determining applicable earnings, the amount taken into account by reason of being described in paragraph (2) of section 316(a) shall be the portion of the amount so described which is allocable (on a pro rata basis) to the part of such year during which the corporation is a controlled foreign corporation.

(c) United States property defined

(1) In general

For purposes of subsection (a), the term ''United States property'' means any property acquired after December 31, 1962, which is—

(A) tangible property located in the United States;

(B) stock of a domestic corporation;

(C) an obligation of a United States person; or

(D) any right to the use in the United States of—

(i) a patent or copyright,

(ii) an invention, model, or design (whether or not patented),

(iii) a secret formula or process, or

(iv) any other similar right,

which is acquired or developed by the controlled foreign corporation for use in the United States.

(2) Exceptions

For purposes of subsection (a), the term ''United States property'' does not include—

(A) obligations of the United States, money, or deposits with—

(i) any bank (as defined by section 2(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)), without regard to subparagraphs (C) and (G) of paragraph (2) of such section), or

(ii) any corporation not described in clause (i) with respect to which a bank holding company (as defined by section 2(a) of such Act) or financial holding company (as defined by section 2(p) of such Act) owns directly or indirectly more than 80 percent by vote or value of the stock of such corporation;

(B) property located in the United States which is purchased in the United States for export to, or use in, foreign countries;

(C) any obligation of a United States person arising in connection with the sale or processing of property if the amount of such obligation outstanding at no time during the taxable year exceeds the amount which would be ordinary and necessary to carry on the trade or business of both the other party to the sale or processing transaction and the United States person had the sale or processing transaction been made between unrelated persons;

(D) any aircraft, railroad rolling stock, vessel, motor vehicle, or container used in the transportation of persons or property in foreign commerce and used predominantly outside the United States;

(E) an amount of assets of an insurance company equivalent to the unearned premiums or reserves ordinary and necessary for the proper conduct of its insurance business attributable to contracts which are not contracts described in section 953(a)(1);[1]

(F) the stock or obligations of a domestic corporation which is neither a United States shareholder (as defined in section 951(b)) of the controlled foreign corporation, nor a domestic corporation, 25 percent or more of the total combined voting power of which, immediately after the acquisition of any stock in such domestic corporation by the controlled foreign corporation, is owned, or is considered as being owned, by such United States shareholders in the aggregate;

(G) any movable property (other than a vessel or aircraft) which is used for the purpose of exploring for, developing, removing, or transporting resources from ocean waters or under such waters when used on the Continental Shelf of the United States;

(H) an amount of assets of the controlled foreign corporation equal to the earnings and profits accumulated after December 31,

[1] See References in Text note below.

1962, and excluded from subpart F income under section 952(b);

(I) deposits of cash or securities made or received on commercial terms in the ordinary course of a United States or foreign person's business as a dealer in securities or in commodities, but only to the extent such deposits are made or received as collateral or margin for (i) a securities loan, notional principal contract, options contract, forward contract, or futures contract, or (ii) any other financial transaction in which the Secretary determines that it is customary to post collateral or margin;

(J) an obligation of a United States person to the extent the principal amount of the obligation does not exceed the fair market value of readily marketable securities sold or purchased pursuant to a sale and repurchase agreement or otherwise posted or received as collateral for the obligation in the ordinary course of its business by a United States or foreign person which is a dealer in securities or commodities;

(K) securities acquired and held by a controlled foreign corporation in the ordinary course of its business as a dealer in securities if—

(i) the dealer accounts for the securities as securities held primarily for sale to customers in the ordinary course of business, and

(ii) the dealer disposes of the securities (or such securities mature while held by the dealer) within a period consistent with the holding of securities for sale to customers in the ordinary course of business; and

(L) an obligation of a United States person which—

(i) is not a domestic corporation, and

(ii) is not—

(I) a United States shareholder (as defined in section 951(b)) of the controlled foreign corporation, or

(II) a partnership, estate, or trust in which the controlled foreign corporation, or any related person (as defined in section 954(d)(3)), is a partner, beneficiary, or trustee immediately after the acquisition of any obligation of such partnership, estate, or trust by the controlled foreign corporation.

For purposes of subparagraphs (I), (J), and (K), the term ''dealer in securities'' has the meaning given such term by section 475(c)(1), and the term ''dealer in commodities'' has the meaning given such term by section 475(e), except that such term shall include a futures commission merchant.

(3) Certain trade or service receivables acquired from related United States persons

(A) In general

Notwithstanding paragraph (2) (other than subparagraph (H) thereof), the term ''United States property'' includes any trade or service receivable if—

(i) such trade or service receivable is acquired (directly or indirectly) from a related person who is a United States person, and

(ii) the obligor under such receivable is a United States person.

(B) Definitions

For purposes of this paragraph, the term ''trade or service receivable'' and ''related person'' have the respective meanings given to such terms by section 864(d).

(d) Pledges and guarantees

For purposes of subsection (a), a controlled foreign corporation shall, under regulations prescribed by the Secretary, be considered as holding an obligation of a United States person if such controlled foreign corporation is a pledgor or guarantor of such obligations.

(e) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section, including regulations to prevent the avoidance of the provisons[2] of this section through reorganizations or otherwise.

(Added Pub. L. 87–834, §12(a), Oct. 16, 1962, 76 Stat. 1015; amended Pub. L. 94–455, title X, §1021(a), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1618, 1834; Pub. L. 98–369, div. A, title I, §123(b), title VIII, §801(d)(8), July 18, 1984, 98 Stat. 646, 996; Pub. L. 99–514, title XVIII, §1810(c)(1), Oct. 22, 1986, 100 Stat. 2824; Pub. L. 103–66, title XIII, §13232(a), (b), Aug. 10, 1993, 107 Stat. 501; Pub. L. 104–188, title I, §1501(b)(2), (3), Aug. 20, 1996, 110 Stat. 1825; Pub. L. 105–34, title XI, §1173(a), title XVI, §1601(e), Aug. 5, 1997, 111 Stat. 988, 1090; Pub. L. 108–357, title IV, §407(a), (b), title VIII, §837(a), Oct. 22, 2004, 118 Stat. 1498, 1499, 1596; Pub. L. 110–172, §11(g)(15)(A), Dec. 29, 2007, 121 Stat. 2490.)

REFERENCES IN TEXT

Section 953(a)(1), referred to in subsec. (c)(2)(E), was subsequently amended, and section 953(a)(1) no longer describes contracts. However, contracts are described elsewhere in that section.

AMENDMENTS

2007—Subsec. (c)(2). Pub. L. 110–172, §11(g)(15)(A)(ii), substituted ''subparagraphs (I), (J), and (K)'' for ''subparagraphs (J), (K), and (L)'' in concluding provisions.

Subsec. (c)(2)(I) to (M). Pub. L. 110–172, §11(g)(15)(A)(i), redesignated subpars. (J) to (M) as (I) to (L), respectively, and struck out former subpar. (I) which read as follows: ''to the extent provided in regulations prescribed by the Secretary, property which is otherwise United States property which is held by a FSC and which is related to the export activities of such FSC;''.

2004—Subsec. (c)(2). Pub. L. 108–357, §407(b), substituted '', (K), and (L)'' for ''and (K)'' in concluding provisions.

Subsec. (c)(2)(A). Pub. L. 108–357, §837(a), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''obligations of the United States, money, or deposits with persons carrying on the banking business;''.

Subsec. (c)(2)(L), (M). Pub. L. 108–357, §407(a), added subpars. (L) and (M).

1997—Subsec. (b)(1)(A). Pub. L. 105–34, §1601(e), inserted ''to the extent such amount was accumulated in prior taxable years'' after ''section 316(a)(1)''.

Subsec. (c)(2). Pub. L. 105–34, §1173(a), added subpars. (J) and (K) and concluding provisions.

[2] So in original. Probably should be ''provisions''.

1996—Subsec. (b)(1). Pub. L. 104–188, § 1501(b)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''For purposes of this section, the term 'applicable earnings' has the meaning given to such term by section 956A(b), except that the provisions of such section excluding earnings and profits accumulated in taxable years beginning before October 1, 1993, shall be disregarded.''

Subsec. (b)(3). Pub. L. 104–188, § 1501(b)(3), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Rules similar to the rules of section 956A(e) shall apply for purposes of this section.''

1993—Subsec. (a). Pub. L. 103–66, § 13232(a)(2), added subsec. (a) and struck out former subsec. (a) which consisted of introductory provisions and pars. (1) to (3) setting out general rules for calculating amount of earnings of a controlled foreign corporation invested in United States and pro rata share of the increase for any taxable year in earnings of such a corporation invested in United States property.

Subsecs. (b) to (d). Pub. L. 103–66, § 13232(a), added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively.

Subsec. (e). Pub. L. 103–66, § 13232(b), added subsec. (e).

1986—Subsec. (b)(3)(A). Pub. L. 99–514 inserted ''(other than subparagraph (H) thereof)''.

1984—Subsec. (b)(2)(I). Pub. L. 98–369, § 801(d)(8), added subpar. (I).

Subsec. (b)(3). Pub. L. 98–369, § 123(b), added par. (3).

1976—Subsec. (b)(2)(F) to (H). Pub. L. 94–455, § 1021(a), added subpars. (F) and (G) and redesignated former subpar. (F) as (H).

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

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title IV, § 407(c), Oct. 22, 2004, 118 Stat. 1499, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.''

Pub. L. 108–357, title VIII, § 837(b), Oct. 22, 2004, 118 Stat. 1596, provided that: ''The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XI, § 1173(b), Aug. 5, 1997, 111 Stat. 989, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 1997, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.''

Amendment by section 1601(e) 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

Amendment by Pub. L. 104–188 applicable to taxable years of foreign corporations beginning after Dec. 31, 1996, and to taxable years of United States shareholders within which or with which such taxable years of foreign corporations end, see section 1501(d) of Pub. L. 104–188, set out as a note under section 904 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years of controlled foreign corporations beginning after Sept. 30, 1993, and to taxable years of United States shareholders in which or with which such taxable years of controlled foreign corporations end, see section 13232(d) of Pub. L. 103–66, set out as a note under section 951 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 1984 AMENDMENT

Amendment by section 123(b) of Pub. L. 98–369 applicable to accounts receivable and evidences of indebtedness transferred after Mar. 1, 1984, in taxable years ending after such date, with an exception, see section 123(c) of Pub. L. 98–369, set out as a note under section 864 of this title.

Amendment by section 801(d)(8) 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 1976 AMENDMENT

Pub. L. 94–455, title X, § 1021(c), Oct. 4, 1976, 90 Stat. 1619, 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 958 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 1975, and to taxable years of United States shareholders (within the meaning of section 951(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) within which or with which such taxable years of such foreign corporations end. In determining for purposes of any taxable year referred to in the preceding sentence the amount referred to in section 956(a)(2)(A) of the Internal Revenue Code of 1986 for the last taxable year of a corporation beginning before January 1, 1976, the amendments made by this section shall be deemed also to apply to such last 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.

[§ 956A. Repealed. Pub. L. 104–188, title I, § 1501(a)(2), Aug. 20, 1996, 110 Stat. 1825]

Section, added Pub. L. 103–66, title XIII, § 13231(b), Aug. 10, 1993, 107 Stat. 496; amended Pub. L. 104–188, title I, § 1703(i)(2), (3), Aug. 20, 1996, 110 Stat. 1876, related to earnings invested in excess passive assets.

EFFECTIVE DATE OF REPEAL

Repeal by Pub. L. 104–188 applicable to taxable years of foreign corporations beginning after Dec. 31, 1996, and to taxable years of United States shareholders within which or with which such taxable years of foreign corporations end, see section 1501(d) of Pub. L. 104–188, set out as an Effective Date of 1996 Amendment note under section 904 of this title.

§ 957. Controlled foreign corporations; United States persons

(a) General rule

For purposes of this title, the term ''controlled foreign corporation'' means any foreign corporation if more than 50 percent of—

(1) the total combined voting power of all classes of stock of such corporation entitled to vote, or

(2) the total value of the stock of such corporation,

is owned (within the meaning of section 958(a)), or is considered as owned by applying the rules of ownership of section 958(b), by United States shareholders on any day during the taxable year of such foreign corporation.

(b) Special rule for insurance

For purposes only of taking into account income described in section 953(a) (relating to insurance income), the term ''controlled foreign corporation'' includes not only a foreign corporation as defined by subsection (a) but also one of which more than 25 percent of the total combined voting power of all classes of stock (or more than 25 percent of the total value of stock) is owned (within the meaning of section 958(a)), or is considered as owned by applying the rules of ownership of section 958(b), by United States shareholders on any day during the taxable year of such corporation, if the gross amount of premiums or other consideration in respect of the reinsurance or the issuing of insurance or annuity contracts described in section 953(a)(1)[1] exceeds 75 percent of the gross amount of all premiums or other consideration in respect of all risks.

(c) United States person

For purposes of this subpart, the term ''United States person'' has the meaning assigned to it by section 7701(a)(30) except that—

(1) with respect to a corporation organized under the laws of the Commonwealth of Puerto Rico, such term does not include an individual who is a bona fide resident of Puerto Rico, if a dividend received by such individual during the taxable year from such corporation would, for purposes of section 933(1), be treated as income derived from sources within Puerto Rico, and

(2) with respect to a corporation organized under the laws of Guam, American Samoa, or the Northern Mariana Islands—

(A) 80 percent or more of the gross income of which for the 3-year period ending at the close of the taxable year (or for such part of such period as such corporation or any predecessor has been in existence) was derived from sources within such a possession or was effectively connected with the conduct of a trade or business in such a possession, and

(B) 50 percent or more of the gross income of which for such period (or part) was derived from the active conduct of a trade or business within such a possession,

such term does not include an individual who is a bona fide resident of Guam, American Samoa, or the Northern Mariana Islands.

For purposes of subparagraphs (A) and (B) of paragraph (2), the determination as to whether income was derived from the active conduct of a trade or business within a possession shall be made under regulations prescribed by the Secretary.

(Added Pub. L. 87–834, §12(a), Oct. 16, 1962, 76 Stat. 1017; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 99–514, title XII, §§1221(b)(3)(C), 1222(a), 1224(a), 1273(a), Oct. 22, 1986, 100 Stat. 2553, 2556, 2558, 2595; Pub. L. 108–357, title VIII, §908(c)(5), Oct. 22, 2004, 118 Stat. 1656; Pub. L. 115–97, title I, §14101(e)(2), Dec. 22, 2017, 131 Stat. 2192.)

[1] See References in Text note below.

REFERENCES IN TEXT

Section 953(a)(1), referred to in subsec. (b), was subsequently amended, and section 953(a)(1) no longer describes insurance or annuity contracts. However, insurance or annuity contracts are described elsewhere in that section.

AMENDMENTS

2017—Subsec. (a). Pub. L. 115–97 substituted ''title'' for ''subpart'' in introductory provisions.

2004—Subsec. (c). Pub. L. 108–357, §908(c)(5)(B), struck out ''derived from sources within a possession, was effectively connected with the conduct of a trade or business within a possession, or'' after ''whether income was'' in concluding provisions.

Subsec. (c)(2)(B). Pub. L. 108–357, §908(c)(5)(A), substituted ''active conduct of a'' for ''conduct of an active''.

1986—Subsec. (a). Pub. L. 99–514, §1222(a)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''For purposes of this subpart, the term 'controlled foreign corporation' means any foreign corporation of which more than 50 percent of the total combined voting power of all classes of stock entitled to vote is owned (within the meaning of section 958(a)), or is considered as owned by applying the rules of ownership of section 958(b), by United States shareholders on any day during the taxable year of such foreign corporation.''

Subsec. (b). Pub. L. 99–514, §1222(a)(2), inserted ''(or more than 25 percent of the total value of stock)''.

Pub. L. 99–514, §1221(b)(3)(C), substituted ''insurance income'' for ''income derived from insurance of United States risks''.

Subsec. (c). Pub. L. 99–514, §1273(a), added par. (2) and concluding provisions and struck out former pars. (2) and (3) which read as follows:

''(2) with respect to a corporation organized under the laws of the Virgin Islands, such term does not include an individual who is a bona fide resident of the Virgin Islands and whose income tax obligation under this subtitle for the taxable year is satisfied pursuant to section 28(a) of the Revised Organic Act of the Virgin Islands, approved July 22, 1954 (48 U.S.C. 1642), by paying tax on income derived from all sources both within and outside the Virgin Islands into the treasury of the Virgin Islands, and

''(3) with respect to a corporation organized under the laws of any other possession of the United States, such term does not include an individual who is a bona fide resident of any such other possession and whose income derived from sources within possessions of the United States is not, by reason of section 931(a), includible in gross income under this subtitle for the taxable year.''

Pub. L. 99–514, §1224(a), redesignated subsec. (d) as (c) and struck out former subsec. (c) which provided circumstances under which for purposes of this subpart, the term ''controlled foreign corporation'' would not include certain corporations created or organized in Puerto Rico or a possession of the United States or under the laws of Puerto Rico or a possession of the United States.

Subsec. (d). Pub. L. 99–514, §1224(a), redesignated subsec. (d) as (c).

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

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–97 applicable to distributions made after Dec. 31, 2017, see section 14101(f) of Pub. L. 115–97, set out as an Effective Date note under section 245A of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years ending after Oct. 22, 2004, see section 908(d)(1) of Pub. L. 108–357, set out as an Effective Date note under section 937 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1221(b)(3)(C) 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, § 1222(c), Oct. 22, 1986, 100 Stat. 2557, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 552 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 1986; except that for purposes of applying sections 951(a)(1)(B) and 956 of the Internal Revenue Code of 1986, such amendments shall take effect on August 16, 1986.

''(2) TRANSITIONAL RULE.—In the case of any corporation treated as a controlled foreign corporation by reason of the amendments made by this section, property acquired before August 16, 1986, shall not be taken into account under section 956(b) of the Internal Revenue Code of 1986.

''(3) SPECIAL RULE FOR BENEFICIARY OF TRUST.—In the case of an individual—

''(A) who is a beneficiary of a trust which was established on December 7, 1979, under the laws of a foreign jurisdiction, and

''(B) who was not a citizen or resident of the United States on the date the trust was established,

amounts which are included in the gross income of such beneficiary under section 951(a) of the Internal Revenue Code of 1986 with respect to stock held by the trust (and treated as distributed to the trust) shall be treated as the first amounts which are distributed by the trust to such beneficiary and as amounts to which section 959(a) of such Code applies.''

Pub. L. 99–514, title XII, § 1224(b), Oct. 22, 1986, 100 Stat. 2558, provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 1986; except that for purposes of applying sections 951(a)(1)(B) and 956 of the Internal Revenue Code of 1986, such amendments shall take effect on August 16, 1986.

''(2) TRANSITIONAL RULE.—In the case of any corporation treated as a controlled foreign corporation by reason of the amendment made by subsection (a), property acquired before August 16, 1986, shall not be taken into account under section 956(b) of the Internal Revenue Code of 1986.''

Amendment by section 1273(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.

§ 958. Rules for determining stock ownership

(a) Direct and indirect ownership

(1) General rule

For purposes of this subpart (other than section 960), stock owned means—

(A) stock owned directly, and

(B) stock owned with the application of paragraph (2).

(2) Stock ownership through foreign entities

For purposes of subparagraph (B) of paragraph (1), stock owned, directly or indirectly, by or for a foreign corporation, foreign partnership, or foreign trust or foreign estate (within the meaning of section 7701(a)(31)) shall be considered 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.

(3) Special rule for mutual insurance companies

For purposes of applying paragraph (1) in the case of a foreign mutual insurance company, the term ''stock'' shall include any certificate entitling the holder to voting power in the corporation.

(b) Constructive ownership

For purposes of sections 951(b), 954(d)(3), 956(c)(2), and 957, section 318(a) (relating to constructive ownership of stock) shall apply to the extent that the effect is to treat any United States person as a United States shareholder within the meaning of section 951(b), to treat a person as a related person within the meaning of section 954(d)(3), to treat the stock of a domestic corporation as owned by a United States shareholder of the controlled foreign corporation for purposes of section 956(c)(2), or to treat a foreign corporation as a controlled foreign corporation under section 957, except that—

(1) In applying paragraph (1)(A) of section 318(a), stock owned by a nonresident alien individual (other than a foreign trust or foreign estate) shall not be considered as owned by a citizen or by a resident alien individual.

(2) In applying subparagraphs (A), (B), and (C) of section 318(a)(2), if a partnership, estate, trust, or corporation owns, directly or indirectly, more than 50 percent of the total combined voting power of all classes of stock entitled to vote of a corporation, it shall be considered as owning all the stock entitled to vote.

(3) In applying subparagraph (C) of section 318(a)(2), the phrase ''10 percent'' shall be substituted for the phrase ''50 percent'' used in subparagraph (C).

Paragraph (1) shall not apply for purposes of section 956(c)(2) to treat stock of a domestic corporation as not owned by a United States shareholder.

(Added Pub. L. 87–834, § 12(a), Oct. 16, 1962, 76 Stat. 1018; amended Pub. L. 88–554, § 4(b)(5), Aug. 31, 1964, 78 Stat. 763; Pub. L. 94–455, title X, § 1021(b), Oct. 4, 1976, 90 Stat. 1619; Pub. L. 104–188, title I, §§ 1703(i)(4), 1704(t)(7), Aug. 20, 1996, 110 Stat. 1876, 1887; Pub. L. 115–97, title I, §§ 14213(a), 14301(c)(31), Dec. 22, 2017, 131 Stat. 2217, 2224.)

AMENDMENTS

2017—Subsec. (a)(1). Pub. L. 115–97, § 14301(c)(31), substituted ''960'' for ''960(a)(1)'' in introductory provisions.

Subsec. (b). Pub. L. 115–97, § 14213(a)(2), substituted ''Paragraph (1)'' for ''Paragraphs (1) and (4)'' in concluding provisions.

Subsec. (b)(4). Pub. L. 115–97, § 14213(a)(1), struck out par. (4) which read as follows: ''Subparagraphs (A), (B), and (C) of section 318(a)(3) shall not be applied so as to consider a United States person as owning stock which

is owned by a person who is not a United States person.''

1996—Subsec. (a)(1). Pub. L. 104–188, §1704(t)(7), substituted ''section 960(a)(1)'' for ''sections 955(b)(1)(A) and (B), 955(c)(2)(A)(ii), and 960(a)(1)'' in introductory provisions.

Subsec. (b). Pub. L. 104–188, §1703(i)(4), substituted ''956(c)(2)'' for ''956(b)(2)'' wherever appearing in introductory and closing provisions.

1976—Subsec. (b). Pub. L. 94–455 inserted ''956(b)(2)'' after ''purposes of sections 951(b), 954(d)(3),'', ''to treat the stock of a domestic corporation as owned by a United States shareholder of the controlled foreign corporation for purposes of section 956(b)(2)'' after ''meaning of section 954(d)(3)'' and ''Paragraphs (1) and (4) shall not apply for purposes of section 956(b)(2) to treat stock of a domestic corporation as not owned by a United States shareholder'' following subpar. (4).

1964—Subsec. (b). Pub. L. 88–554 redesignated pars. (4) and (5) as (3) and (4), respectively, struck out former par. (3) which related to ownership of stock by a partnership, estate, trust, or corporation for purposes of applying first sentence of subpars. (A) and (B), and subpar. (C)(i) of section 318(a)(2) of this title, and made amendments throughout subsec. (b) to conform to changes made in section 318 of this title by Pub. L. 88–554.

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–97, title I, §14213(b), Dec. 22, 2017, 131 Stat. 2217, provided that: ''The amendments made by this section [amending this section] shall apply to—

''(1) the last taxable year of foreign corporations beginning before January 1, 2018, and each subsequent taxable year of such foreign corporations, and

''(2) taxable years of United States shareholders in which or with which such taxable years of foreign corporations end.''

Amendment by section 14301(c)(31) 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 1996 AMENDMENT

Amendment by section 1703(i)(4) of Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§13001–13444, to which such amendment relates, see section 1703(*o*) of Pub. L. 104–188, set out as a note under section 39 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable to taxable years of foreign corporations beginning after Dec. 31, 1975, and to taxable years of United States shareholders within which or with which such taxable years of such corporations end, see section 1021(c) of Pub. L. 94–455, set out as a note under section 956 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

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.

§ 959. Exclusion from gross income of previously taxed earnings and profits

(a) Exclusion from gross income of United States persons

For purposes of this chapter, the earnings and profits of a foreign corporation attributable to amounts which are, or have been, included in the gross income of a United States shareholder under section 951(a) shall not, when—

(1) such amounts are distributed to, or

(2) such amounts would, but for this subsection, be included under section 951(a)(1)(B) in the gross income of,

such shareholder (or any other United States person who acquires from any person any portion of the interest of such United States shareholder in such foreign corporation, but only to the extent of such portion, and subject to such proof of the identity of such interest as the Secretary may by regulations prescribe) directly or indirectly through a chain of ownership described under section 958(a), be again included in the gross income of such United States shareholder (or of such other United States person). The rules of subsection (c) shall apply for purposes of paragraph (1) of this subsection and the rules of subsection (f) shall apply for purposes of paragraph (2) of this subsection.

(b) Exclusion from gross income of certain foreign subsidiaries

For purposes of section 951(a), the earnings and profits of a controlled foreign corporation attributable to amounts which are, or have been, included in the gross income of a United States shareholder under section 951(a), shall not, when distributed through a chain of ownership described under section 958(a), be also included in the gross income of another controlled foreign corporation in such chain for purposes of the application of section 951(a) to such other controlled foreign corporation with respect to such United States shareholder (or to any other United States shareholder who acquires from any person any portion of the interest of such United States shareholder in the controlled foreign corporation, but only to the extent of such portion, and subject to such proof of identity of such interest as the Secretary may prescribe by regulations).

(c) Allocation of distributions

For purposes of subsections (a) and (b), section 316(a) shall be applied by applying paragraph (2) thereof, and then paragraph (1) thereof—

(1) first to the aggregate of—

(A) earnings and profits attributable to amounts included in gross income under section 951(a)(1)(B) (or which would have been included except for subsection (a)(2) of this section), and

(B) earnings and profits attributable to amounts included in gross income under section 951(a)(1)(C) (or which would have been included except for subsection (a)(3) of this section),

with any distribution being allocated between earnings and profits described in subparagraph (A) and earnings and profits described in subparagraph (B) proportionately on the basis of the respective amounts of such earnings and profits,

(2) then to earnings and profits attributable to amounts included in gross income under section 951(a)(1)(A) (but reduced by amounts not included under subparagraph (B) or (C) of section 951(a)(1) because of the exclusions in

paragraphs (2) and (3) of subsection (a) of this section), and

(3) then to other earnings and profits.

References in this subsection to section 951(a)(1)(C) and subsection (a)(3) shall be treated as references to such provisions as in effect on the day before the date of the enactment of the Small Business Job Protection Act of 1996.

(d) Distributions excluded from gross income not to be treated as dividends

Any distribution excluded from gross income under subsection (a) shall be treated, for purposes of this chapter, as a distribution which is not a dividend; except that such distributions shall immediately reduce earnings and profits.

(e) Coordination with amounts previously taxed under section 1248

For purposes of this section and section 960(c), any amount included in the gross income of any person as a dividend by reason of subsection (a) or (f) of section 1248 shall be treated as an amount included in the gross income of such person (or, in any case to which section 1248(e) applies, of the domestic corporation referred to in section 1248(e)(2)) under section 951(a)(1)(A).

(f) Allocation rules for certain inclusions

(1) In general

For purposes of this section, amounts that would be included under subparagraph (B) of section 951(a)(1) (determined without regard to this section) shall be treated as attributable first to earnings described in subsection (c)(2), and then to earnings described in subsection (c)(3).

(2) Treatment of distributions

In applying this section, actual distributions shall be taken into account before amounts that would be included under section 951(a)(1)(B) (determined without regard to this section).

(Added Pub. L. 87–834, §12(a), Oct. 16, 1962, 76 Stat. 1019; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title I, §133(b)(1), July 18, 1984, 98 Stat. 668; Pub. L. 99–514, title XII, §1226(b), Oct. 22, 1986, 100 Stat. 2560; Pub. L. 100–647, title I, §1012(bb)(7)(A), Nov. 10, 1988, 102 Stat. 3536; Pub. L. 103–66, title XIII, §13231(c)(1), (2), (4)(A), (B), Aug. 10, 1993, 107 Stat. 497, 498; Pub. L. 104–188, title I, §1501(b)(4)–(8), Aug. 20, 1996, 110 Stat. 1826; Pub. L. 115–97, title I, §14301(c)(32), (33), Dec. 22, 2017, 131 Stat. 2224.)

REFERENCES IN TEXT

The date of the enactment of the Small Business Job Protection Act of 1996, referred to in subsec. (c), is the date of enactment of Pub. L. 104–188, which was approved Aug. 20, 1996.

AMENDMENTS

2017—Subsec. (d). Pub. L. 115–97, §14301(c)(32), substituted ''Any'' for ''Except as provided in section 960(a)(3), any''.

Subsec. (e). Pub. L. 115–97, §14301(c)(33), substituted ''section 960(c)'' for ''section 960(b)''.

1996—Subsec. (a). Pub. L. 104–188, §1501(b)(4), (5), substituted ''paragraph (2)'' for ''paragraphs (2) and (3)'' in closing provisions, inserted ''or'' at end of par. (1), struck out ''or'' at end of par. (2), and struck out par. (3) which read as follows: ''such amounts would, but for this subsection, be included under section 951(a)(1)(C) in the gross income of,''.

Subsec. (c). Pub. L. 104–188, §1501(b)(6), inserted at end ''References in this subsection to section 951(a)(1)(C) and subsection (a)(3) shall be treated as references to such provisions as in effect on the day before the date of the enactment of the Small Business Job Protection Act of 1996.''

Subsec. (f)(1). Pub. L. 104–188, §1501(b)(7), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''For purposes of this section—

''(A) amounts that would be included under subparagraph (B) of section 951(a)(1) (determined without regard to this section) shall be treated as attributable first to earnings described in subsection (c)(2), and then to earnings described in subsection (c)(3), and

''(B) amounts that would be included under subparagraph (C) of section 951(a)(1) (determined without regard to this section) shall be treated as attributable first to earnings described in subsection (c)(2) to the extent the earnings so described were accumulated in taxable years beginning after September 30, 1993, and then to earnings described in subsection (c)(3).''

Subsec. (f)(2). Pub. L. 104–188, §1501(b)(8), substituted ''section 951(a)(1)(B)'' for ''subparagraphs (B) and (C) of section 951(a)(1)''.

1993—Subsec. (a). Pub. L. 103–66, §13231(c)(2)(A), (4)(A), substituted in introductory provisions ''earnings and profits'' for ''earnings and profits for taxable year'' and inserted at end of closing provisions ''The rules of subsection (c) shall apply for purposes of paragraph (1) of this subsection and the rules of subsection (f) shall apply for purposes of paragraphs (2) and (3) of this subsection.''

Subsec. (a)(3). Pub. L. 103–66, §13231(c)(1), added par. (3).

Subsec. (b). Pub. L. 103–66, §13231(c)(4)(A), substituted ''earnings and profits'' for ''earnings and profits for a taxable year''.

Subsec. (c)(1). Pub. L. 103–66, §13231(c)(2)(C), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''first to earnings and profits attributable to amounts included in gross income under section 951(a)(1)(B) (or which would have been included except for subsection (a)(2) of this section),''.

Subsec. (c)(2). Pub. L. 103–66, §13231(c)(4)(B), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''then to earnings and profits attributable to amounts included in gross income under section 951(a)(1)(A) (but reduced by amounts not included under section 951(a)(1)(B) because of the exclusion in subsection (a)(2) of this section), and''.

Subsec. (f). Pub. L. 103–66, §13231(c)(2)(B), added subsec. (f).

1988—Subsec. (e). Pub. L. 100–647 substituted ''such person (or, in any case to which section 1248(e) applies, of the domestic corporation referred to in section 1248(e)(2)) under'' for ''such person under''.

1986—Subsec. (d). Pub. L. 99–514 inserted ''; except that such distributions shall immediately reduce earnings and profits''.

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

1976—Subsecs. (a), (b). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

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 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years of foreign corporations beginning after Dec. 31,

1996, and to taxable years of United States shareholders within which or with which such taxable years of foreign corporations end, see section 1501(d) of Pub. L. 104–188, set out as a note under section 904 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years of foreign corporations beginning after Sept. 30, 1993, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, see section 13231(e) of Pub. L. 103–66, set out as a note under section 951 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1012(bb)(7)(B), Nov. 10, 1988, 102 Stat. 3536, provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply in the case of transactions to which section 1248(e) of the 1986 Code applies and which occur after December 31, 1986.''

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XII, §1226(c)(2), Oct. 22, 1986, 100 Stat. 2560, provided that: ''The amendment made by subsection (b) [amending this section] shall apply to distributions after the date of the enactment of this Act [Oct. 22, 1986].''

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §133(d)(2), (3), July 18, 1984, 98 Stat. 668, as amended by Pub. L. 99–514, §2, title XVIII, §1810(i)(2), Oct. 22, 1986, 100 Stat. 2095, 2829; Pub. L. 100–647, title I, §1018(g)(2), Nov. 10, 1988, 102 Stat. 3582, provided that:

''(2) SUBSECTIONS (b) AND (c).—Except as provided in paragraph (3), the amendments made by subsections (b) and (c) [amending this section and section 1248 of this title] shall apply with respect to transactions to which subsection (a) or (f) of section 1248 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] applies occurring after the date of the enactment of this Act [July 18, 1984].

''(3) ELECTION OF EARLIER DATE FOR CERTAIN TRANSACTIONS.—

''(A) IN GENERAL.—If the appropriate election is made under subparagraph (B), the amendments made by subsection (b) [amending this section and section 1248 of this title] shall apply with respect to transactions to which subsection (a) or (f) of section 1248 of such Code applies occurring after October 9, 1975.

''(B) ELECTION.—

''(i) Subparagraph (A) shall apply with respect to transactions to which subsection (a) of section 1248 of such Code applies if the foreign corporation described in such subsection (or its successor in interest) so elects.

''(ii) Subparagraph (A) shall apply with respect to transactions to which subsection (f) of section 1248 of such Code applies if the domestic corporation described in section 1248(f)(1) of such Code (or its successor) so elects.

''(iii) Any election under clause (i) or (ii) shall be made not later than the date which is 1 year after the date of the enactment of the Tax Reform Act of 1986 [Oct. 22, 1986] and shall be made in such manner as the Secretary of the Treasury or his delegate shall prescribe.''

§ 960. Deemed paid credit for subpart F inclusions

(a) In general

For purposes of subpart A of this part, if there is included in the gross income of a domestic corporation any item of income under section 951(a)(1) with respect to any controlled foreign corporation with respect to which such domestic corporation is a United States shareholder, such domestic corporation shall be deemed to have paid so much of such foreign corporation's foreign income taxes as are properly attributable to such item of income.

(b) Special rules for distributions from previously taxed earnings and profits

For purposes of subpart A of this part—

(1) In general

If any portion of a distribution from a controlled foreign corporation to a domestic corporation which is a United States shareholder with respect to such controlled foreign corporation is excluded from gross income under section 959(a), such domestic corporation shall be deemed to have paid so much of such foreign corporation's foreign income taxes as—

(A) are properly attributable to such portion, and

(B) have not been deemed to have to[1] been paid by such domestic corporation under this section for the taxable year or any prior taxable year.

(2) Tiered controlled foreign corporations

If section 959(b) applies to any portion of a distribution from a controlled foreign corporation to another controlled foreign corporation, such controlled foreign corporation shall be deemed to have paid so much of such other controlled foreign corporation's foreign income taxes as—

(A) are properly attributable to such portion, and

(B) have not been deemed to have been paid by a domestic corporation under this section for the taxable year or any prior taxable year.

(c) Special rules for foreign tax credit in year of receipt of previously taxed earnings and profits

(1) Increase in section 904 limitation

In the case of any taxpayer who—

(A) either (i) chose to have the benefits of subpart A of this part for a taxable year beginning after September 30, 1993, in which he was required under section 951(a) to include any amount in his gross income, or (ii) did not pay or accrue for such taxable year any income, war profits, or excess profits taxes to any foreign country or to any possession of the United States,

(B) chooses to have the benefits of subpart A of this part for any taxable year in which he receives 1 or more distributions or amounts which are excludable from gross income under section 959(a) and which are attributable to amounts included in his gross income for taxable years referred to in subparagraph (A), and

(C) for the taxable year in which such distributions or amounts are received, pays, or is deemed to have paid, or accrues income, war profits, or excess profits taxes to a foreign country or to any possession of the United States with respect to such distributions or amounts,

the limitation under section 904 for the taxable year in which such distributions or

[1] So in original.

amounts are received shall be increased by the lesser of the amount of such taxes paid, or deemed paid, or accrued with respect to such distributions or amounts or the amount in the excess limitation account as of the beginning of such taxable year.

(2) Excess limitation account

(A) Establishment of account

Each taxpayer meeting the requirements of paragraph (1)(A) shall establish an excess limitation account. The opening balance of such account shall be zero.

(B) Increases in account

For each taxable year beginning after September 30, 1993, the taxpayer shall increase the amount in the excess limitation account by the excess (if any) of—

(i) the amount by which the limitation under section 904(a) for such taxable year was increased by reason of the total amount of the inclusions in gross income under section 951(a) for such taxable year, over

(ii) the amount of any income, war profits, and excess profits taxes paid, or deemed paid, or accrued to any foreign country or possession of the United States which were allowable as a credit under section 901 for such taxable year and which would not have been allowable but for the inclusions in gross income described in clause (i).

Proper reductions in the amount added to the account under the preceding sentence for any taxable year shall be made for any increase in the credit allowable under section 901 for such taxable year by reason of a carryback if such increase would not have been allowable but for the inclusions in gross income described in clause (i).

(C) Decreases in account

For each taxable year beginning after September 30, 1993, for which the limitation under section 904 was increased under paragraph (1), the taxpayer shall reduce the amount in the excess limitation account by the amount of such increase.

(3) Distributions of income previously taxed in years beginning before October 1, 1993

If the taxpayer receives a distribution or amount in a taxable year beginning after September 30, 1993, which is excluded from gross income under section 959(a) and is attributable to any amount included in gross income under section 951(a) for a taxable year beginning before October 1, 1993, the limitation under section 904 for the taxable year in which such amount or distribution is received shall be increased by the amount determined under this subsection as in effect on the day before the date of the enactment of the Revenue Reconcilation[2] Act of 1993.

(4) Cases in which taxes not to be allowed as deduction

In the case of any taxpayer who—

(A) chose to have the benefits of subpart A of this part for a taxable year in which he was required under section 951(a) to include in his gross income an amount in respect of a controlled foreign corporation, and

(B) does not choose to have the benefits of subpart A of this part for the taxable year in which he receives a distribution or amount which is excluded from gross income under section 959(a) and which is attributable to earnings and profits of the controlled foreign corporation which was included in his gross income for the taxable year referred to in subparagraph (A),

no deduction shall be allowed under section 164 for the taxable year in which such distribution or amount is received for any income, war profits, or excess profits taxes paid or accrued to any foreign country or to any possession of the United States on or with respect to such distribution or amount.

(5) Insufficient taxable income

If an increase in the limitation under this subsection exceeds the tax imposed by this chapter for such year, the amount of such excess shall be deemed an overpayment of tax for such year.

(d) Deemed paid credit for taxes properly attributable to tested income

(1) In general

For purposes of subpart A of this part, if any amount is includible in the gross income of a domestic corporation under section 951A, such domestic corporation shall be deemed to have paid foreign income taxes equal to 80 percent of the product of—

(A) such domestic corporation's inclusion percentage, multiplied by

(B) the aggregate tested foreign income taxes paid or accrued by controlled foreign corporations.

(2) Inclusion percentage

For purposes of paragraph (1), the term ''inclusion percentage'' means, with respect to any domestic corporation, the ratio (expressed as a percentage) of—

(A) such corporation's global intangible low-taxed income (as defined in section 951A(b)), divided by

(B) the aggregate amount described in section 951A(c)(1)(A) with respect to such corporation.

(3) Tested foreign income taxes

For purposes of paragraph (1), the term ''tested foreign income taxes'' means, with respect to any domestic corporation which is a United States shareholder of a controlled foreign corporation, the foreign income taxes paid or accrued by such foreign corporation which are properly attributable to the tested income of such foreign corporation taken into account by such domestic corporation under section 951A.

(e) Foreign income taxes

The term ''foreign income taxes'' means any income, war profits, or excess profits taxes paid or accrued to any foreign country or possession of the United States.

[2] So in original. Probably should be ''Reconciliation''.

(f) Regulations

The Secretary shall prescribe such regulations or other guidance as may be necessary or appropriate to carry out the provisions of this section.

(Added Pub. L. 87–834, §12(a), Oct. 16, 1962, 76 Stat. 1020; amended Pub. L. 94–455, title X, §§1031(b)(1), 1033(b)(2), 1037(a), Oct. 4, 1976, 90 Stat. 1622, 1628, 1633; Pub. L. 99–514, title XII, §1202(b), Oct. 22, 1986, 100 Stat. 2530; Pub. L. 103–66, title XIII, §13233(b)(1), Aug. 10, 1993, 107 Stat. 502; Pub. L. 105–34, title XI, §1113(b), Aug. 5, 1997, 111 Stat. 971; Pub. L. 111–226, title II, §214(a), Aug. 10, 2010, 124 Stat. 2399; Pub. L. 115–97, title I, §§14201(b)(1), 14301(b), Dec. 22, 2017, 131 Stat. 2212, 2221.)

REFERENCES IN TEXT

The date of the enactment of the Revenue Reconciliation Act of 1993, referred to in subsec. (c)(3), is the date of enactment of Pub. L. 103–66, which was approved Aug. 10, 1993.

AMENDMENTS

2017—Pub. L. 115–97, §14301(b)(1), substituted ''Deemed paid credit for subpart F inclusions'' for ''Special rules for foreign tax credit'' in section catchline.

Subsecs. (a) to (c). Pub. L. 115–97, §14301(b)(1), added subsecs. (a) and (b), redesignated former subsec. (b) as (c), and struck out former subsecs. (a) and (c) which related to taxes paid by a foreign corporation and limitation with respect to section 956 inclusions, respectively.

Subsec. (d). Pub. L. 115–97, §14201(b)(1), added subsec. (d).

Subsecs. (e), (f). Pub. L. 115–97, §14301(b)(2), added subsecs. (e) and (f).

2010—Subsec. (c). Pub. L. 111–226 added subsec. (c).

1997—Subsec. (a)(1). Pub. L. 105–34 amended heading and text of par. (1) generally. Prior to amendment, text read as follows: ''For purposes of subpart A of this part, if there is included, under section 951(a), in the gross income of a domestic corporation any amount attributable to earnings and profits—

''(A) of a foreign corporation (hereafter in this subsection referred to as the 'first foreign corporation') at least 10 percent of the voting stock of which is owned by such domestic corporation, or

''(B) of a second foreign corporation (hereinafter in this subsection referred to as the 'second foreign corporation') at least 10 percent of the voting stock of which is owned by the first foreign corporation, or

''(C) of a third foreign corporation (hereinafter in this subsection referred to as the 'third foreign corporation') at least 10 percent of the voting stock of which is owned by the second foreign corporation,

then, except to the extent provided in regulations, such domestic corporation shall be deemed to have paid a portion of such foreign corporation's post-1986 foreign income taxes determined under section 902 in the same manner as if the amount so included were a dividend paid by such foreign corporation (determined by applying section 902(c) in accordance with section 904(d)(3)(B)). This paragraph shall not apply with respect to any amount included in the gross income of such domestic corporation attributable to earnings and profits of the second foreign corporation or of the third foreign corporation unless, in the case of the second foreign corporation, the percentage-of-voting-stock requirement of section 902(b)(3)(A) is satisfied, and in the case of the third foreign corporation, the percentage-of-voting-stock requirement of section 902(b)(3)(B) is satisfied.''

1993—Subsec. (b). Pub. L. 103–66 added pars. (1) to (3), redesignated former pars. (3) and (4) as (4) and (5), respectively, and struck out former par. (1) relating to increase in section 904 limitation and former par. (2) relating to the amount of increase.

1986—Subsec. (a)(1). Pub. L. 99–514 substituted ''then, except to the extent provided in regulations, such domestic corporation shall be deemed to have paid a portion of such foreign corporation's post-1986 foreign income taxes determined under section 902 in the same manner as if the amount so included were a dividend paid by such foreign corporation (determined by applying section 902(c) in accordance with section 904(d)(3)(B))'' for ''then, under regulations prescribed by the Secretary, such domestic corporation shall be deemed to have paid the same proportion of the total income, war profits, and excess profits taxes paid (or deemed paid) by such foreign corporation to a foreign country or possession of the United States for the taxable year on or with respect to the earnings and profits of such foreign corporation which the amount of earnings and profits of such foreign corporation so included in gross income of the domestic corporation bears to the entire amount of the earnings and profits of such corporation for such taxable year''.

1976—Subsec. (a)(1). Pub. L. 94–455, §§1033(b)(2), 1037(a), substituted ''bears to the entire amount of the earnings and profits of such foreign corporation for such taxable year'' for ''bears to–'' after ''gross income of the domestic corporation'', struck out subpars. (C) and (D) relating to corporations which are and are not less developed country corporations, inserted in subpar. (A) ''(hereafter in this subsection referred to as the 'first foreign corporation')'' after ''foreign corporation'', substituted in subpar. (B) ''of a second foreign corporation (hereinafter in this subsection referred to as the 'second foreign corporation') at least 10 percent of the voting stock of which is owned by the first foreign corporation, or'' for ''of a foreign corporation at least 50 percent of the voting stock of which is owned by a foreign corporation at least 10 percent of the voting stock of which in turn owned by such domestic corporation'' after ''(B)'', added subpar. (C), and inserted at end ''This paragraph shall not apply with respect to any amount included in the gross income of such domestic corporation attributable to earning and profits of the second foreign corporation or of the third foreign corporation unless, in the case of the second foreign corporation, the percentage-of-voting-stock requirement of section 902(b)(3)(A) is satisfied, and in the case of the third foreign corporation, the percentage-of-voting-stock requirement of section 902(b)(3)(B) is satisfied.''

Subsec. (b). Pub. L. 94–455, §1031(b)(1), struck out ''applicable'' in par. (1) after ''amount, the'', in par. (2) after ''increase of the'', and in subpar. (A) of par. (2) after ''by which the''.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 14201(b)(1) 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 14201(d) of Pub. L. 115–97, set out as a note under section 904 of this title.

Amendment by section 14301(b) 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 2010 AMENDMENT

Pub. L. 111–226, title II, §214(b), Aug. 10, 2010, 124 Stat. 2399, provided that: ''The amendment made by this section [amending this section] shall apply to acquisitions of United States property (as defined in section 956(c) of the Internal Revenue Code of 1986) after December 31, 2010.''

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XI, §1113(c), Aug. 5, 1997, 111 Stat. 971, provided that:

''(1) IN GENERAL.—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 enactment of this Act [Aug. 5, 1997].

''(2) SPECIAL RULE.—In the case of any chain of foreign corporations described in clauses (i) and (ii) of [former] section 902(b)(2)(B) of the Internal Revenue Code of 1986 (as amended by this section), no liquidation, reorganization, or similar transaction in a taxable year beginning after the date of the enactment of this Act shall have the effect of permitting taxes to be taken into account under section 902 of the Internal Revenue Code of 1986 which could not have been taken into account under such section but for such transaction.''

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13233(b)(2), Aug. 10, 1993, 107 Stat. 504, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after September 30, 1993.''

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XII, §1202(e), Oct. 22, 1986, 100 Stat. 2531, provided that: ''The amendments made by this section [amending this section and sections 902 and 6038 of this title] shall apply to distributions by foreign corporations out of, and to inclusions under section 951(a) of the Internal Revenue Code of 1986 attributable to, earnings and profits for taxable years beginning after December 31, 1986.''

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, see section 1031(c) of Pub. L. 94–455, set out as a note under section 904 of this title.

Pub. L. 94–455, title X, §1033(c), Oct. 4, 1976, 90 Stat. 1628, 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 78, 535, 545, and 902 of this title] shall apply—

''(1) in respect of any distribution received by a domestic corporation after December 31, 1977, and

''(2) in respect of any distribution received by a domestic corporation before January 1, 1978, in a taxable year of such corporation beginning after December 31, 1975, 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 December 31, 1975.

For purposes of paragraph (2), a distribution made by a foreign corporation out of its profits which are attributable to a distribution received from a foreign corporation to which [former] section 902(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] applies shall be treated as made out of the accumulated profits of a foreign corporation for a taxable year beginning before January 1, 1976, to the extent that such distribution was paid out of the accumulated profits of such foreign corporation for a taxable year beginning before January 1, 1976.''

Pub. L. 94–455, title X, §1037(b), Oct. 4, 1976, 90 Stat. 1634, 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 with respect to earnings and profits of a foreign corporation, included, under section 951(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], in the gross income of a domestic corporation in taxable years beginning after December 31, 1976.''

INCREASE IN EARNINGS AND PROFITS OF FOREIGN CORPORATIONS UNDER SECTION 1023(e)(3)(C) OF PUB. L. 99–514

Pub. L. 100–647, title I, §1012(b)(3), Nov. 10, 1988, 102 Stat. 3496, provided that: ''For purposes of sections [former] 902 and 960 of the 1986 Code, the increase in earnings and profits of any foreign corporation under section 1023(e)(3)(C) of the Reform Act [Pub. L. 99–514, set out as an Effective Date note under section 846 of this title] shall be taken into account ratably over the 10-year period beginning with the corporation's first taxable year beginning after December 31, 1986.''

§ 961. Adjustments to basis of stock in controlled foreign corporations and of other property

(a) Increase in basis

Under regulations prescribed by the Secretary, the basis of a United States shareholder's stock in a controlled foreign corporation, and the basis of property of a United States shareholder by reason of which he is considered under section 958(a)(2) as owning stock of a controlled foreign corporation, shall be increased by the amount required to be included in his gross income under section 951(a) with respect to such stock or with respect to such property, as the case may be, but only to the extent to which such amount was included in the gross income of such United States shareholder. In the case of a United States shareholder who has made an election under section 962 for the taxable year, the increase in basis provided by this subsection shall not exceed an amount equal to the amount of tax paid under this chapter with respect to the amounts required to be included in his gross income under section 951(a).

(b) Reduction in basis

(1) In general

Under regulations prescribed by the Secretary, the adjusted basis of stock or other property with respect to which a United States shareholder or a United States person receives an amount which is excluded from gross income under section 959(a) shall be reduced by the amount so excluded. In the case of a United States shareholder who has made an election under section 962 for any prior taxable year, the reduction in basis provided by this paragraph shall not exceed an amount equal to the amount received which is excluded from gross income under section 959(a) after the application of section 962(d).

(2) Amount in excess of basis

To the extent that an amount excluded from gross income under section 959(a) exceeds the adjusted basis of the stock or other property with respect to which it is received, the amount shall be treated as gain from the sale or exchange of property.

(c) Basis adjustments in stock held by foreign corporations

Under regulations prescribed by the Secretary, if a United States shareholder is treated under section 958(a)(2) as owning stock in a controlled foreign corporation which is owned by another controlled foreign corporation, then adjustments similar to the adjustments provided by subsections (a) and (b) shall be made to—

(1) the basis of such stock, and

(2) the basis of stock in any other controlled foreign corporation by reason of which the United States shareholder is considered under section 958(a)(2) as owning the stock described in paragraph (1),

but only for the purposes of determining the amount included under section 951 in the gross

income of such United States shareholder (or any other United States shareholder who acquires from any person any portion of the interest of such United States shareholder by reason of which such shareholder was treated as owning such stock, but only to the extent of such portion, and subject to such proof of identity of such interest as the Secretary may prescribe by regulations). The preceding sentence shall not apply with respect to any stock to which a basis adjustment applies under subsection (a) or (b).

(d) Basis in specified 10-percent owned foreign corporation reduced by nontaxed portion of dividend for purposes of determining loss

If a domestic corporation received a dividend from a specified 10-percent owned foreign corporation (as defined in section 245A) in any taxable year, solely for purposes of determining loss on any disposition of stock of such foreign corporation in such taxable year or any subsequent taxable year, the basis of such domestic corporation in such stock shall be reduced (but not below zero) by the amount of any deduction allowable to such domestic corporation under section 245A with respect to such stock except to the extent such basis was reduced under section 1059 by reason of a dividend for which such a deduction was allowable.

(Added Pub. L. 87–834, §12(a), Oct. 16, 1962, 76 Stat. 1022; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 105–34, title XI, §1112(b)(1), Aug. 5, 1997, 111 Stat. 969; Pub. L. 109–135, title IV, §409(b), Dec. 21, 2005, 119 Stat. 2635; Pub. L. 115–97, title I, §14102(b)(1), Dec. 22, 2017, 131 Stat. 2192.)

AMENDMENTS

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

2005—Subsec. (c). Pub. L. 109–135 amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: ''Under regulations prescribed by the Secretary, if a United States shareholder is treated under section 958(a)(2) as owning any stock in a controlled foreign corporation which is actually owned by another controlled foreign corporation, adjustments similar to the adjustments provided by subsections (a) and (b) shall be made to the basis of such stock in the hands of such other controlled foreign corporation, but only for the purposes of determining the amount included under section 951 in the gross income of such United States shareholder (or any other United States shareholder who acquires from any person any portion of the interest of such United States shareholder by reason of which such shareholder was treated as owning such stock, but only to the extent of such portion, and subject to such proof of identity of such interest as the Secretary may prescribe by regulations).''

1997—Subsec. (c). Pub. L. 105–34 added subsec. (c).

1976—Subsecs. (a), (b)(1). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–97, title I, §14102(b)(2), Dec. 22, 2017, 131 Stat. 2192, provided that: ''The amendments made by this subsection [amending this section] shall apply to distributions made after December 31, 2017.''

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–135, title IV, §409(d), Dec. 21, 2005, 119 Stat. 2636, provided that: ''The amendments made by this section [amending this section and sections 6038B, 6411, and 6601 of this title] shall take effect as if included in the provisions of the Taxpayer Relief Act of 1997 [Pub. L. 105–34] to which they relate.''

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XI, §1112(b)(2), Aug. 5, 1997, 111 Stat. 969, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply for purposes of determining inclusions for taxable years of United States shareholders beginning after December 31, 1997.''

DUAL RESIDENT COMPANIES

Basis adjustments of this section not applicable in certain circumstances involving dual resident companies, see section 6126 of Pub. L. 100–647, set out as a note under section 1502 of this title.

§ 962. Election by individuals to be subject to tax at corporate rates

(a) General rule

Under regulations prescribed by the Secretary, in the case of a United States shareholder who is an individual and who elects to have the provisions of this section apply for the taxable year—

(1) the tax imposed under this chapter on amounts which are included in his gross income under section 951(a) shall (in lieu of the tax determined under sections 1 and 55) be an amount equal to the tax which would be imposed under section 11 if such amounts were received by a domestic corporation, and

(2) for purposes of applying the provisions of section 960[1] (relating to foreign tax credit) such amounts shall be treated as if they were received by a domestic corporation.

(b) Election

An election to have the provisions of this section apply for any taxable year shall be made by a United States shareholder at such time and in such manner as the Secretary shall prescribe by regulations. An election made for any taxable year may not be revoked except with the consent of the Secretary.

(c) Pro ration of each section 11 bracket amount

For purposes of applying subsection (a)(1), the amount in each taxable income bracket in the tax table in section 11(b) shall not exceed an amount which bears the same ratio to such bracket amount as the amount included in the gross income of the United States shareholder under section 951(a) for the taxable year bears to such shareholder's pro rata share of the earnings and profits for the taxable year of all controlled foreign corporations with respect to which such shareholder includes any amount in gross income under section 951(a).

(d) Special rule for actual distributions

The earnings and profits of a foreign corporation attributable to amounts which were included in the gross income of a United States shareholder under section 951(a) and with respect to which an election under this section applied shall, when such earnings and profits are distributed, notwithstanding the provisions of section 959(a)(1), be included in gross income to the extent that such earnings and profits so distributed exceed the amount of tax paid under this chapter on the amounts to which such election applied.

[1] See References in Text note below.

(Added Pub. L. 87–834, §12(a), Oct. 16, 1962, 76 Stat. 1023; amended Pub. L. 94–12, title III, §303(c)(3), Mar. 29, 1975, 89 Stat. 45; Pub. L. 94–164, §4(d)(1), Dec. 23, 1975, 89 Stat. 975; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–600, title III, §301(b)(16), Nov. 6, 1978, 92 Stat. 2822; Pub. L. 100–647, title I, §1007(g)(11), Nov. 10, 1988, 102 Stat. 3435; Pub. L. 115–97, title I, §12001(b)(15), Dec. 22, 2017, 131 Stat. 2094.)

REFERENCES IN TEXT

Section 960, referred to in subsec. (a)(2), was amended extensively by Pub. L. 115–97, and, as so amended, relates to deemed paid credit for subpart F inclusions.

AMENDMENTS

2017—Subsec. (a)(1). Pub. L. 115–97 substituted ''section 11'' for ''sections 11 and 55''.

1988—Subsec. (a)(1). Pub. L. 100–647 substituted ''sections 1 and 55'' and ''sections 11 and 55'' for ''section 1'' and ''section 11'', respectively.

1978—Subsec. (c). Pub. L. 95–600 substituted provisions relating to the pro ration of each section 11 bracket amount for provisions relating to the surtax exemption.

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

1975—Subsec. (c). Pub. L. 94–164 substituted ''same ratio to the surtax exemption'' for ''same ratio to $25,000'' in subsec. (c) as such subsec. (c) is in effect for taxable years ending after Dec. 31, 1975.

Pub. L. 94–12 substituted ''$50,000'' for ''$25,000''.

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 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 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 AND TERMINATION DATES OF 1975 AMENDMENTS

Amendment by Pub. L. 94–164 applicable to taxable years beginning after Dec. 31, 1975, see section 4(e) of Pub. L. 94–164, set out as a note under section 11 of this title.

Amendment by Pub. L. 94–12 applicable to taxable years ending after Dec. 31, 1974, but to cease to apply for taxable years ending after Dec. 31, 1975, see section 305(b)(1) of Pub. L. 94–12, set out as a note under section 11 of this title.

[§ 963. Repealed. Pub. L. 94–12, title VI, § 602(a)(1), Mar. 29, 1975, 89 Stat. 58]

Section, added Pub. L. 87–834, §12(a), Oct. 16, 1962, 76 Stat. 1023; amended Pub. L. 88–272, title I, §123(b), Feb. 26, 1964, 78 Stat. 29; Pub. L. 90–364, title I, §102(b), June 28, 1968, 82 Stat. 255; Pub. L. 91–53, §5(b), Aug. 7, 1969, 83 Stat. 95; Pub. L. 91–172, title VII, §701(b), Dec. 30, 1969, 83 Stat. 659, dealt with the receipt of minimum distributions by domestic corporations.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to taxable years for 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.

§ 964. Miscellaneous provisions

(a) Earnings and profits

Except as provided in section 312(k)(4), for purposes of this subpart, the earnings and profits of any foreign corporation, and the deficit in earnings and profits of any foreign corporation, for any taxable year shall be determined according to rules substantially similar to those applicable to domestic corporations, under regulations prescribed by the Secretary. In determining such earnings and profits, or the deficit in such earnings and profits, the amount of any illegal bribe, kickback, or other payment (within the meaning of section 162(c)) shall not be taken into account to decrease such earnings and profits or to increase such deficit. The payments referred to in the preceding sentence are payments which would be unlawful under the Foreign Corrupt Practices Act of 1977 if the payor were a United States person.

(b) Blocked foreign income

Under regulations prescribed by the Secretary, no part of the earnings and profits of a controlled foreign corporation for any taxable year shall be included in earnings and profits for purposes of sections 952 and 956, if it is established to the satisfaction of the Secretary that such part could not have been distributed by the controlled foreign corporation to United States shareholders who own (within the meaning of section 958(a)) stock of such controlled foreign corporation because of currency or other restrictions or limitations imposed under the laws of any foreign country.

(c) Records and accounts of United States shareholders

(1) Records and accounts to be maintained

The Secretary may by regulations require each person who is, or has been, a United States shareholder of a controlled foreign corporation to maintain such records and accounts as may be prescribed by such regulations as necessary to carry out the provisions of this subpart and subpart G.

(2) Two or more persons required to maintain or furnish the same records and accounts with respect to the same foreign corporation

Where, but for this paragraph, two or more United States persons would be required to maintain or furnish the same records and accounts as may by regulations be required under paragraph (1) with respect to the same controlled foreign corporation for the same period, the Secretary may by regulations provide that the maintenance or furnishing of such records and accounts by only one such person shall satisfy the requirements of paragraph (1) for such other persons.

(d) Treatment of certain branches

(1) In general

For purposes of this chapter, section 6038, section 6046, and such other provisions as may be specified in regulations—

(A) a qualified insurance branch of a controlled foreign corporation shall be treated as a separate foreign corporation created under the laws of the foreign country with respect to which such branch qualifies under paragraph (2), and

(B) except as provided in regulations, any amount directly or indirectly transferred or credited from such branch to one or more other accounts of such controlled foreign corporation shall be treated as a dividend paid to such controlled foreign corporation.

(2) Qualified insurance branch

For purposes of paragraph (1), the term ''qualified insurance branch'' means any branch of a controlled foreign corporation which is licensed and predominantly engaged on a permanent basis in the active conduct of an insurance business in a foreign country if—

(A) separate books and accounts are maintained for such branch,

(B) the principal place of business of such branch is in such foreign country,

(C) such branch would be taxable under subchapter L if it were a separate domestic corporation, and

(D) an election under this paragraph applies to such branch.

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.

(3) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection.

(e) Gain on certain stock sales by controlled foreign corporations treated as dividends

(1) In general

If a controlled foreign corporation sells or exchanges stock in any other foreign corporation, gain recognized on such sale or exchange shall be included in the gross income of such controlled foreign corporation as a dividend to the same extent that it would have been so included under section 1248(a) if such controlled foreign corporation were a United States person. For purposes of determining the amount which would have been so includible, the determination of whether such other foreign corporation was a controlled foreign corporation shall be made without regard to the preceding sentence.

(2) Same country exception not applicable

Clause (i) of section 954(c)(3)(A) shall not apply to any amount treated as a dividend by reason of paragraph (1).

(3) Clarification of deemed sales

For purposes of this subsection, a controlled foreign corporation shall be treated as having sold or exchanged any stock if, under any provision of this subtitle, such controlled foreign corporation is treated as having gain from the sale or exchange of such stock.

(4) Coordination with dividends received deduction

(A) In general

If, for any taxable year of a controlled foreign corporation beginning after December 31, 2017, any amount is treated as a dividend under paragraph (1) by reason of a sale or exchange by the controlled foreign corporation of stock in another foreign corporation held for 1 year or more, then, notwithstanding any other provision of this title—

(i) the foreign-source portion of such dividend shall be treated for purposes of section 951(a)(1)(A) as subpart F income of the selling controlled foreign corporation for such taxable year,

(ii) a United States shareholder with respect to the selling controlled foreign corporation shall include in gross income for the taxable year of the shareholder with or within which such taxable year of the controlled foreign corporation ends an amount equal to the shareholder's pro rata share (determined in the same manner as under section 951(a)(2)) of the amount treated as subpart F income under clause (i), and

(iii) the deduction under section 245A(a) shall be allowable to the United States shareholder with respect to the subpart F income included in gross income under clause (ii) in the same manner as if such subpart F income were a dividend received by the shareholder from the selling controlled foreign corporation.

(B) Application of basis or similar adjustment

For purposes of this title, in the case of a sale or exchange by a controlled foreign corporation of stock in another foreign corporation in a taxable year of the selling controlled foreign corporation beginning after December 31, 2017, rules similar to the rules of section 961(d) shall apply.

(C) Foreign-source portion

For purposes of this paragraph, the foreign-source portion of any amount treated as a dividend under paragraph (1) shall be determined in the same manner as under section 245A(c).

(Added Pub. L. 87–834, §12(a), Oct. 16, 1962, 76 Stat. 1027; amended Pub. L. 91–172, title IV, §442(b)(1), Dec. 30, 1969, 83 Stat. 628; Pub. L. 94–455, title X, §1065(b), title XIX, §§1901(b)(32)(B)(iii), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1654, 1800, 1834; Pub. L. 97–34, title II, §206(c), Aug. 13, 1981, 95 Stat. 225; Pub. L. 97–248, title II, §288(b)(2), Sept. 3, 1982, 96 Stat. 571; Pub. L. 100–647, title VI, §6129(a), Nov. 10, 1988, 102 Stat. 3716; Pub. L. 105–34, title XI, §1111(a), Aug. 5, 1997, 111 Stat. 968; Pub. L. 115–97, title I, §§14102(c)(1), 14212(b)(4), Dec. 22, 2017, 131 Stat. 2193, 2217.)

REFERENCES IN TEXT

The Foreign Corrupt Practices Act of 1977, referred to in subsec. (a), is title I of Pub. L. 95–213, Dec. 19, 1977, 91 Stat. 1494, as amended, which enacted sections 78dd–1 to 78dd–3 of Title 15, Commerce and Trade, and amended sections 78m and 78ff of Title 15. For complete classification of this Act to the Code, see Short Title of 1977 Amendment note set out under section 78a of Title 15 and Tables.

AMENDMENTS

2017—Subsec. (b). Pub. L. 115–97, §14212(b)(4), struck out '', 955,'' after ''sections 952''.

Subsec. (e)(4). Pub. L. 115–97, § 14102(c)(1), added par. (4).

1997—Subsec. (e). Pub. L. 105–34 added subsec. (e).

1988—Subsec. (d). Pub. L. 100–647 added subsec. (d).

1982—Subsec. (a). Pub. L. 97–248 inserted provision that payments referred to in sentence beginning ''In determining such earnings and profits'' are payments which would be unlawful under the Foreign Corrupt Practices Act of 1977 if the payor were a United States person.

1981—Subsec. (a). Pub. L. 97–34 substituted ''section 312(k)(4)'' for ''section 312(k)(3)''.

1976—Subsec. (a). Pub. L. 94–455, §§ 1065(b), 1901(b)(32)(B)(ii), 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'', inserted second sentence, and substituted ''312(k)(3)'' for ''312(m)(3)'' after ''provided in section''.

Subsecs. (b), (c)(1), (2). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' whenever appearing.

1969—Subsec. (a). Pub. L. 91–172 inserted reference to the exception provided for in section 312(m)(3).

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–97, title I, § 14102(c)(2), Dec. 22, 2017, 131 Stat. 2193, provided that: ''The amendments made by this subsection [amending this section] shall apply to sales or exchanges after December 31, 2017.''

Amendment by section 14212(b)(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 14212(c) of Pub. L. 115–97, set out as a note under section 851 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XI, § 1111(c)(1), Aug. 5, 1997, 111 Stat. 969, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to gain recognized on transactions occurring after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title VI, § 6129(b), Nov. 10, 1988, 102 Stat. 3716, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 1988.''

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to payments made after Sept. 3, 1982, see section 288(c) of Pub. L. 97–248, set out as a note under section 162 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to property placed in service after Dec. 31, 1980, in taxable years ending after that date, see section 209(a) of Pub. L. 97–34, set out as an Effective Date note under section 168 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1065(b) of Pub. L. 94–455 applicable to payments described in section 162(c) of this title made more than 30 days after Oct. 4, 1976, see section 1066(b) of Pub. L. 94–455, set out as a note under section 952 of this title.

§ 965. Treatment of deferred foreign income upon transition to participation exemption system of taxation

(a) Treatment of deferred foreign income as subpart F income

In the case of the last taxable year of a deferred foreign income corporation which begins before January 1, 2018, the subpart F income of such foreign corporation (as otherwise determined for such taxable year under section 952) shall be increased by the greater of—

(1) the accumulated post-1986 deferred foreign income of such corporation determined as of November 2, 2017, or

(2) the accumulated post-1986 deferred foreign income of such corporation determined as of December 31, 2017.

(b) Reduction in amounts included in gross income of United States shareholders of specified foreign corporations with deficits in earnings and profits

(1) In general

In the case of a taxpayer which is a United States shareholder with respect to at least one deferred foreign income corporation and at least one E&P deficit foreign corporation, the amount which would (but for this subsection) be taken into account under section 951(a)(1) by reason of subsection (a) as such United States shareholder's pro rata share of the subpart F income of each deferred foreign income corporation shall be reduced by the amount of such United States shareholder's aggregate foreign E&P deficit which is allocated under paragraph (2) to such deferred foreign income corporation.

(2) Allocation of aggregate foreign E&P deficit

The aggregate foreign E&P deficit of any United States shareholder shall be allocated among the deferred foreign income corporations of such United States shareholder in an amount which bears the same proportion to such aggregate as—

(A) such United States shareholder's pro rata share of the accumulated post-1986 deferred foreign income of each such deferred foreign income corporation, bears to

(B) the aggregate of such United States shareholder's pro rata share of the accumulated post-1986 deferred foreign income of all deferred foreign income corporations of such United States shareholder.

(3) Definitions related to E&P deficits

For purposes of this subsection—

(A) Aggregate foreign E&P deficit

(i) In general

The term ''aggregate foreign E&P deficit'' means, with respect to any United States shareholder, the lesser of—

(I) the aggregate of such shareholder's pro rata shares of the specified E&P deficits of the E&P deficit foreign corporations of such shareholder, or

(II) the amount determined under paragraph (2)(B).

(ii) Allocation of deficit

If the amount described in clause (i)(II) is less than the amount described in clause (i)(I), then the shareholder shall designate, in such form and manner as the Secretary determines—

(I) the amount of the specified E&P deficit which is to be taken into account for each E&P deficit corporation with respect to the taxpayer, and

(II) in the case of an E&P deficit corporation which has a qualified deficit (as defined in section 952), the portion (if any) of the deficit taken into account under subclause (I) which is attributable to a qualified deficit, including the qualified activities to which such portion is attributable.

(B) E&P deficit foreign corporation

The term ''E&P deficit foreign corporation'' means, with respect to any taxpayer, any specified foreign corporation with respect to which such taxpayer is a United States shareholder, if, as of November 2, 2017—

(i) such specified foreign corporation has a deficit in post-1986 earnings and profits,

(ii) such corporation was a specified foreign corporation, and

(iii) such taxpayer was a United States shareholder of such corporation.

(C) Specified E&P deficit

The term ''specified E&P deficit'' means, with respect to any E&P deficit foreign corporation, the amount of the deficit referred to in subparagraph (B).

(4) Treatment of earnings and profits in future years

(A) Reduced earnings and profits treated as previously taxed income when distributed

For purposes of applying section 959 in any taxable year beginning with the taxable year described in subsection (a), with respect to any United States shareholder of a deferred foreign income corporation, an amount equal to such shareholder's reduction under paragraph (1) which is allocated to such deferred foreign income corporation under this subsection shall be treated as an amount which was included in the gross income of such United States shareholder under section 951(a).

(B) E&P deficits

For purposes of this title, with respect to any taxable year beginning with the taxable year described in subsection (a), a United States shareholder's pro rata share of the earnings and profits of any E&P deficit foreign corporation under this subsection shall be increased by the amount of the specified E&P deficit of such corporation taken into account by such shareholder under paragraph (1), and, for purposes of section 952, such increase shall be attributable to the same activity to which the deficit so taken into account was attributable.

(5) Netting among United States shareholders in same affiliated group

(A) In general

In the case of any affiliated group which includes at least one E&P net surplus shareholder and one E&P net deficit shareholder, the amount which would (but for this paragraph) be taken into account under section 951(a)(1) by reason of subsection (a) by each such E&P net surplus shareholder shall be reduced (but not below zero) by such shareholder's applicable share of the affiliated group's aggregate unused E&P deficit.

(B) E&P net surplus shareholder

For purposes of this paragraph, the term ''E&P net surplus shareholder'' means any United States shareholder which would (determined without regard to this paragraph) take into account an amount greater than zero under section 951(a)(1) by reason of subsection (a).

(C) E&P net deficit shareholder

For purposes of this paragraph, the term ''E&P net deficit shareholder'' means any United States shareholder if—

(i) the aggregate foreign E&P deficit with respect to such shareholder (as defined in paragraph (3)(A) without regard to clause (i)(II) thereof), exceeds

(ii) the amount which would (but for this subsection) be taken into account by such shareholder under section 951(a)(1) by reason of subsection (a).

(D) Aggregate unused E&P deficit

For purposes of this paragraph—

(i) In general

The term ''aggregate unused E&P deficit'' means, with respect to any affiliated group, the lesser of—

(I) the sum of the excesses described in subparagraph (C), determined with respect to each E&P net deficit shareholder in such group, or

(II) the amount determined under subparagraph (E)(ii).

(ii) Reduction with respect to E&P net deficit shareholders which are not wholly owned by the affiliated group

If the group ownership percentage of any E&P net deficit shareholder is less than 100 percent, the amount of the excess described in subparagraph (C) which is taken into account under clause (i)(I) with respect to such E&P net deficit shareholder shall be such group ownership percentage of such amount.

(E) Applicable share

For purposes of this paragraph, the term ''applicable share'' means, with respect to any E&P net surplus shareholder in any affiliated group, the amount which bears the same proportion to such group's aggregate unused E&P deficit as—

(i) the product of—

(I) such shareholder's group ownership percentage, multiplied by

(II) the amount which would (but for this paragraph) be taken into account under section 951(a)(1) by reason of subsection (a) by such shareholder, bears to

(ii) the aggregate amount determined under clause (i) with respect to all E&P net surplus shareholders in such group.

(F) Group ownership percentage

For purposes of this paragraph, the term ''group ownership percentage'' means, with

respect to any United States shareholder in any affiliated group, the percentage of the value of the stock of such United States shareholder which is held by other includible corporations in such affiliated group. Notwithstanding the preceding sentence, the group ownership percentage of the common parent of the affiliated group is 100 percent. Any term used in this subparagraph which is also used in section 1504 shall have the same meaning as when used in such section.

(c) Application of participation exemption to included income

(1) In general

In the case of a United States shareholder of a deferred foreign income corporation, there shall be allowed as a deduction for the taxable year in which an amount is included in the gross income of such United States shareholder under section 951(a)(1) by reason of this section an amount equal to the sum of—

(A) the United States shareholder's 8 percent rate equivalent percentage of the excess (if any) of—

(i) the amount so included as gross income, over

(ii) the amount of such United States shareholder's aggregate foreign cash position, plus

(B) the United States shareholder's 15.5 percent rate equivalent percentage of so much of the amount described in subparagraph (A)(ii) as does not exceed the amount described in subparagraph (A)(i).

(2) 8 and 15.5 percent rate equivalent percentages

For purposes of this subsection—

(A) 8 percent rate equivalent percentage

The term ''8 percent rate equivalent percentage'' means, with respect to any United States shareholder for any taxable year, the percentage which would result in the amount to which such percentage applies being subject to a 8 percent rate of tax determined by only taking into account a deduction equal to such percentage of such amount and the highest rate of tax specified in section 11 for such taxable year. In the case of any taxable year of a United States shareholder to which section 15 applies, the highest rate of tax under section 11 before the effective date of the change in rates and the highest rate of tax under section 11 after the effective date of such change shall each be taken into account under the preceding sentence in the same proportions as the portion of such taxable year which is before and after such effective date, respectively.

(B) 15.5 percent rate equivalent percentage

The term ''15.5 percent rate equivalent percentage'' means, with respect to any United States shareholder for any taxable year, the percentage determined under subparagraph (A) applied by substituting ''15.5 percent rate of tax'' for ''8 percent rate of tax''.

(3) Aggregate foreign cash position

For purposes of this subsection—

(A) In general

The term ''aggregate foreign cash position'' means, with respect to any United States shareholder, the greater of—

(i) the aggregate of such United States shareholder's pro rata share of the cash position of each specified foreign corporation of such United States shareholder determined as of the close of the last taxable year of such specified foreign corporation which begins before January 1, 2018, or

(ii) one half of the sum of—

(I) the aggregate described in clause (i) determined as of the close of the last taxable year of each such specified foreign corporation which ends before November 2, 2017, plus

(II) the aggregate described in clause (i) determined as of the close of the taxable year of each such specified foreign corporation which precedes the taxable year referred to in subclause (I).

(B) Cash position

For purposes of this paragraph, the cash position of any specified foreign corporation is the sum of—

(i) cash held by such foreign corporation,

(ii) the net accounts receivable of such foreign corporation, plus

(iii) the fair market value of the following assets held by such corporation:

(I) Personal property which is of a type that is actively traded and for which there is an established financial market.

(II) Commercial paper, certificates of deposit, the securities of the Federal government and of any State or foreign government.

(III) Any foreign currency.

(IV) Any obligation with a term of less than one year.

(V) Any asset which the Secretary identifies as being economically equivalent to any asset described in this subparagraph.

(C) Net accounts receivable

For purposes of this paragraph, the term ''net accounts receivable'' means, with respect to any specified foreign corporation, the excess (if any) of—

(i) such corporation's accounts receivable, over

(ii) such corporation's accounts payable (determined consistent with the rules of section 461).

(D) Prevention of double counting

Cash positions of a specified foreign corporation described in clause (ii), (iii)(I), or (iii)(IV) of subparagraph (B) shall not be taken into account by a United States shareholder under subparagraph (A) to the extent that such United States shareholder demonstrates to the satisfaction of the Secretary that such amount is so taken into account by such United States shareholder with respect to another specified foreign corporation.

(E) Cash positions of certain non-corporate entities taken into account

An entity (other than a corporation) shall be treated as a specified foreign corporation

of a United States shareholder for purposes of determining such United States shareholder's aggregate foreign cash position if any interest in such entity is held by a specified foreign corporation of such United States shareholder (determined after application of this subparagraph) and such entity would be a specified foreign corporation of such United States shareholder if such entity were a foreign corporation.

(F) Anti-abuse

If the Secretary determines that a principal purpose of any transaction was to reduce the aggregate foreign cash position taken into account under this subsection, such transaction shall be disregarded for purposes of this subsection.

(d) Deferred foreign income corporation; accumulated post-1986 deferred foreign income

For purposes of this section—

(1) Deferred foreign income corporation

The term ''deferred foreign income corporation'' means, with respect to any United States shareholder, any specified foreign corporation of such United States shareholder which has accumulated post-1986 deferred foreign income (as of the date referred to in paragraph (1) or (2) of subsection (a)) greater than zero.

(2) Accumulated post-1986 deferred foreign income

The term ''accumulated post-1986 deferred foreign income'' means the post-1986 earnings and profits except to the extent such earnings—

(A) are attributable to income of the specified foreign corporation which is effectively connected with the conduct of a trade or business within the United States and subject to tax under this chapter, or

(B) in the case of a controlled foreign corporation, if distributed, would be excluded from the gross income of a United States shareholder under section 959.

To the extent provided in regulations or other guidance prescribed by the Secretary, in the case of any controlled foreign corporation which has shareholders which are not United States shareholders, accumulated post-1986 deferred foreign income shall be appropriately reduced by amounts which would be described in subparagraph (B) if such shareholders were United States shareholders.

(3) Post-1986 earnings and profits

The term ''post-1986 earnings and profits'' means the earnings and profits of the foreign corporation (computed in accordance with sections 964(a) and 986, and by only taking into account periods when the foreign corporation was a specified foreign corporation) accumulated in taxable years beginning after December 31, 1986, and determined—

(A) as of the date referred to in paragraph (1) or (2) of subsection (a), whichever is applicable with respect to such foreign corporation, and

(B) without diminution by reason of dividends distributed during the taxable year described in subsection (a) other than dividends distributed to another specified foreign corporation.

(e) Specified foreign corporation

(1) In general

For purposes of this section, the term ''specified foreign corporation'' means—

(A) any controlled foreign corporation, and

(B) any foreign corporation with respect to which one or more domestic corporations is a United States shareholder.

(2) Application to certain foreign corporations

For purposes of sections 951 and 961, a foreign corporation described in paragraph (1)(B) shall be treated as a controlled foreign corporation solely for purposes of taking into account the subpart F income of such corporation under subsection (a) (and for purposes of applying subsection (f)).

(3) Exclusion of passive foreign investment companies

Such term shall not include any corporation which is a passive foreign investment company (as defined in section 1297) with respect to the shareholder and which is not a controlled foreign corporation.

(f) Determinations of pro rata share

(1) In general

For purposes of this section, the determination of any United States shareholder's pro rata share of any amount with respect to any specified foreign corporation shall be determined under rules similar to the rules of section 951(a)(2) by treating such amount in the same manner as subpart F income (and by treating such specified foreign corporation as a controlled foreign corporation).

(2) Special rules

The portion which is included in the income of a United States shareholder under section 951(a)(1) by reason of subsection (a) which is equal to the deduction allowed under subsection (c) by reason of such inclusion—

(A) shall be treated as income exempt from tax for purposes of sections 705(a)(1)(B) and 1367(a)(1)(A), and

(B) shall not be treated as income exempt from tax for purposes of determining whether an adjustment shall be made to an accumulated adjustment account under section 1368(e)(1)(A).

(g) Disallowance of foreign tax credit, etc.

(1) In general

No credit shall be allowed under section 901 for the applicable percentage of any taxes paid or accrued (or treated as paid or accrued) with respect to any amount for which a deduction is allowed under this section.

(2) Applicable percentage

For purposes of this subsection, the term ''applicable percentage'' means the amount (expressed as a percentage) equal to the sum of—

(A) 0.771 multiplied by the ratio of—

(i) the excess to which subsection (c)(1)(A) applies, divided by

(ii) the sum of such excess plus the amount to which subsection (c)(1)(B) applies, plus

(B) 0.557 multiplied by the ratio of—

(i) the amount to which subsection (c)(1)(B) applies, divided by

(ii) the sum described in subparagraph (A)(ii).

(3) Denial of deduction

No deduction shall be allowed under this chapter for any tax for which credit is not allowable under section 901 by reason of paragraph (1) (determined by treating the taxpayer as having elected the benefits of subpart A of part III of subchapter N).

(4) Coordination with section 78

With respect to the taxes treated as paid or accrued by a domestic corporation with respect to amounts which are includible in gross income of such domestic corporation by reason of this section, section 78 shall apply only to so much of such taxes as bears the same proportion to the amount of such taxes as—

(A) the excess of—

(i) the amounts which are includible in gross income of such domestic corporation by reason of this section, over

(ii) the deduction allowable under subsection (c) with respect to such amounts, bears to

(B) such amounts.

(h) Election to pay liability in installments

(1) In general

In the case of a United States shareholder of a deferred foreign income corporation, such United States shareholder may elect to pay the net tax liability under this section in 8 installments of the following amounts:

(A) 8 percent of the net tax liability in the case of each of the first 5 of such installments,

(B) 15 percent of the net tax liability in the case of the 6th such installment,

(C) 20 percent of the net tax liability in the case of the 7th such installment, and

(D) 25 percent of the net tax liability in the case of the 8th such installment.

(2) Date for payment of installments

If an election is made under paragraph (1), the first installment shall be paid on the due date (determined without regard to any extension of time for filing the return) for the return of tax for the taxable year described in subsection (a) and each succeeding installment shall be paid on the due date (as so determined) for the return of tax for the taxable year following the taxable year with respect to which the preceding installment was made.

(3) Acceleration of payment

If there is an addition to tax for failure to timely pay any installment required under this subsection, a liquidation or sale of substantially all the assets of the taxpayer (including in a title 11 or similar case), a cessation of business by the taxpayer, or any similar circumstance, then the unpaid portion of all remaining installments shall be due on the date of such event (or in the case of a title 11 or similar case, the day before the petition is filed). The preceding sentence shall not apply to the sale of substantially all the assets of a taxpayer to a buyer if such buyer enters into an agreement with the Secretary under which such buyer is liable for the remaining installments due under this subsection in the same manner as if such buyer were the taxpayer.

(4) Proration of deficiency to installments

If an election is made under paragraph (1) to pay the net tax liability under this section in installments and a deficiency has been assessed with respect to such net tax liability, the deficiency shall be prorated to the installments payable under paragraph (1). The part of the deficiency so prorated to any installment the date for payment of which has not arrived shall be collected at the same time as, and as a part of, such installment. The part of the deficiency so prorated to any installment the date for payment of which has arrived shall be paid upon notice and demand from the Secretary. This subsection shall not apply if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

(5) Election

Any election under paragraph (1) shall be made not later than the due date for the return of tax for the taxable year described in subsection (a) and shall be made in such manner as the Secretary shall provide.

(6) Net tax liability under this section

For purposes of this subsection—

(A) In general

The net tax liability under this section with respect to any United States shareholder is the excess (if any) of—

(i) such taxpayer's net income tax for the taxable year in which an amount is included in the gross income of such United States shareholder under section 951(a)(1) by reason of this section, over

(ii) such taxpayer's net income tax for such taxable year determined—

(I) without regard to this section, and

(II) without regard to any income or deduction properly attributable to a dividend received by such United States shareholder from any deferred foreign income corporation.

(B) Net income tax

The term ''net income tax'' means the regular tax liability reduced by the credits allowed under subparts A, B, and D of part IV of subchapter A.

(i) Special rules for S corporation shareholders

(1) In general

In the case of any S corporation which is a United States shareholder of a deferred foreign income corporation, each shareholder of such S corporation may elect to defer payment of such shareholder's net tax liability under this section with respect to such S corporation

until the shareholder's taxable year which includes the triggering event with respect to such liability. Any net tax liability payment of which is deferred under the preceding sentence shall be assessed on the return of tax as an addition to tax in the shareholder's taxable year which includes such triggering event.

(2) Triggering event

(A) In general

In the case of any shareholder's net tax liability under this section with respect to any S corporation, the triggering event with respect to such liability is whichever of the following occurs first:

(i) Such corporation ceases to be an S corporation (determined as of the first day of the first taxable year that such corporation is not an S corporation).

(ii) A liquidation or sale of substantially all the assets of such S corporation (including in a title 11 or similar case), a cessation of business by such S corporation, such S corporation ceases to exist, or any similar circumstance.

(iii) A transfer of any share of stock in such S corporation by the taxpayer (including by reason of death, or otherwise).

(B) Partial transfers of stock

In the case of a transfer of less than all of the taxpayer's shares of stock in the S corporation, such transfer shall only be a triggering event with respect to so much of the taxpayer's net tax liability under this section with respect to such S corporation as is properly allocable to such stock.

(C) Transfer of liability

A transfer described in clause (iii) of subparagraph (A) shall not be treated as a triggering event if the transferee enters into an agreement with the Secretary under which such transferee is liable for net tax liability with respect to such stock in the same manner as if such transferee were the taxpayer.

(3) Net tax liability

A shareholder's net tax liability under this section with respect to any S corporation is the net tax liability under this section which would be determined under subsection (h)(6) if the only subpart F income taken into account by such shareholder by reason of this section were allocations from such S corporation.

(4) Election to pay deferred liability in installments

In the case of a taxpayer which elects to defer payment under paragraph (1)—

(A) subsection (h) shall be applied separately with respect to the liability to which such election applies,

(B) an election under subsection (h) with respect to such liability shall be treated as timely made if made not later than the due date for the return of tax for the taxable year in which the triggering event with respect to such liability occurs,

(C) the first installment under subsection (h) with respect to such liability shall be paid not later than such due date (but determined without regard to any extension of time for filing the return), and

(D) if the triggering event with respect to any net tax liability is described in paragraph (2)(A)(ii), an election under subsection (h) with respect to such liability may be made only with the consent of the Secretary.

(5) Joint and several liability of S corporation

If any shareholder of an S corporation elects to defer payment under paragraph (1), such S corporation shall be jointly and severally liable for such payment and any penalty, addition to tax, or additional amount attributable thereto.

(6) Extension of limitation on collection

Any limitation on the time period for the collection of a liability deferred under this subsection shall not be treated as beginning before the date of the triggering event with respect to such liability.

(7) Annual reporting of net tax liability

(A) In general

Any shareholder of an S corporation which makes an election under paragraph (1) shall report the amount of such shareholder's deferred net tax liability on such shareholder's return of tax for the taxable year for which such election is made and on the return of tax for each taxable year thereafter until such amount has been fully assessed on such returns.

(B) Deferred net tax liability

For purposes of this paragraph, the term ''deferred net tax liability'' means, with respect to any taxable year, the amount of net tax liability payment of which has been deferred under paragraph (1) and which has not been assessed on a return of tax for any prior taxable year.

(C) Failure to report

In the case of any failure to report any amount required to be reported under subparagraph (A) with respect to any taxable year before the due date for the return of tax for such taxable year, there shall be assessed on such return as an addition to tax 5 percent of such amount.

(8) Election

Any election under paragraph (1)—

(A) shall be made by the shareholder of the S corporation not later than the due date for such shareholder's return of tax for the taxable year which includes the close of the taxable year of such S corporation in which the amount described in subsection (a) is taken into account, and

(B) shall be made in such manner as the Secretary shall provide.

(j) Reporting by S corporation

Each S corporation which is a United States shareholder of a specified foreign corporation shall report in its return of tax under section 6037(a) the amount includible in its gross income for such taxable year by reason of this section and the amount of the deduction allowable by

subsection (c). Any copy provided to a shareholder under section 6037(b) shall include a statement of such shareholder's pro rata share of such amounts.

(k) Extension of limitation on assessment

Notwithstanding section 6501, the limitation on the time period for the assessment of the net tax liability under this section (as defined in subsection (h)(6)) shall not expire before the date that is 6 years after the return for the taxable year described in such subsection was filed.

***(l)* Recapture for expatriated entities**

(1) In general

If a deduction is allowed under subsection (c) to a United States shareholder and such shareholder first becomes an expatriated entity at any time during the 10-year period beginning on the date of the enactment of the Tax Cuts and Jobs Act[1] (with respect to a surrogate foreign corporation which first becomes a surrogate foreign corporation during such period), then—

(A) the tax imposed by this chapter shall be increased for the first taxable year in which such taxpayer becomes an expatriated entity by an amount equal to 35 percent of the amount of the deduction allowed under subsection (c), and

(B) no credits shall be allowed against the increase in tax under subparagraph (A).

(2) Expatriated entity

For purposes of this subsection, the term ''expatriated entity'' has the same meaning given such term under section 7874(a)(2), except that such term shall not include an entity if the surrogate foreign corporation with respect to the entity is treated as a domestic corporation under section 7874(b).

(3) Surrogate foreign corporation

For purposes of this subsection, the term ''surrogate foreign corporation'' has the meaning given such term in section 7874(a)(2)(B).

(m) Special rules for United States shareholders which are real estate investment trusts

(1) In general

If a real estate investment trust is a United States shareholder in 1 or more deferred foreign income corporations—

(A) any amount required to be taken into account under section 951(a)(1) by reason of this section shall not be taken into account as gross income of the real estate investment trust for purposes of applying paragraphs (2) and (3) of section 856(c) to any taxable year for which such amount is taken into account under section 951(a)(1), and

(B) if the real estate investment trust elects the application of this subparagraph, notwithstanding subsection (a), any amount required to be taken into account under section 951(a)(1) by reason of this section shall, in lieu of the taxable year in which it would otherwise be included in gross income (for purposes of the computation of real estate investment trust taxable income under section 857(b)), be included in gross income as follows:

(i) 8 percent of such amount in the case of each of the taxable years in the 5-taxable year period beginning with the taxable year in which such amount would otherwise be included.

(ii) 15 percent of such amount in the case of the 1st taxable year following such period.

(iii) 20 percent of such amount in the case of the 2nd taxable year following such period.

(iv) 25 percent of such amount in the case of the 3rd taxable year following such period.

(2) Rules for trusts electing deferred inclusion

(A) Election

Any election under paragraph (1)(B) shall be made not later than the due date for the first taxable year in the 5-taxable year period described in clause (i) of paragraph (1)(B) and shall be made in such manner as the Secretary shall provide.

(B) Special rules

If an election under paragraph (1)(B) is in effect with respect to any real estate investment trust, the following rules shall apply:

(i) Application of participation exemption

For purposes of subsection (c)(1)—

(I) the aggregate amount to which subparagraph (A) or (B) of subsection (c)(1) applies shall be determined without regard to the election,

(II) each such aggregate amount shall be allocated to each taxable year described in paragraph (1)(B) in the same proportion as the amount included in the gross income of such United States shareholder under section 951(a)(1) by reason of this section is allocated to each such taxable year.

(III) NO INSTALLMENT PAYMENTS.—The real estate investment trust may not make an election under subsection (g) for any taxable year described in paragraph (1)(B).

(ii) Acceleration of inclusion

If there is a liquidation or sale of substantially all the assets of the real estate investment trust (including in a title 11 or similar case), a cessation of business by such trust, or any similar circumstance, then any amount not yet included in gross income under paragraph (1)(B) shall be included in gross income as of the day before the date of the event and the unpaid portion of any tax liability with respect to such inclusion shall be due on the date of such event (or in the case of a title 11 or similar case, the day before the petition is filed).

(n) Election not to apply net operating loss deduction

(1) In general

If a United States shareholder of a deferred foreign income corporation elects the applica-

[1] See References in Text note below.

tion of this subsection for the taxable year described in subsection (a), then the amount described in paragraph (2) shall not be taken into account—

(A) in determining the amount of the net operating loss deduction under section 172 of such shareholder for such taxable year, or

(B) in determining the amount of taxable income for such taxable year which may be reduced by net operating loss carryovers or carrybacks to such taxable year under section 172.

(2) Amount described

The amount described in this paragraph is the sum of—

(A) the amount required to be taken into account under section 951(a)(1) by reason of this section (determined after the application of subsection (c)), plus

(B) in the case of a domestic corporation which chooses to have the benefits of subpart A of part III of subchapter N for the taxable year, the taxes deemed to be paid by such corporation under subsections (a) and (b) of section 960 for such taxable year with respect to the amount described in subparagraph (A) which are treated as a dividends[2] under section 78.

(3) Election

Any election under this subsection shall be made not later than the due date (including extensions) for filing the return of tax for the taxable year and shall be made in such manner as the Secretary shall prescribe.

(*o*) Regulations

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

(1) regulations or other guidance to provide appropriate basis adjustments, and

(2) regulations or other guidance to prevent the avoidance of the purposes of this section, including through a reduction in earnings and profits, through changes in entity classification or accounting methods, or otherwise.

(Added Pub. L. 108–357, title IV, §422(a), Oct. 22, 2004, 118 Stat. 1514; amended Pub. L. 109–135, title IV, §403(q), Dec. 21, 2005, 119 Stat. 2627; Pub. L. 115–97, title I, §14103(a), Dec. 22, 2017, 131 Stat. 2195.)

REFERENCES IN TEXT

The date of the enactment of the Tax Cuts and Jobs Act, referred to in subsec. (*l*)(1), probably means the date of the 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—Pub. L. 115–97 amended section generally. Prior to amendment, section related to temporary dividends received deduction.

2005—Subsec. (a)(2)(B). Pub. L. 109–135, §403(q)(1), inserted ''from another controlled foreign corporation in such chain of ownership'' before '', but only to the extent''.

Subsec. (b)(2)(A). Pub. L. 109–135, §403(q)(2), inserted ''cash'' before ''dividends''.

Subsec. (b)(3). Pub. L. 109–135, §403(q)(3), inserted at end ''The Secretary may prescribe such regulations as may be necessary or appropriate to prevent the avoidance of the purposes of this paragraph, including regulations which provide that cash dividends shall not be taken into account under subsection (a) to the extent such dividends are attributable to the direct or indirect transfer (including through the use of intervening entities or capital contributions) of cash or other property from a related person (as so defined) to a controlled foreign corporation.''

Subsec. (c)(1). Pub. L. 109–135, §403(q)(4), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The term 'applicable financial statement' means, with respect to a United States shareholder, the most recently audited financial statement (including notes and other documents which accompany such statement) which includes such shareholder—

''(A) which is certified on or before June 30, 2003, as being prepared in accordance with generally accepted accounting principles, and

''(B) which is used for the purposes of a statement or report—

''(i) to creditors,

''(ii) to shareholders, or

''(iii) for any other substantial nontax purpose.

In the case of a corporation required to file a financial statement with the Securities and Exchange Commission, such term means the most recent such statement filed on or before June 30, 2003.''

Subsec. (d)(2). Pub. L. 109–135, §403(q)(5), substituted ''directly allocable'' for ''properly allocated and apportioned''.

Subsec. (d)(4). Pub. L. 109–135, §403(q)(6), added par. (4).

Subsec. (e)(1). Pub. L. 109–135, §403(q)(7), inserted ''which are imposed by foreign countries and possessions of the United States and are'' after ''taxes'' in concluding provisions.

Subsec. (f). Pub. L. 109–135, §403(q)(8), inserted ''on or'' before ''before the due date'' in concluding provisions.

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

Section applicable to taxable years ending on or after Oct. 22, 2004, see section 422(d) of Pub. L. 108–357, set out as an Effective Date of 2004 Amendments note under section 56 of this title.

SUBPART G—EXPORT TRADE CORPORATIONS

AMENDMENTS

1976—Pub. L. 94–455, title XIX, §1901(b)(27)(B), Oct. 4, 1976, 90 Stat. 1799, struck out item 972 ''Consolidation of group of export trade corporations''.

1962—Pub. L. 87–834, §12(a), Oct. 16, 1962, 76 Stat. 1027, added heading of subpart G, and items 970 to 972.

§ 970. Reduction of subpart F income of export trade corporations

(a) Export trade income constituting foreign base company income

(1) In general

In the case of a controlled foreign corporation (as defined in section 957) which for the

[2] So in original.

taxable year is an export trade corporation, the subpart F income (determined without regard to this subpart) of such corporation for such year shall be reduced by an amount equal to so much of the export trade income (as defined in section 971(b)) of such corporation for such year as constitutes foreign base company income (as defined in section 954), but only to the extent that such amount does not exceed whichever of the following amounts is the lesser:

(A) an amount equal to 1½ times so much of the export promotion expenses (as defined in section 971(d)) of such corporation for such year as is properly allocable to the export trade income which constitutes foreign base company income of such corporation for such year, or

(B) an amount equal to 10 percent of so much of the gross receipts for such year (or, in the case of gross receipts arising from commissions, fees, or other compensation for its services, so much of the gross amount upon the basis of which such commissions, fees, or other compensation is computed) accruing to such export trade corporation from the sale, installation, operation, maintenance, or use of property in respect of which such corporation derives export trade income as is properly allocable to the export trade income which constitutes foreign base company income of such corporation for such year.

The allocations with respect to export trade income which constitutes foreign base company income under subparagraphs (A) and (B) shall be made under regulations prescribed by the Secretary.

(2) Overall limitation

The reduction under paragraph (1) for any taxable year shall not exceed an amount which bears the same ratio to the increase in the investments in export trade assets (as defined in section 971(c)) of such corporation for such year as the export trade income which constitutes foreign base company income of such corporation for such year bears to the entire export trade income of such corporation for such year.

[(b) Repealed. Pub. L. 115–97, title I, § 14212(b)(5), Dec. 22, 2017, 131 Stat. 2217]

(c) Investments in export trade assets

(1) Amount of investments

For purposes of this section, the amount taken into account with respect to any export trade asset shall be its adjusted basis, reduced by any liability to which the asset is subject.

(2) Increase in investments in export trade assets

For purposes of subsection (a), the amount of increase in investments in export trade assets of any controlled foreign corporation for any taxable year is the amount by which—

(A) the amount of such investments at the close of the taxable year, exceeds

(B) the amount of such investments at the close of the preceding taxable year.

(3) Decrease in investments in export trade assets

For purposes of subsection (b), the amount of decrease in investments in export trade assets of any controlled foreign corporation for any taxable year is the amount by which—

(A) the amount of such investments at the close of the preceding taxable year (reduced by an amount equal to the amount of net loss sustained during the taxable year with respect to export trade assets), exceeds

(B) the amount of such investments at the close of the taxable year.

(4) Special rule

A United States shareholder of an export trade corporation may, under regulations prescribed by the Secretary, make the determinations under paragraphs (2) and (3) as of the close of the 75th day after the close of the years referred to in such paragraphs in lieu of on the last day of such years. A United States shareholder of an export trade corporation may, under regulations prescribed by the Secretary, make the determinations under paragraphs (2) and (3) with respect to export trade assets described in section 971(c)(3) as of the close of the years following the years referred to in such paragraphs, or as of the close of such longer period of time as such regulations may permit, in lieu of on the last day of such years and in lieu of on the day prescribed in the preceding sentence. Any election under this paragraph made with respect to any taxable year shall apply to such year and to all succeeding taxable years unless the Secretary consents to the revocation of such election.

(Added Pub. L. 87–834, § 12(a), Oct. 16, 1962, 76 Stat. 1027; amended Pub. L. 94–455, title XIX, §§ 1901(b)(27)(A), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1799, 1834; Pub. L. 115–97, title I, § 14212(b)(5), Dec. 22, 2017, 131 Stat. 2217.)

AMENDMENTS

2017—Subsec. (b). Pub. L. 115–97 struck out subsec. (b). Text read as follows: ''Each United States shareholder of a controlled foreign corporation which for any prior taxable year was an export trade corporation shall include in his gross income under section 951(a)(1)(A)(ii), as an amount to which section 955 (relating to withdrawal of previously excluded subpart F income from qualified investment) applies, his pro rata share of the amount of decrease in the investments in export trade assets of such corporation for such year, but only to the extent that his pro rata share of such amount does not exceed an amount equal to—

''(1) his pro rata share of the sum of (A) the amounts by which the subpart F income of such corporation was reduced for all prior taxable years under subsection (a), and (B) the amounts not included in subpart F income (determined without regard to this subpart) for all prior taxable years by reason of the treatment (under section 972 as in effect before the date of the enactment of the Tax Reform Act of 1976) of two or more controlled foreign corporations which are export trade corporations as a single controlled foreign corporation, reduced by

''(2) the sum of the amounts which were included in his gross income under section 951(a)(1)(A)(ii) under the provisions of this subsection for all prior taxable years.''

1976—Subsec. (a)(1). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (b)(1). Pub. L. 94–455, § 1901(b)(27)(A), substituted ''treatment (under section 972 as in effect be-

fore the date of enactment of the Tax Reform Act of 1976) of two or more controlled foreign corporations which are export trade corporations as a single controlled corporation'' for ''application of section 972'' after ''reason of the''.

Subsec. (c)(4). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' in three places.

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 14212(c) of Pub. L. 115–97, set out as a note under section 851 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(b)(27)(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.

EXPORT TRADE CORPORATIONS

Pub. L. 92–178, title V, §505(a), (b), Dec. 10, 1971, 85 Stat. 551, provided that:

''(a) USE OF TERMS.—Except as otherwise expressly provided, whenever in this section a reference is made to a section, chapter, or other provision, the reference shall be considered to be made to a section, chapter, or other provision of the Internal Revenue Code of 1954, and terms used in this section shall have the same meaning as when used in such Code.

''(b) TRANSFER TO A DISC OF ASSETS OF EXPORT TRADE CORPORATION.—

''(1) IN GENERAL.—If a corporation (hereinafter in this section called 'parent') owns all of the outstanding stock of an export trade corporation (as defined in section 971), and the export trade corporation, during a taxable year beginning before January 1, 1976, transfers property, without receiving consideration, to a DISC (as defined in section 992(a)) all of whose outstanding stock is owned by the parent, and if the amount transferred by the export trade corporation is not less than the amount of its untaxed subpart F income (as defined in paragraph (2) of this subsection) at the time of such transfer, then—

''(A) notwithstanding section 367 or any other provision of chapter 1, no gain or loss to the export trade corporation, the parent, or the DISC shall be recognized by reason of such transfer;

''(B) the earnings and profits of the DISC shall be increased by the amount transferred to it by the export trade corporation and such amount shall be included in the accumulated DISC income, and for purposes of section 861(a)(2)(D) shall be considered to be qualified export receipts;

''(C) the adjusted basis of the assets transferred to the DISC shall be the same in the hands of the DISC as in the hands of the export trade corporation;

''(D) the earnings and profits of the export trade corporation shall be reduced by the amount transferred to the DISC, to the extent thereof, with the reduction being applied first to the untaxed subpart F income and then to the other earnings and profits in the order in which they were most recently accumulated;

''(E) the basis of the parent's stock in the export trade corporation shall be decreased by the amount obtained by multiplying its basis in such stock by a fraction the numerator of which is the amount transferred to the DISC and the denominator of which is the aggregate adjusted basis of all the assets of the export trade corporation immediately before such transfer;

''(F) the basis of the parent's stock in the DISC shall be increased by the amount of the reduction under subparagraph (E) of its basis in the stock of the export trade corporation;

''(G) the property transferred to the DISC shall not be considered to reduce the investments of the export trade corporation in export trade assets for purposes of applying [former] section 970(b); and

''(H) any foreign income taxes which would have been deemed under [former] section 902 to have been paid by the parent if the transfer had been made to the parent shall be treated as foreign income taxes paid by the DISC.

For purposes of this section, the amount transferred by the export trade corporation to the DISC shall be the aggregate of the adjusted basis of the properties transferred, with proper adjustment for any indebtedness secured by such property or assumed by the DISC in connection with the transfer. For purposes of this section, a foreign corporation which qualified as an export trade corporation for any 3 taxable years beginning before November 1, 1971, shall be treated as an export trade corporation.

''(2) DEFINITION OF UNTAXED SUBPART F INCOME.—For purposes of this section, the term 'untaxed subpart F income' means with respect to an export trade corporation the amount by which—

''(A) the sum of the amount by which the subpart F income of such corporation was reduced for the taxable year and all prior taxable years under section 970(a) and the amounts not included in subpart F income (determined without regard to subpart G of subchapter N of chapter 1) for all prior taxable years by reason of the application of section 972, exceeds

''(B) the sum of the amounts which were included in the gross income of the shareholders of such corporation under [former] section 951(a)(1)(A)(ii) and under the provision of [former] section 970(b) for all prior taxable years,

determined without regard to the transfer of property described in paragraph (1) of this subsection.

''(3) SPECIAL CASES.—If the provisions of paragraph (1) of this subsection are not applicable solely because the export trade corporation or the DISC, or both, are not owned in the manner prescribed in such paragraph, the provisions shall nevertheless be applicable in such cases to the extent, and in accordance with such rules, as may be prescribed by the Secretary or his delegate.

''(4) TREATMENT OF EXPORT TRADE ASSETS.—If the provisions of this subsection are applicable, accounts receivable held by an export trade corporation and transferred to a DISC, to the extent such receivables were export trade assets in the hands of the export trade corporation, shall be treated as qualified export assets for purposes of section 993(b).''

§ 971. Definitions

(a) Export trade corporations

For purposes of this subpart, the term ''export trade corporation'' means—

(1) In general

A controlled foreign corporation (as defined in section 957) which satisfies the following conditions:

(A) 90 percent or more of the gross income of such corporation for the 3–year period immediately preceding the close of the taxable year (or such part of such period subsequent to the effective date of this subpart during which the corporation was in existence) was derived from sources without the United States, and

(B) 75 percent or more of the gross income of such corporation for such period constituted gross income in respect of which such corporation derived export trade income.

(2) Special rule

If 50 percent or more of the gross income of a controlled foreign corporation in the period specified in subsection (a)(1)(A) is gross income in respect of which such corporation derived export trade income in respect of agricultural products grown in the United States, it may qualify as an export trade corporation although it does not meet the requirements of subsection (a)(1)(B).

(3) Limitation

No controlled foreign corporation may qualify as an export trade corporation for any taxable year beginning after October 31, 1971, unless it qualified as an export trade corporation for any taxable year beginning before such date. If a corporation fails to qualify as an export trade corporation for a period of any 3 consecutive taxable years beginning after such date, it may not qualify as an export trade corporation for any taxable year beginning after such period.

(b) Export trade income

For the purposes of this subpart, the term ''export trade income'' means net income from—

(1) the sale to an unrelated person for use, consumption, or disposition outside the United States of export property (as defined in subsection (e)), or from commissions, fees, compensation, or other income from the performance of commercial, industrial, financial, technical, scientific, managerial, engineering, architectural, skilled, or other services in respect to such sales or in respect of the installation or maintenance of such export property;

(2) commissions, fees, compensation, or other income from commercial, industrial, financial, technical, scientific, managerial, engineering, architectural, skilled, or other services performed in connection with the use by an unrelated person outside the United States of patents, copyrights, secret processes and formulas, goodwill, trademarks, trade brands, franchises, and other like property acquired or developed and owned by the manufacturer, producer, grower, or extractor of export property in respect of which the export trade corporation earns export trade income under paragraph (1);

(3) commissions, fees, rentals, or other compensation or income attributable to the use of export property by an unrelated person or attributable to the use of export property in the rendition of technical, scientific, or engineering services to an unrelated person; and

(4) interest from export trade assets described in subsection (c)(4).

For purposes of paragraph (3), if a controlled foreign corporation receives income from an unrelated person attributable to the use of export property in the rendition of services to such unrelated person together with income attributable to the rendition of other services to such unrelated person, including personal services, the amount of such aggregate income which shall be considered to be attributable to the use of the export property shall (if such amount cannot be established by reference to transactions between unrelated persons) be that part of such aggregate income which the cost of the export property consumed in the rendition of such services (including a reasonable allowance for depreciation) bears to the total costs and expenses attributable to such aggregate income.

(c) Export trade assets

For purposes of this subpart, the term ''export trade assets'' means—

(1) working capital reasonably necessary for the production of export trade income,

(2) inventory of export property held for use, consumption, or disposition outside the United States,

(3) facilities located outside the United States for the storage, handling, transportation, packaging, or servicing of export property, and

(4) evidences of indebtedness executed by persons, other than related persons, in connection with payment for purchases of export property for use, consumption, or disposition outside the United States, or in connection with the payment for services described in subsections (b)(2) and (3).

(d) Export promotion expenses

For purposes of this subpart, the term ''export promotion expenses'' means the following expenses paid or incurred in the receipt or production of export trade income—

(1) a reasonable allowance for salaries or other compensation for personal services actually rendered for such purpose,

(2) rentals or other payments for the use of property actually used for such purpose,

(3) a reasonable allowance for the exhaustion, wear and tear, or obsolescence of property actually used for such purpose, and

(4) any other ordinary and necessary expenses of the corporation to the extent reasonably allocable to the receipt or production of export trade income.

No expense incurred within the United States shall be treated as an export promotion expense within the meaning of the preceding sentence, unless at least 90 percent of each category of expenses described in such sentence is incurred outside the United States.

(e) Export property

For purposes of this subpart, the term ''export property'' means any property or any interest in property manufactured, produced, grown, or extracted in the United States.

(f) Unrelated person

For purposes of this subpart, the term ''unrelated person'' means a person other than a related person as defined in section 954(d)(3).

(Added Pub. L. 87–834, § 12(a), Oct. 16, 1962, 76 Stat. 1029; amended Pub. L. 92–178, title V, § 505(c), Dec. 10, 1971, 85 Stat. 553.)

AMENDMENTS

1971—Subsec. (a)(3). Pub. L. 92–178 added par. (3).

TREATMENT OF CERTAIN FORMER EXPORT TRADE CORPORATIONS

Pub. L. 99–514, title XVIII, § 1876(m), Oct. 22, 1986, 100 Stat. 2901, provided that: ''If—

''(1) a corporation which is not an export trading corporation for its most recent taxable year ending

before the date of the enactment of the Tax Reform Act of 1984 [July 18, 1984] but was an export trading corporation for any prior taxable year, and

''(2)(A) such corporation may not qualify as an export trade corporation for any taxable year beginning after December 31, 1984, by reason of section 971(a)(3) of the Internal Revenue Code of 1954 [now 1986], or (B) such corporation makes an election, before the date 6 months after the date of the enactment of this Act [Oct. 22, 1986], not to be treated as an export trade corporation with respect to taxable years beginning after December 31, 1984,

rules similar to the rules of paragraphs (2) and (4) of section 805(b) of the Tax Reform Act of 1984 [set out as a note under section 991 of this title] shall apply to such corporation. For purposes of the preceding sentence, the term 'export trade corporation' has the meaning given such term by section 971 of such Code.''

[§ 972. Repealed. Pub. L. 94–455, title XIX, § 1901(a)(120), Oct. 4, 1976, 90 Stat. 1784]

Section, Pub. L. 87–834, §12(a), Oct. 16, 1962, 76 Stat. 1031, related to the consolidation of a group of export trade corporations for treatment as a single controlled foreign corporation for tax purposes.

[SUBPART H—REPEALED]

[§ 981. Repealed. Pub. L. 94–455, title X, § 1012(b)(2), Oct. 4, 1976, 90 Stat. 1614]

Section, Pub. L. 89–809, title I, §105(e)(1), Nov. 13, 1966, 80 Stat. 1565, related to income of certain nonresident United States citizens subject to foreign community property laws.

SUBPART I—ADMISSIBILITY OF DOCUMENTATION MAINTAINED IN FOREIGN COUNTRIES

Sec.
982. Admissibility of documentation maintained in foreign countries.

AMENDMENTS

1982—Pub. L. 97–248, title III, §337(a), Sept. 3, 1982, 96 Stat. 629, added subpart I and item 982.

§ 982. Admissibility of documentation maintained in foreign countries

(a) General rule

If the taxpayer fails to substantially comply with any formal document request arising out of the examination of the tax treatment of any item (hereinafter in this section referred to as the ''examined item'') before the 90th day after the date of the mailing of such request on motion by the Secretary, any court having jurisdiction of a civil proceeding in which the tax treatment of the examined item is an issue shall prohibit the introduction by the taxpayer of any foreign-based documentation covered by such request.

(b) Reasonable cause exception

(1) In general

Subsection (a) shall not apply with respect to any documentation if the taxpayer establishes that the failure to provide the documentation as requested by the Secretary is due to reasonable cause.

(2) Foreign nondisclosure law not reasonable cause

For purposes of paragraph (1), the fact that a foreign jurisdiction would impose a civil or criminal penalty on the taxpayer (or any other person) for disclosing the requested documentation is not reasonable cause.

(c) Formal document request

For purposes of this section—

(1) Formal document request

The term ''formal document request'' means any request (made after the normal request procedures have failed to produce the requested documentation) for the production of foreign-based documentation which is mailed by registered or certified mail to the taxpayer at his last known address and which sets forth—

(A) the time and place for the production of the documentation,

(B) a statement of the reason the documentation previously produced (if any) is not sufficient,

(C) a description of the documentation being sought, and

(D) the consequences to the taxpayer of the failure to produce the documentation described in subparagraph (C).

(2) Proceeding to quash

(A) In general

Notwithstanding any other law or rule of law, any person to whom a formal document request is mailed shall have the right to begin a proceeding to quash such request not later than the 90th day after the day such request was mailed. In any such proceeding, the Secretary may seek to compel compliance with such request.

(B) Jurisdiction

The United States district court for the district in which the person (to whom the formal document request is mailed) resides or is found shall have jurisdiction to hear any proceeding brought under subparagraph (A). An order denying the petition shall be deemed a final order which may be appealed.

(C) Suspension of 90-day period

The running of the 90-day period referred to in subsection (a) shall be suspended during any period during which a proceeding brought under subparagraph (A) is pending.

(d) Definitions and special rules

For purposes of this section—

(1) Foreign-based documentation

The term ''foreign-based documentation'' means any documentation which is outside the United States and which may be relevant or material to the tax treatment of the examined item.

(2) Documentation

The term ''documentation'' includes books and records.

(3) Authority to extend 90-day period

The Secretary, and any court having jurisdiction over a proceeding under subsection (c)(2), may extend the 90-day period referred to in subsection (a).

(e) Suspension of statute of limitations

If any person takes any action as provided in subsection (c)(2), the running of any period of

limitations under section 6501 (relating to the assessment and collection of tax) or under section 6531 (relating to criminal prosecutions) with respect to such person shall be suspended for the period during which the proceeding under such subsection, and appeals therein, are pending.

(Added Pub. L. 97–248, title III, § 337(a), Sept. 3, 1982, 96 Stat. 629; amended Pub. L. 98–369, div. A, title VII, § 714(k), July 18, 1984, 98 Stat. 963.)

AMENDMENTS

1984—Subsec. (d)(3), (4). Pub. L. 98–369 redesignated par. (4) as (3) and struck out former par. (3) which provided that an item was to be treated as foreign connected if directly or indirectly from a source outside the United States, or the item (in whole or in part) purported to arise outside the United States, or was otherwise dependent on transactions occurring outside the United States.

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

Pub. L. 97–248, title III, § 337(c), Sept. 3, 1982, 96 Stat. 630, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [enacting this section] shall apply with respect to formal document requests (as defined in section 982(c)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as added by this section) mailed after the date of the enactment of this Act [Sept. 3, 1982].''

SUBPART J—FOREIGN CURRENCY TRANSACTIONS

AMENDMENTS

1988—Pub. L. 100–647, title I, § 1012(v)(1)(C), Nov. 10, 1988, 102 Stat. 3529, added item 986 and struck out former item 986 ''Determination of foreign corporation's earnings and profits and foreign taxes''.

§ 985. Functional currency

(a) In general

Unless otherwise provided in regulations, all determinations under this subtitle shall be made in the taxpayer's functional currency.

(b) Functional currency

(1) In general

For purposes of this subtitle, the term ''functional currency'' means—

(A) except as provided in subparagraph (B), the dollar, or

(B) in the case of a qualified business unit, the currency of the economic environment in which a significant part of such unit's activities are conducted and which is used by such unit in keeping its books and records.

(2) Functional currency where activities primarily conducted in dollars

The functional currency of any qualified business unit shall be the dollar if activities of such unit are primarily conducted in dollars.

(3) Election

To the extent provided in regulations, the taxpayer may elect to use the dollar as the functional currency for any qualified business unit if—

(A) such unit keeps its books and records in dollars, or

(B) the taxpayer uses a method of accounting that approximates a separate transactions method.

Any such election shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

(4) Change in functional currency treated as a change in method of accounting

Any change in the functional currency shall be treated as a change in the taxpayer's method of accounting for purposes of section 481 under procedures to be established by the Secretary.

(Added Pub. L. 99–514, title XII, § 1261(a), Oct. 22, 1986, 100 Stat. 2585.)

EFFECTIVE DATE

Pub. L. 99–514, title XII, § 1261(e), Oct. 22, 1986, 100 Stat. 2591, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this subpart and amending sections 1092 and 1256 of this title] shall apply to taxable years beginning after December 31, 1986.

''(2) SPECIAL RULES FOR PURPOSES OF SECTIONS 902 AND 960.—For purposes of applying sections [former] 902 and 960 of the Internal Revenue Code of 1986, the amendments made by this section shall apply to—

''(A) earnings and profits of the foreign corporation for taxable years beginning after December 31, 1986, and

''(B) foreign taxes paid or accrued by the foreign corporation with respect to such earnings and profits.''

§ 986. Determination of foreign taxes and foreign corporation's earnings and profits

(a) Foreign income taxes

(1) Translation of accrued taxes

(A) In general

For purposes of determining the amount of the foreign tax credit, in the case of a taxpayer who takes foreign income taxes into account when accrued, the amount of any foreign income taxes (and any adjustment thereto) shall be translated into dollars by using the average exchange rate for the taxable year to which such taxes relate.

(B) Exception for certain taxes

Subparagraph (A) shall not apply to any foreign income taxes—

(i) paid after the date 2 years after the close of the taxable year to which such taxes relate, or

(ii) paid before the beginning of the taxable year to which such taxes relate.

(C) Exception for inflationary currencies

Subparagraph (A) shall not apply to any foreign income taxes the liability for which is denominated in any inflationary currency (as determined under regulations).

(D) Elective exception for taxes paid other than in functional currency

(i) In general

At the election of the taxpayer, subparagraph (A) shall not apply to any foreign income taxes the liability for which is denominated in any currency other than in the taxpayer's functional currency.

(ii) Application to qualified business units

An election under this subparagraph may apply to foreign income taxes attributable to a qualified business unit in accordance with regulations prescribed by the Secretary.

(iii) Election

Any such election shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

(E) Special rule for regulated investment companies

In the case of a regulated investment company which takes into account income on an accrual basis, subparagraphs (A) through (D) shall not apply and foreign income taxes paid or accrued with respect to such income shall be translated into dollars using the exchange rate as of the date the income accrues.

(F) Cross reference

For adjustments where tax is not paid within 2 years, see section 905(c).

(2) Translation of taxes to which paragraph (1) does not apply

For purposes of determining the amount of the foreign tax credit, in the case of any foreign income taxes to which subparagraph (A) or (E) of paragraph (1) does not apply—

(A) such taxes shall be translated into dollars using the exchange rates as of the time such taxes were paid to the foreign country or possession of the United States, and

(B) any adjustment to the amount of such taxes shall be translated into dollars using—

(i) except as provided in clause (ii), the exchange rate as of the time when such adjustment is paid to the foreign country or possession, or

(ii) in the case of any refund or credit of foreign income taxes, using the exchange rate as of the time of the original payment of such foreign income taxes.

(3) Authority to permit use of average rates

To the extent prescribed in regulations, the average exchange rate for the period (specified in such regulations) during which the taxes or adjustment is paid may be used instead of the exchange rate as of the time of such payment.

(4) Foreign income taxes

For purposes of this subsection, the term ''foreign income taxes'' means any income, war profits, or excess profits taxes paid or accrued to any foreign country or to any possession of the United States.

(b) Earnings and profits and distributions

For purposes of determining the tax under this subtitle—

(1) of any shareholder of any foreign corporation, the earnings and profits of such corporation shall be determined in the corporation's functional currency, and

(2) in the case of any United States person, the earnings and profits determined under paragraph (1) (when distributed, deemed distributed, or otherwise taken into account under this subtitle) shall (if necessary) be translated into dollars using the appropriate exchange rate.

(c) Previously taxed earnings and profits

(1) In general

Foreign currency gain or loss with respect to distributions of previously taxed earnings and profits (as described in section 959 or 1293(c)) attributable to movements in exchange rates between the times of deemed and actual distribution shall be recognized and treated as ordinary income or loss from the same source as the associated income inclusion.

(2) Distributions through tiers

The Secretary shall prescribe regulations with respect to the treatment of distributions of previously taxed earnings and profits through tiers of foreign corporations.

(Added Pub. L. 99–514, title XII, §1261(a), Oct. 22, 1986, 100 Stat. 2586; amended Pub. L. 100–647, title I, §1012(v)(1)(A), Nov. 10, 1988, 102 Stat. 3528; Pub. L. 105–34, title XI, §1102(a)(1), (b)(1), Aug. 5, 1997, 111 Stat. 963, 965; Pub. L. 108–357, title IV, §408(a), (b), Oct. 22, 2004, 118 Stat. 1499.)

AMENDMENTS

2004—Subsec. (a)(1)(D). Pub. L. 108–357, §408(a), added subpar. (D). Former subpar. (D) redesignated (E).

Subsec. (a)(1)(E). Pub. L. 108–357, §408(b)(1), added subpar. (E). Former subpar. (E) redesignated (F).

Pub. L. 108–357, §408(a), redesignated subpar. (D) as (E).

Subsec. (a)(1)(F). Pub. L. 108–357, §408(b)(1), redesignated subpar. (E) as (F).

Subsec. (a)(2). Pub. L. 108–357, §408(b)(2), inserted ''or (E)'' after ''subparagraph (A)'' in introductory provisions.

1997—Subsec. (a). Pub. L. 105–34, §1102(a)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows:

''(a) FOREIGN TAXES.—

''(1) IN GENERAL.—For purposes of determining the amount of the foreign tax credit—

''(A) any foreign income taxes shall be translated into dollars using the exchange rates as of the time such taxes were paid to the foreign country or possession of the United States, and

''(B) any adjustment to the amount of foreign income taxes shall be translated into dollars using—

''(i) except as provided in clause (ii), the exchange rate as of the time when such adjustment is paid to the foreign country or possession, or

''(ii) in the case of any refund or credit of foreign income taxes, using the exchange rate as of the time of original payment of such foreign income taxes.

''(2) FOREIGN INCOME TAXES.—For purposes of paragraph (1), 'foreign income taxes' means any income,

war profits, or excess profits taxes paid to any foreign country or to any possession of the United States.''

Subsec. (a)(3), (4). Pub. L. 105–34, § 1102(b)(1), added par. (3) and redesignated former par. (3) as (4).

1988—Pub. L. 100–647 substituted ''foreign taxes and foreign corporation's earnings and profits'' for ''foreign corporation's earnings and profits and foreign taxes'' in heading, and revised and restructured the provisions of subsecs. (a) and (b).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title IV, § 408(c), 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, 2004.''

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XI, § 1102(c)(1), Aug. 5, 1997, 111 Stat. 966, provided that: ''The amendments made by subsections (a)(1) and (b) [amending this section and section 989 of this title] shall apply to taxes paid or accrued in 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

Section applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1261(e) of Pub. L. 99–514, set out as a note under section 985 of this title.

§ 987. Branch transactions

In the case of any taxpayer having 1 or more qualified business units with a functional currency other than the dollar, taxable income of such taxpayer shall be determined—

(1) by computing the taxable income or loss separately for each such unit in its functional currency,

(2) by translating the income or loss separately computed under paragraph (1) at the appropriate exchange rate, and

(3) by making proper adjustments (as prescribed by the Secretary) for transfers of property between qualified business units of the taxpayer having different functional currencies, including—

(A) treating post-1986 remittances from each such unit as made on a pro rata basis out of post-1986 accumulated earnings, and

(B) treating gain or loss determined under this paragraph as ordinary income or loss, respectively, and sourcing such gain or loss by reference to the source of the income giving rise to post-1986 accumulated earnings.

(Added Pub. L. 99–514, title XII, § 1261(a), Oct. 22, 1986, 100 Stat. 2586; amended Pub. L. 100–647, title I, § 1012(v)(1)(B), Nov. 10, 1988, 102 Stat. 3528.)

AMENDMENTS

1988—Par. (4). Pub. L. 100–647 struck out par. (4) which provided for translation of foreign income taxes paid by each qualified business unit of the taxpayer in the same manner as provided under section 986(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

Section applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1261(e) of Pub. L. 99–514, set out as a note under section 985 of this title.

§ 988. Treatment of certain foreign currency transactions

(a) General rule

Notwithstanding any other provision of this chapter—

(1) Treatment as ordinary income or loss

(A) In general

Except as otherwise provided in this section, any foreign currency gain or loss attributable to a section 988 transaction shall be computed separately and treated as ordinary income or loss (as the case may be).

(B) Special rule for forward contracts, etc.

Except as provided in regulations, a taxpayer may elect to treat any foreign currency gain or loss attributable to a forward contract, a futures contract, or option described in subsection (c)(1)(B)(iii) which is a capital asset in the hands of the taxpayer and which is not a part of a straddle (within the meaning of section 1092(c), without regard to paragraph (4) thereof) as capital gain or loss (as the case may be) if the taxpayer makes such election and identifies such transaction before the close of the day on which such transaction is entered into (or such earlier time as the Secretary may prescribe).

(2) Gain or loss treated as interest for certain purposes

To the extent provided in regulations, any amount treated as ordinary income or loss under paragraph (1) shall be treated as interest income or expense (as the case may be).

(3) Source

(A) In general

Except as otherwise provided in regulations, in the case of any amount treated as ordinary income or loss under paragraph (1) (without regard to paragraph (1)(B)), the source of such amount shall be determined by reference to the residence of the taxpayer or the qualified business unit of the taxpayer on whose books the asset, liability, or item of income or expense is properly reflected.

(B) Residence

For purposes of this subpart—

(i) In general

The residence of any person shall be—

(I) in the case of an individual, the country in which such individual's tax home (as defined in section 911(d)(3)) is located,

(II) in the case of any corporation, partnership, trust, or estate which is a

United States person (as defined in section 7701(a)(30)), the United States, and

(III) in the case of any corporation, partnership, trust, or estate which is not a United States person, a country other than the United States.

If an individual does not have a tax home (as so defined), the residence of such individual shall be the United States if such individual is a United States citizen or a resident alien and shall be a country other than the United States if such individual is not a United States citizen or a resident alien.

(ii) Exception

In the case of a qualified business unit of any taxpayer (including an individual), the residence of such unit shall be the country in which the principal place of business of such qualified business unit is located.

(iii) Special rule for partnerships

To the extent provided in regulations, in the case of a partnership, the determination of residence shall be made at the partner level.

(C) Special rule for certain related party loans

Except to the extent provided in regulations, in the case of a loan by a United States person or a related person to a 10-percent owned foreign corporation which is denominated in a currency other than the dollar and bears interest at a rate at least 10 percentage points higher than the Federal mid-term rate (determined under section 1274(d)) at the time such loan is entered into, the following rules shall apply:

(i) For purposes of section 904 only, such loan shall be marked to market on an annual basis.

(ii) Any interest income earned with respect to such loan for the taxable year shall be treated as income from sources within the United States to the extent of any loss attributable to clause (i).

For purposes of this subparagraph, the term ''related person'' has the meaning given such term by section 954(d)(3), except that such section shall be applied by substituting ''United States person'' for ''controlled foreign corporation'' each place such term appears.

(D) 10-percent owned foreign corporation

The term ''10-percent owned foreign corporation'' means any foreign corporation in which the United States person owns directly or indirectly at least 10 percent of the voting stock.

(b) Foreign currency gain or loss

For purposes of this section—

(1) Foreign currency gain

The term ''foreign currency gain'' means any gain from a section 988 transaction to the extent such gain does not exceed gain realized by reason of changes in exchange rates on or after the booking date and before the payment date.

(2) Foreign currency loss

The term ''foreign currency loss'' means any loss from a section 988 transaction to the extent such loss does not exceed the loss realized by reason of changes in exchange rates on or after the booking date and before the payment date.

(3) Special rule for certain contracts, etc.

In the case of any section 988 transaction described in subsection (c)(1)(B)(iii), any gain or loss from such transaction shall be treated as foreign currency gain or loss (as the case may be).

(c) Other definitions

For purposes of this section—

(1) Section 988 transaction

(A) In general

The term ''section 988 transaction'' means any transaction described in subparagraph (B) if the amount which the taxpayer is entitled to receive (or is required to pay) by reason of such transaction—

(i) is denominated in terms of a nonfunctional currency, or

(ii) is determined by reference to the value of 1 or more nonfunctional currencies.

(B) Description of transactions

For purposes of subparagraph (A), the following transactions are described in this subparagraph:

(i) The acquisition of a debt instrument or becoming the obligor under a debt instrument.

(ii) Accruing (or otherwise taking into account) for purposes of this subtitle any item of expense or gross income or receipts which is to be paid or received after the date on which so accrued or taken into account.

(iii) Entering into or acquiring any forward contract, futures contract, option, or similar financial instrument.

The Secretary may prescribe regulations excluding from the application of clause (ii) any class of items the taking into account of which is not necessary to carry out the purposes of this section by reason of the small amounts or short periods involved, or otherwise.

(C) Special rules for disposition of nonfunctional currency

(i) In general

In the case of any disposition of any nonfunctional currency—

(I) such disposition shall be treated as a section 988 transaction, and

(II) any gain or loss from such transaction shall be treated as foreign currency gain or loss (as the case may be).

(ii) Nonfunctional currency

For purposes of this section, the term ''nonfunctional currency'' includes coin or currency, and nonfunctional currency denominated demand or time deposits or similar instruments issued by a bank or other financial institution.

(D) Exception for certain instruments marked to market

(i) In general

Clause (iii) of subparagraph (B) shall not apply to any regulated futures contract or nonequity option which would be marked to market under section 1256 if held on the last day of the taxable year.

(ii) Election out

(I) In general

The taxpayer may elect to have clause (i) not apply to such taxpayer. Such an election shall apply to contracts held at any time during the taxable year for which such election is made or any succeeding taxable year unless such election is revoked with the consent of the Secretary.

(II) Time for making election

Except as provided in regulations, an election under subclause (I) for any taxable year shall be made on or before the 1st day of such taxable year (or, if later, on or before the 1st day during such year on which the taxpayer holds a contract described in clause (i)).

(III) Special rule for partnerships, etc.

In the case of a partnership, an election under subclause (I) shall be made by each partner separately. A similar rule shall apply in the case of an S corporation.

(iii) Treatment of certain partnerships

This subparagraph shall not apply to any income or loss of a partnership for any taxable year if such partnership made an election under subparagraph (E)(iii)(V) for such year or any preceding year.

(E) Special rules for certain funds

(i) In general

In the case of a qualified fund, clause (iii) of subparagraph (B) shall not apply to any instrument which would be marked to market under section 1256 if held on the last day of the taxable year (determined after the application of clause (iv)).

(ii) Special rule where electing partnership does not qualify

If any partnership made an election under clause (iii)(V) for any taxable year and such partnership has a net loss for such year or any succeeding year from instruments referred to in clause (i), the rules of clauses (i) and (iv) shall apply to any such loss year whether or not such partnership is a qualified fund for such year.

(iii) Qualified fund defined

For purposes of this subparagraph, the term ''qualified fund'' means any partnership if—

(I) at all times during the taxable year (and during each preceding taxable year to which an election under subclause (V) applied), such partnership has at least 20 partners and no single partner owns more than 20 percent of the interests in the capital or profits of the partnership,

(II) the principal activity of such partnership for such taxable year (and each such preceding taxable year) consists of buying and selling options, futures, or forwards with respect to commodities,

(III) at least 90 percent of the gross income of the partnership for the taxable year (and for each such preceding taxable year) consisted of income or gains described in subparagraph (A), (B), or (G) of section 7704(d)(1) or gain from the sale or disposition of capital assets held for the production of interest or dividends,

(IV) no more than a de minimis amount of the gross income of the partnership for the taxable year (and each such preceding taxable year) was derived from buying and selling commodities, and

(V) an election under this subclause applies to the taxable year.

An election under subclause (V) for any taxable year shall be made on or before the 1st day of such taxable year (or, if later, on or before the 1st day during such year on which the partnership holds an instrument referred to in clause (i)). Any such election shall apply to the taxable year for which made and all succeeding taxable years unless revoked with the consent of the Secretary.

(iv) Treatment of certain currency contracts

(I) In general

Except as provided in regulations, in the case of a qualified fund, any bank forward contract, any foreign currency futures contract traded on a foreign exchange, or to the extent provided in regulations any similar instrument, which is not otherwise a section 1256 contract shall be treated as a section 1256 contract for purposes of section 1256.

(II) Gains and losses treated as short-term

In the case of any instrument treated as a section 1256 contract under subclause (I), subparagraph (A) of section 1256(a)(3) shall be applied by substituting ''100 percent'' for ''40 percent'' (and subparagraph (B) of such section shall not apply).

(v) Special rules for clause (iii)(I)

(I) Certain general partners

The interest of a general partner in the partnership shall not be treated as failing to meet the 20-percent ownership requirements of clause (iii)(I) for any taxable year of the partnership if, for the taxable year of the partner in which such partnership taxable year ends, such partner (and each corporation filing a consolidated return with such partner) had no ordinary income or loss from a section 988 transaction which is foreign currency gain or loss (as the case may be).

(II) Treatment of incentive compensation

For purposes of clause (iii)(I), any income allocable to a general partner as incentive compensation based on profits rather than capital shall not be taken into account in determining such partner's interest in the profits of the partnership.

(III) Treatment of tax-exempt partners

Except as provided in regulations, the interest of a partner in the partnership shall not be treated as failing to meet the 20-percent ownership requirements of clause (iii)(I) if none of the income of such partner from such partnership is subject to tax under this chapter (whether directly or through 1 or more pass-thru entities).

(IV) Look-thru rule

In determining whether the requirements of clause (iii)(I) are met with respect to any partnership, except to the extent provided in regulations, any interest in such partnership held by another partnership shall be treated as held proportionately by the partners in such other partnership.

(vi) Other special rules

For purposes of this subparagraph—

(I) Related persons

Interests in the partnership held by persons related to each other (within the meaning of sections 267(b) and 707(b)) shall be treated as held by 1 person.

(II) Predecessors

References to any partnership shall include a reference to any predecessor thereof.

(III) Inadvertent terminations

Rules similar to the rules of section 7704(e) shall apply.

(IV) Treatment of certain debt instruments

For purposes of clause (iii)(IV), any debt instrument which is a section 988 transaction shall be treated as a commodity.

(2) Booking date

The term ''booking date'' means—

(A) in the case of a transaction described in paragraph (1)(B)(i), the date of acquisition or on which the taxpayer becomes the obligor, or

(B) in the case of a transaction described in paragraph (1)(B)(ii), the date on which accrued or otherwise taken into account.

(3) Payment date

The term ''payment date'' means the date on which the payment is made or received.

(4) Debt instrument

The term ''debt instrument'' means a bond, debenture, note, or certificate or other evidence of indebtedness. To the extent provided in regulations, such term shall include preferred stock.

(5) Special rules where taxpayer takes or makes delivery

If the taxpayer takes or makes delivery in connection with any section 988 transaction described in paragraph (1)(B)(iii), any gain or loss (determined as if the taxpayer sold the contract, option, or instrument on the date on which he took or made delivery for its fair market value on such date) shall be recognized in the same manner as if such contract, option, or instrument were so sold.

(d) Treatment of 988 hedging transactions

(1) In general

To the extent provided in regulations, if any section 988 transaction is part of a 988 hedging transaction, all transactions which are part of such 988 hedging transaction shall be integrated and treated as a single transaction or otherwise treated consistently for purposes of this subtitle. For purposes of the preceding sentence, the determination of whether any transaction is a section 988 transaction shall be determined without regard to whether such transaction would otherwise be marked-to-market under section 475 or 1256 and such term shall not include any transaction with respect to which an election is made under subsection (a)(1)(B). Sections 475, 1092, and 1256 shall not apply to a transaction covered by this subsection.

(2) 988 hedging transaction

For purposes of paragraph (1), the term ''988 hedging transaction'' means any transaction—

(A) entered into by the taxpayer primarily—

(i) to manage risk of currency fluctuations with respect to property which is held or to be held by the taxpayer, or

(ii) to manage risk of currency fluctuations with respect to borrowings made or to be made, or obligations incurred or to be incurred, by the taxpayer, and

(B) identified by the Secretary or the taxpayer as being a 988 hedging transaction.

(e) Application to individuals

(1) In general

The preceding provisions of this section shall not apply to any section 988 transaction entered into by an individual which is a personal transaction.

(2) Exclusion for certain personal transactions

If—

(A) nonfunctional currency is disposed of by an individual in any transaction, and

(B) such transaction is a personal transaction,

no gain shall be recognized for purposes of this subtitle by reason of changes in exchange rates after such currency was acquired by such individual and before such disposition. The preceding sentence shall not apply if the gain which would otherwise be recognized on the transaction exceeds $200.

(3) Personal transactions

For purposes of this subsection, the term ''personal transaction'' means any transaction

entered into by an individual, except that such term shall not include any transaction to the extent that expenses properly allocable to such transaction meet the requirements of—

(A) section 162 (other than traveling expenses described in subsection (a)(2) thereof), or

(B) section 212 (other than that part of section 212 dealing with expenses incurred in connection with taxes).

(Added Pub. L. 99–514, title XII, § 1261(a), Oct. 22, 1986, 100 Stat. 2587; amended Pub. L. 100–647, title I, § 1012(v)(2)(A), (3), (4), (6)–(8), title VI, § 6130(a), (b), Nov. 10, 1988, 102 Stat. 3529, 3530, 3717; Pub. L. 101–239, title VII, § 7811(i)(7), Dec. 19, 1989, 103 Stat. 2410; Pub. L. 103–66, title XIII, § 13223(b)(1), Aug. 10, 1993, 107 Stat. 484; Pub. L. 105–34, title XI, § 1104(a), Aug. 5, 1997, 111 Stat. 967; Pub. L. 106–170, title V, § 532(b)(3), Dec. 17, 1999, 113 Stat. 1930.)

AMENDMENTS

1999—Subsec. (d)(2)(A)(i), (ii). Pub. L. 106–170 substituted ''to manage'' for ''to reduce''.

1997—Subsec. (e). Pub. L. 105–34 amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows: ''This section shall apply to section 988 transactions entered into by an individual only to the extent expenses properly allocable to such transactions meet the requirements of section 162 or 212 (other than that part of section 212 dealing with expenses incurred in connection with taxes).''

1993—Subsec. (d)(1). Pub. L. 103–66 substituted ''section 475 or 1256'' for ''section 1256'' and ''Sections 475, 1092, and 1256'' for ''Sections 1092 and 1256''.

1989—Subsec. (a). Pub. L. 101–239 inserted introductory provision ''Notwithstanding any other provision of this chapter—''.

1988—Subsec. (a)(3)(B)(i). Pub. L. 100–647, § 1012(v)(8), inserted at end ''If an individual does not have a tax home (as so defined), the residence of such individual shall be the United States if such individual is a United States citizen or a resident alien and shall be a country other than the United States if such individual is not a United States citizen or a resident alien.''

Subsec. (a)(3)(B)(iii). Pub. L. 100–647, § 1012(v)(7), added cl. (iii).

Subsec. (b)(3). Pub. L. 100–647, § 1012(v)(3)(A), added par. (3).

Subsec. (c)(1)(B)(iii). Pub. L. 100–647, § 6130(a), struck out ''unless such instrument would be marked to market under section 1256 if held on the last day of the taxable year'' after ''similar financial instrument''.

Pub. L. 100–647, § 1012(v)(6), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''Entering into or acquiring any forward contract, futures contract, option, or similar financial instrument if such instrument is not marked to market at the close of the taxable year under section 1256.''

Subsec. (c)(1)(C)(i)(II). Pub. L. 100–647, § 1012(v)(3)(B), amended subcl. (II) generally. Prior to amendment, subcl. (II) read as follows: ''for purposes of determining the foreign currency gain or loss from such transaction, paragraphs (1) and (2) of subsection (b) shall be applied by substituting 'acquisition date' for 'booking date' and 'disposition' for 'payment date'.''

Subsec. (c)(1)(D), (E). Pub. L. 100–647, § 6130(b), added subpars. (D) and (E).

Subsec. (c)(2)(C). Pub. L. 100–647, § 1012(v)(3)(C), struck out subpar. (C) which defined ''booking date'' in the case of a transaction described in par. (1)(B)(iii) as the date on which the position is entered into or acquired.

Subsec. (c)(3). Pub. L. 100–647, § 1012(v)(3)(D), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The term 'payment date' means—

''(A) in the case of a transaction described in paragraph (1)(B)(i) or (ii), the date on which payment is made or received, or

''(B) in the case of a transaction described in paragraph (1)(B)(iii), the date payment is made or received or the date the taxpayer's rights with respect to the position are terminated.''

Subsec. (c)(5). Pub. L. 100–647, § 1012(v)(2)(A), added par. (5).

Subsec. (d)(1). Pub. L. 100–647, § 1012(v)(4), substituted ''this subtitle'' for ''this section''.

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, § 1104(b), Aug. 5, 1997, 111 Stat. 967, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997.''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to all taxable years ending on or after Dec. 31, 1993, with special rules for taxpayers required to change accounting methods and for floor specialists and market makers, see section 13223(c) of Pub. L. 103–66, set out as an Effective Date note under section 475 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, § 1012(v)(2)(B), Nov. 10, 1988, 102 Stat. 3529, provided that: ''The amendment made by subparagraph (A) [amending this section] shall not apply in any case in which the taxpayer takes or makes delivery before June 11, 1987.''

Amendment by section 1012(v)(3), (4), (6)–(8) 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, § 6130(d), Nov. 10, 1988, 102 Stat. 3719, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 1092 of this title] shall apply with respect to forward contracts, future contracts, options, and similar instruments entered into or acquired after October 21, 1988.

''(2) TIME FOR MAKING ELECTION.—The time for making any election under subparagraph (D) or (E) of section 988(c)(1) of the 1986 Code shall not expire before the date 30 days after the date of the enactment of this Act [Nov. 10, 1988].

''(3) TRANSITIONAL RULES.—

''(A) The requirements of subclause (IV) of section 988(c)(1)(E)(iii) of the 1986 Code (as added by subsection (b)) shall not apply to periods before the date of the enactment of this Act.

''(B) In the case of any partner in an existing partnership, the 20-percent ownership requirements of subclause (I) of such section 988(c)(1)(E)(iii) shall be treated as met during any period during which such partner does not own a percentage interest in the capital or profits of such partnership greater than 33⅓ percent (or, if lower, the lowest such percentage interest of such partner during any prior period after October 21, 1988, during which such partnership is in existence). For purposes of the preceding sentence, the term 'existing partnership' means any partnership if—

''(i) such partnership was in existence on October 21, 1988, and principally engaged on such date in buying and selling options, futures, or forwards with respect to commodities, or

''(ii) a registration statement was filed with respect to such partnership with the Securities and Exchange Commission on or before such date and such registration statement indicated that the principal activity of such partnership will consist of buying and selling instruments referred to in clause (i).''

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1261(e) of Pub. L. 99–514, set out as a note under section 985 of this title.

§ 989. Other definitions and special rules

(a) Qualified business unit

For purposes of this subpart, the term ''qualified business unit'' means any separate and clearly identified unit of a trade or business of a taxpayer which maintains separate books and records.

(b) Appropriate exchange rate

Except as provided in regulations, for purposes of this subpart, the term ''appropriate exchange rate'' means—

(1) in the case of an actual distribution of earnings and profits, the spot rate on the date such distribution is included in income,

(2) in the case of an actual or deemed sale or exchange of stock in a foreign corporation treated as a dividend under section 1248, the spot rate on the date the deemed dividend is included in income,

(3) in the case of any amounts included in income under section 951(a)(1)(A) or 1293(a), the average exchange rate for the taxable year of the foreign corporation, or

(4) in the case of any other qualified business unit of a taxpayer, the average exchange rate for the taxable year of such qualified business unit.

For purposes of the preceding sentence, any amount included in income under section 951(a)(1)(B) shall be treated as an actual distribution made on the last day of the taxable year for which such amount was so included.

(c) Regulations

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

(1) setting forth procedures to be followed by taxpayers with qualified business units using a net worth method of accounting before the enactment of this subpart,

(2) limiting the recognition of foreign currency loss on certain remittances from qualified business units,

(3) providing for the recharacterization of interest and principal payments with respect to obligations denominated in certain hyperinflationary currencies,

(4) providing for alternative adjustments to the application of section 905(c),

(5) providing for the appropriate treatment of related party transactions (including transactions between qualified business units of the same taxpayer), and

(6) setting forth procedures for determining the average exchange rate for any period.

(Added Pub. L. 99–514, title XII, §1261(a), Oct. 22, 1986, 100 Stat. 2590; amended Pub. L. 100–647, title I, §1012(v)(5), Nov. 10, 1988, 102 Stat. 3529; Pub. L. 103–66, title XIII, §13231(c)(4)(C), Aug. 10, 1993, 107 Stat. 499; Pub. L. 104–188, title I, §1501(b)(9), Aug. 20, 1996, 110 Stat. 1826; Pub. L. 105–34, title XI, §1102(b)(2), (3), Aug. 5, 1997, 111 Stat. 966; Pub. L. 108–357, title IV, §413(c)(17), Oct. 22, 2004, 118 Stat. 1508.)

REFERENCES IN TEXT

The enactment of this subpart, referred to in subsec. (c)(1), probably means the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

AMENDMENTS

2004—Subsec. (b)(3). Pub. L. 108–357 struck out '', 551(a),'' after ''section 951(a)(1)(A)''.

1997—Subsec. (b)(3), (4). Pub. L. 105–34, §1102(b)(3), struck out ''weighted'' before ''average exchange rate''.

Subsec. (c)(6). Pub. L. 105–34, §1102(b)(2), added par. (6).

1996—Subsec. (b). Pub. L. 104–188 substituted ''section 951(a)(1)(B)'' for ''subparagraph (B) or (C) of section 951(a)(1)'' in closing provisions.

1993—Subsec. (b). Pub. L. 103–66 substituted ''subparagraph (B) or (C) of section 951(a)(1)'' for ''section 951(a)(1)(B)'' in last sentence.

1988—Subsec. (b). Pub. L. 100–647 substituted in par. (3) ''section 951(a)(1)(A)'' for ''section 951(a)'' and inserted at end ''For purposes of the preceding sentence, any amount included in income under section 951(a)(1)(B) shall be treated as an actual distribution made on the last day of the taxable year for which such amount was so included.''

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 taxes paid or accrued in taxable years beginning after Dec. 31, 1997, see section 1102(c)(1) of Pub. L. 105–34, set out as a note under section 986 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years of foreign corporations beginning after Dec. 31, 1996, and to taxable years of United States shareholders within which or with which such taxable years of foreign corporations end, see section 1501(d) of Pub. L. 104–188, set out as a note under section 904 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years of foreign corporations beginning after Sept. 30, 1993, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, see section 13231(e) of Pub. L. 103–66, set out as a note under section 951 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, with certain exceptions and qualifications, see section 1261(e) of Pub. L. 99–514, set out as a note under section 985 of this title.

PART IV—DOMESTIC INTERNATIONAL SALES CORPORATIONS

AMENDMENTS

1971—Pub. L. 92–178, title V, § 501, Dec. 10, 1971, 85 Stat. 535, added part IV to subchapter N of chapter 1.

SUBPART A—TREATMENT OF QUALIFYING CORPORATIONS

§ 991. Taxation of a domestic international sales corporation

For purposes of the taxes imposed by this subtitle upon a DISC (as defined in section 992(a)), a DISC shall not be subject to the taxes imposed by this subtitle.

(Added Pub. L. 92–178, title V, § 501, Dec. 10, 1971, 85 Stat. 535; amended Pub. L. 105–206, title VI, § 6011(e)(1), July 22, 1998, 112 Stat. 818.)

AMENDMENTS

1998—Pub. L. 105–206 struck out ''except for the tax imposed by chapter 5'' before period at end.

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 (section 1131(a) of Pub. L. 105–34), see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE

Pub. L. 92–178, title V, § 507, Dec. 10, 1971, 85 Stat. 553, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Except as provided in section 505 of this title [amending section 971 of this title and enacting provisions set out as a note under section 970 of this title], the amendments made by sections 501 through 504 of this title [enacting this section and sections 992 to 994, 995 to 997, and 6686 of this title and amending sections 246, 861, 901, 904, 922, 931, 1014, 1504, 6011, 6072, and 6501 of this title] shall apply with respect to taxable years ending after December 31, 1971, except that a corporation may not be a DISC (as defined in section 992(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], added by section 501 of this title) for any taxable year beginning before January 1, 1972.''

TRANSITION RULES FOR DISC'S

Pub. L. 98–369, div. A, title VIII, § 805(b), July 18, 1984, 98 Stat. 1001, as amended by Pub. L. 99–514, § 2, title XVIII, § 1876(h), (n), Oct. 22, 1986, 100 Stat. 2095, 2900, 2901, provided that:

''(1) CLOSE OF 1984 TAXABLE YEARS OF DISC'S.—

''(A) IN GENERAL.—For purposes of applying the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the taxable year of each DISC which begins before January 1, 1985, and which (but for this paragraph) would include January 1, 1985, shall close on December 31, 1984. For purposes of such Code, the requirements of section 992(a)(1)(B) of such Code (relating to percentage of qualified export assets on last day of the taxable year) shall not apply to any taxable year ending on December 31, 1984.

''(B) UNDERPAYMENTS OF ESTIMATED TAX.—To the extent provided in regulations prescribed by the Secretary of the Treasury or his delegate, no addition to tax shall be made under section 6654 or 6655 of such Code with respect to any underpayment of any installment required to be paid before April 13, 1985, to the extent the underpayment was created or increased by reason of subparagraph (A).

''(2) EXEMPTION OF ACCUMULATED DISC INCOME FROM TAX.—

''(A) IN GENERAL.—For purposes of applying the Internal Revenue Code of 1986 with respect to actual distributions made after December 31, 1984, by a DISC or former DISC which was a DISC on December 31, 1984, any accumulated DISC income of a DISC or former DISC (within the meaning of section 996(f)(1) of such Code) which is derived before January 1, 1985, shall be treated as previously taxed income (within the meaning of section 996(f)(2) of such Code) with respect to which there had previously been a deemed distribution to which section 996(e)(1) of such Code applied. For purposes of the preceding sentence, the term 'actual distribution' includes a distribution in liquidation, and the earnings and profits of any corporation receiving a distribution not included in gross income by reason of the preceding sentence shall be increased by the amount of such distribution.

''(B) EXCEPTION FOR DISTRIBUTION OF AMOUNTS PREVIOUSLY DISQUALIFIED.—Subparagraph (A) shall not apply to the distribution of any accumulated DISC income of a DISC or former DISC to which section 995(b)(2) of such Code applied by reason of any revocation or disqualification (other than a revocation which under regulations prescribed by the Secretary results solely from the provisions of this title [title VIII, §§ 801–805, of Pub. L. 98–369, see Effective Date of 1984 Amendment note set out under section 245 of this title].

''(C) TREATMENT OF DISTRIBUTION OF ACCUMULATED DISC INCOME RECEIVED BY COOPERATIVES.—In the case of any actual distribution received by an organization described in section 1381 of such Code and excluded from the gross income of such corporation by reason of subparagraph (A)—

''(i) such amount shall not be included in the gross income of any member of such organization when distributed in the form of a patronage dividend or otherwise, and

''(ii) no deduction shall be allowed to such organization by reason of any such distribution.

''(3) INSTALLMENT TREATMENT OF CERTAIN DEEMED DISTRIBUTIONS OF SHAREHOLDERS.—

''(A) IN GENERAL.—Notwithstanding section 995(b) of such Code, if a shareholder of a DISC elects the application of this paragraph, any qualified distribution shall be treated, for purposes of such Code, as received by such shareholder in 10 equal installments on the last day of each of the 10 taxable years of such shareholder which begins after the first taxable year of such shareholder beginning in 1984. The preceding sentence shall apply without regard to whether the DISC exists after December 31, 1984.

''(B) QUALIFIED DISTRIBUTION.—The term 'qualified distribution' means any distribution which a shareholder is deemed to have received by reason of section 995(b) of such Code with respect to income derived by the DISC in the first taxable year of the DISC beginning—

''(i) in 1984, and

[1] Section numbers editorially supplied.

[1] So in original. Does not conform to section catchline.

''(ii) after the date in 1984 on which the taxable year of such shareholder begins.

''(C) SHORTER PERIOD FOR INSTALLMENTS.—The Secretary of the Treasury or his delegate may by regulations provide for the election by any shareholder to be treated as receiving a qualified distribution over such shorter period as the taxpayer may elect.

''(D) ELECTIONS.—Any election under this paragraph shall be made at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe.

''(4) TREATMENT OF TRANSFERS FROM DISC TO FSC.—Except to the extent provided in regulations, section 367 of such Code shall not apply to transfers made before January 1, 1986 (or, if later, the date 1 year after the date on which the corporation ceases to be a DISC), to a FSC of qualified export assets (as defined in section 993(b) of such Code) held on August 4, 1983, by a DISC in a transaction described in section 351 or 368(a)(1) of such Code.

''(5) DEEMED TERMINATION OF A DISC.—Under regulations prescribed by the Secretary, if any controlled group of corporations of which a DISC is a member establishes a FSC, then any DISC which is a member of such group shall be treated as having terminated its DISC status.

''(6) DEFINITIONS.—For purposes of this subsection, the terms 'DISC' and 'former DISC' have the respective meanings given to such terms by section 992 of such Code.''

SPECIAL RULE FOR EXPORT TRADE CORPORATIONS

Pub. L. 98–369, div. A, title VIII, § 805(c), July 18, 1984, 98 Stat. 1002, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—If, before January 1, 1985, any export trade corporation—

''(A) makes an election under [former] section 927(f)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] to be treated as a FSC, or

''(B) elects not to be treated as an export trade corporation with respect to taxable years beginning after December 31, 1984,

rules similar to the rules of paragraphs (2) and (4) of subsection (b) [section 805(b)(2) and (4) of Pub. L. 98–369, set out as a note above] shall apply to such export trade corporation.

''(2) TREATMENT OF TRANSFERS TO FSC.—In the case of any export trade corporation which—

''(A) makes an election described in paragraph (1), and

''(B) transfers before January 1, 1986, any portion of its property to a FSC in a transaction described in section 351 or 368(a)(1),

then, subject to such rules as the Secretary of the Treasury or his delegate may prescribe based on principles similar to the principles of section 505(a) and (b) of the Revenue Act of 1971 [Pub. L. 92–178, set out as a note under section 970 of this title], no income, gain, or loss shall be recognized on such transfer or on the distribution of any stock of the FSC received (or treated as received) in connection with such transfer.

''(3) EXPORT TRADE CORPORATION.—For purposes of this subsection, the term 'export trade corporation' has the meaning given such term by section 971 of the Internal Revenue Code of 1986.''

SUBMISSION OF ANNUAL REPORTS TO CONGRESS

Pub. L. 92–178, title V, § 506, Dec. 10, 1971, 85 Stat. 553, which directed, that commencing with calendar year 1972, the Secretary of the Treasury submit annual reports to Congress on the effect and operation of title V, §§ 501–507, of Pub. L. 92–178, was probably intended by Congress to be repealed by Pub. L. 98–369, div. A, title VIII, § 804(b)(1), July 18, 1984, 98 Stat. 1000, which directed that section 806 of Pub. L. 98–178 relating to submission of annual reports to Congress be repealed. Section 804(b)(2) of Pub. L. 98–369 provided that the repeal is applicable to reports for calendar years after 1984.

§ 992. Requirements of a domestic international sales corporation

(a) Definition of "DISC" and "former DISC"

(1) DISC

For purposes of this title, the term ''DISC'' means, with respect to any taxable year, a corporation which is incorporated under the laws of any State and satisfies the following conditions for the taxable year:

(A) 95 percent or more of the gross receipts (as defined in section 993(f)) of such corporation consist of qualified export receipts (as defined in section 993(a)),

(B) the adjusted basis of the qualified export assets (as defined in section 993(b)) of the corporation at the close of the taxable year equals or exceeds 95 percent of the sum of the adjusted basis of all assets of the corporation at the close of the taxable year,

(C) such corporation does not have more than one class of stock and the par or stated value of its outstanding stock is at least $2,500 on each day of the taxable year, and

(D) the corporation has made an election pursuant to subsection (b) to be treated as a DISC and such election is in effect for the taxable year.

(2) Status as DISC after having filed a return as a DISC

The Secretary shall prescribe regulations setting forth the conditions under and the extent to which a corporation which has filed a return as a DISC for a taxable year shall be treated as a DISC for such taxable year for all purposes of this title, notwithstanding the fact that the corporation has failed to satisfy the conditions of paragraph (1).

(3) "Former DISC"

For purposes of this title, the term ''former DISC'' means, with respect to any taxable year, a corporation which is not a DISC for such year but was a DISC in a preceding taxable year and at the beginning of the taxable year has undistributed previously taxed income or accumulated DISC income.

(b) Election

(1) Election

(A) An election by a corporation to be treated as a DISC shall be made by such corporation for a taxable year at any time during the 90–day period immediately preceding the beginning of the taxable year, except that the Secretary may give his consent to the making of an election at such other times as he may designate.

(B) Such election shall be made in such manner as the Secretary shall prescribe and shall be valid only if all persons who are shareholders in such corporation on the first day of the first taxable year for which such election is effective consent to such election.

(2) Effect of election

If a corporation makes an election under paragraph (1), then the provisions of this part shall apply to such corporation for the taxable year of the corporation for which made and for all succeeding taxable years and shall apply to

each person who at any time is a shareholder of such corporation for all periods on or after the first day of the first taxable year of the corporation for which the election is effective.

(3) Termination of election

(A) Revocation

An election under this subsection made by any corporation may be terminated by revocation of such election for any taxable year of the corporation after the first taxable year of the corporation for which the election is effective. A termination under this paragraph shall be effective with respect to such election—

(i) for the taxable year in which made, if made at any time during the first 90 days of such taxable year, or

(ii) for the taxable year following the taxable year in which made, if made after the close of such 90 days,

and for all succeeding taxable years of the corporation. Such termination shall be made in such manner as the Secretary shall prescribe by regulations.

(B) Continued failure to be DISC

If a corporation is not a DISC for each of any 5 consecutive taxable years of the corporation for which an election under this subsection is effective, the election shall be terminated and not be in effect for any taxable year of the corporation after such 5th year.

(c) Distributions to meet qualification requirements

(1) In general

Subject to the conditions provided by paragraph (2), a corporation which for a taxable year does not satisfy a condition specified in paragraph (1)(A) (relating to gross receipts) or (1)(B) (relating to assets) of subsection (a) shall nevertheless be deemed to satisfy such condition for such year if it makes a pro rata distribution of property after the close of the taxable year to its shareholders (designated at the time of such distribution as a distribution to meet qualification requirements) with respect to their stock in an amount which is equal to—

(A) if the condition of subsection (a)(1)(A) is not satisfied, the portion of such corporation's taxable income attributable to its gross receipts which are not qualified export receipts for such year,

(B) if the condition of subsection (a)(1)(B) is not satisfied, the fair market value of those assets which are not qualified export assets on the last day of such taxable year, or

(C) if neither of such conditions is satisfied, the sum of the amounts required by subparagraphs (A) and (B).

(2) Reasonable cause for failure

The conditions under paragraph (1) shall be deemed satisfied in the case of a distribution made under such paragraph—

(A) if the failure to meet the requirements of subsection (a)(1)(A) or (B), and the failure to make such distribution prior to the date on which made, are due to reasonable cause; and

(B) the corporation pays, within the 30–day period beginning with the day on which such distribution is made, to the Secretary, if such corporation makes such distribution after the 15th day of the 9th month after the close of the taxable year, an amount determined by multiplying (i) the amount equal to 4½ percent of such distribution, by (ii) the number of its taxable years which begin after the taxable year with respect to which such distribution is made and before such distribution is made. For purposes of this title, any payment made pursuant to this paragraph shall be treated as interest.

(3) Certain distributions made within 8½ months after close of taxable year deemed for reasonable cause

A distribution made on or before the 15th day of the 9th month after the close of the taxable year shall be deemed for reasonable cause for purposes of paragraph (2)(A) if—

(A) at least 70 percent of the gross receipts of such corporation for such taxable year consist of qualified export receipts, and

(B) the adjusted basis of the qualified export assets held by the corporation on the last day of each month of the taxable year equals or exceeds 70 percent of the sum of the adjusted basis of all assets held by the corporation on such day.

(d) Ineligible corporations

The following corporations shall not be eligible to be treated as a DISC—

(1) a corporation exempt from tax by reason of section 501,

(2) a personal holding company (as defined in section 542),

(3) a financial institution to which section 581 applies,

(4) an insurance company subject to the tax imposed by subchapter L,

(5) a regulated investment company (as defined in section 851(a)),

(6) a China Trade Act corporation receiving the special deduction provided in section 941(a),[1] or

(7) an S corporation.

(e) Coordination with personal holding company provisions in case of certain produced film rents

If—

(1) a corporation (hereinafter in this subsection referred to as ''subsidiary'') was established to take advantage of the provisions of this part, and

(2) a second corporation (hereinafter in this subsection referred to as ''parent'') throughout the taxable year owns directly at least 80 percent of the stock of the subsidiary,

then, for purposes of applying subsection (d)(2) and section 541 (relating to personal holding company tax) to the subsidiary for the taxable year, there shall be taken into account under

[1] See References in Text note below.

section 543(a)(5) (relating to produced film rents) any interest in a film acquired by the parent and transferred to the subsidiary as if such interest were acquired by the subsidiary at the time it was acquired by the parent.

(Added Pub. L. 92–178, title V, §501, Dec. 10, 1971, 85 Stat. 535; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–354, §5(a)(32), Oct. 19, 1982, 96 Stat. 1695; Pub. L. 98–369, div. A, title VIII, §802(c)(1), July 18, 1984, 98 Stat. 999; Pub. L. 104–188, title I, §1616(b)(11), Aug. 20, 1996, 110 Stat. 1857; Pub. L. 110–172, §11(g)(16), Dec. 29, 2007, 121 Stat. 2491.)

REFERENCES IN TEXT

The China Trade Act, referred to in subsec. (d)(6), is act Sept. 19, 1922, ch. 346, 42 Stat. 849, as amended, which is classified generally to chapter 4 (§141 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 141 of Title 15 and Tables.

Section 941, referred to in subsec. (d)(6), was repealed by Pub. L. 94–455, title X, §1053(c), Oct. 4, 1976, 90 Stat. 1648.

AMENDMENTS

2007—Subsec. (a)(1)(C) to (E). Pub. L. 110–172 inserted ''and'' at end of subpar. (C), substituted period for '', and'' at end of subpar. (D), and struck out subpar. (E) which read as follows: ''such corporation is not a member of any controlled group of which a FSC is a member.''

1996—Subsec. (d)(3). Pub. L. 104–188 struck out ''or 593'' after ''section 581''.

1984—Subsec. (a)(1)(E). Pub. L. 98–369 added subpar. (E).

1982—Subsec. (d)(7). Pub. L. 97–354 substituted ''an S corporation'' for ''an electing small business corporation (as defined in section 1371(b))''.

1976—Subsecs. (a)(2), (b)(1), (3), (c)(2)(B). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary'' wherever appearing.

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 1984 AMENDMENT

Amendment by 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 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.

§ 993. Definitions

(a) Qualified export receipts

(1) General rule

For purposes of this part, except as provided by regulations under paragraph (2), the qualified export receipts of a corporation are—

(A) gross receipts from the sale, exchange, or other disposition of export property,

(B) gross receipts from the lease or rental of export property, which is used by the lessee of such property outside the United States,

(C) gross receipts for services which are related and subsidiary to any qualified sale, exchange, lease, rental, or other disposition of export property by such corporation,

(D) gross receipts from the sale, exchange, or other disposition of qualified export assets (other than export property),

(E) dividends (or amounts includible in gross income under section 951) with respect to stock of a related foreign export corporation (as defined in subsection (e)),

(F) interest on any obligation which is a qualified export asset,

(G) gross receipts for engineering or architectural services for construction projects located (or proposed for location) outside the United States, and

(H) gross receipts for the performance of managerial services in furtherance of the production of other qualified export receipts of a DISC.

(2) Excluded receipts

The Secretary may under regulations designate receipts from the sale, exchange, lease, rental, or other disposition of export property, and from services, as not being receipts described in paragraph (1) if he determines that such sale, exchange, lease, rental, or other disposition, or furnishing of services—

(A) is for ultimate use in the United States;

(B) is accomplished by a subsidy granted by the United States or any instrumentality thereof;

(C) is for use by the United States or any instrumentality thereof where the use of such export property or services is required by law or regulation.

For purposes of this part, the term ''qualified export receipts'' does not include receipts from a corporation which is a DISC for its taxable year in which the receipts arise and which is a member of a controlled group (as defined in paragraph (3)) which includes the recipient corporation.

(3) Definition of controlled group

For purposes of this part, the term ''controlled group'' has the meaning assigned to the term ''controlled group of corporations'' by section 1563(a), except that the phrase ''more than 50 percent'' shall be substituted for the phrase ''at least 80 percent'' each place it appears therein, and section 1563(b) shall not apply.

(b) Qualified export assets

For purposes of this part, the qualified export assets of a corporation are—

(1) export property (as defined in subsection (c));

(2) assets used primarily in connection with the sale, lease, rental, storage, handling, transportation, packaging, assembly, or servicing of export property, or the performance of engineering or architectural services described in subparagraph (G) of subsection (a)(1) or managerial services in furtherance of the production of qualified export receipts described in subparagraphs (A), (B), (C), and (G) of subsection (a)(1);

(3) accounts receivable and evidences of indebtedness which arise by reason of transactions of such corporation or of another corporation which is a DISC and which is a member of a controlled group which includes such corporation described in subparagraph (A), (B), (C), (D), (G), or (H), of subsection (a)(1);

(4) money, bank deposits, and other similar temporary investments, which are reasonably necessary to meet the working capital requirements of such corporation;

(5) obligations arising in connection with a producer's loan (as defined in subsection (d));

(6) stock or securities of a related foreign export corporation (as defined in subsection (e));

(7) obligations issued, guaranteed, or insured, in whole or in part, by the Export-Import Bank of the United States or the Foreign Credit Insurance Association in those cases where such obligations are acquired from such Bank or Association or from the seller or purchaser of the goods or services with respect to which such obligations arose;

(8) obligations issued by a domestic corporation organized solely for the purpose of financing sales of export property pursuant to an agreement with the Export-Import Bank of the United States under which such corporation makes export loans guaranteed by such bank; and

(9) amounts (other than reasonable working capital) on deposit in the United States that are utilized during the period provided for in, and otherwise in accordance with, regulations prescribed by the Secretary to acquire other qualified export assets.

(c) Export property

(1) In general

For purposes of this part, the term ''export property'' means property—

(A) manufactured, produced, grown, or extracted in the United States by a person other than a DISC,

(B) held primarily for sale, lease, or rental, in the ordinary course of trade or business, by, or to, a DISC, for direct use, consumption, or disposition outside the United States, and

(C) not more than 50 percent of the fair market value of which is attributable to articles imported into the United States.

In applying subparagraph (C), the fair market value of any article 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.

(2) Excluded property

For purposes of this part, the term ''export property'' does not include—

(A) property leased or rented by a DISC for use by any member of a controlled group (as defined in subsection (a)(3)) which includes the DISC,

(B) patents, inventions, models, designs, formulas, or processes, whether or not patented, copyrights (other than films, tapes, records, or similar reproductions, for commercial or home use), goodwill, trademarks, trade brands, franchises, or other like property,

(C) products of a character with respect to which a deduction for depletion is allowable (including oil, gas, coal, or uranium products) under section 613 or 613A,

(D) products the export of which is prohibited or curtailed under section 7(a) of the Export Administration Act of 1979 to effectuate the policy set forth in paragraph (2)(C) of section 3 of such Act (relating to the protection of the domestic economy), or

(E) any unprocessed timber which is a softwood.

Subparagraph (C) shall not apply to any commodity or product at least 50 percent of the fair market value of which is attributable to manufacturing or processing, except that subparagraph (C) shall apply to any primary product from oil, gas, coal, or uranium. For purposes of the preceding sentence, the term ''processing'' does not include extracting or handling, packing, packaging, grading, storing, or transporting. For purposes of subparagraph (E), the term ''unprocessed timber'' means any log, cant, or similar form of timber.

(3) Property in short supply

If the President determines that the supply of any property described in paragraph (1) is insufficient to meet the requirements of the domestic economy, he may by Executive order designate the property as in short supply. Any property so designated shall be treated as property not described in paragraph (1) during the period beginning with the date specified in the Executive order and ending with the date specified in an Executive order setting forth the President's determination that the property is no longer in short supply.

(d) Producer's loans

(1) In general

An obligation, subject to the rules provided in paragraphs (2) and (3), shall be treated as arising out of a producer's loan if—

(A) the loan, when added to the unpaid balance of all other producer's loans made by the DISC, does not exceed the accumulated DISC income at the beginning of the month in which the loan is made;

(B) the obligation is evidenced by a note (or other evidence of indebtedness) with a stated maturity date not more than 5 years from the date of the loan;

(C) the loan is made to a person engaged in the United States in the manufacturing, production, growing, or extraction of export property determined without regard to subparagraph (C) or (D) of subsection (c)(2), (referred to hereinafter as the ''borrower''); and

(D) at the time of such loan it is designated as a producer's loan.

(2) Limitation

An obligation shall be treated as arising out of a producer's loan only to the extent that such loan, when added to the unpaid balance of all other producer's loans to the borrower outstanding at the time such loan is made, does

not exceed an amount determined by multiplying the sum of—

(A) the amount of the borrower's adjusted basis determined at the beginning of the borrower's taxable year in which the loan is made, in plant, machinery, and equipment, and supporting production facilities in the United States;

(B) the amount of the borrower's property held primarily for sale, lease, or rental, to customers in the ordinary course of trade or business, at the beginning of such taxable year; and

(C) the aggregate amount of the borrower's research and experimental expenditures (within the meaning of section 174) in the United States during all preceding taxable years beginning after December 31, 1971,

by the percentage which the borrower's receipts, during the 3 taxable years immediately preceding the taxable year (but not including any taxable year commencing prior to 1972) in which the loan is made, from the sale, lease, or rental outside the United States of property which would be export property (determined without regard to subparagraph (C) or (D) of subsection (c)(2)) if held by a DISC is of the gross receipts during such 3 taxable years from the sale, lease, or rental of property held by such borrower primarily for sale, lease, or rental to customers in the ordinary course of the trade or business of such borrower.

(3) Increased investment requirement

An obligation shall be treated as arising out of a producer's loan in a taxable year only to the extent that such loan, when added to the unpaid balance of all other producer's loans to the borrower made during such taxable year, does not exceed an amount equal to—

(A) the amount by which the sum of the adjusted basis of assets described in paragraph (2)(A) and (B) on the last day of the taxable year in which the loan is made exceeds the sum of the adjusted basis of such assets on the first day of such taxable year; plus

(B) the aggregate amount of the borrower's research and experimental expenditures (within the meaning of section 174) in the United States during such taxable year.

(4) Special limitation in the case of domestic film maker

(A) In general

In the case of a borrower who is a domestic film maker and who incurs an obligation to a DISC for the making of a film, and such DISC is engaged in the trade or business of selling, leasing, or renting films which are export property, the limitation described in paragraph (2) may be determined (to the extent provided under regulations prescribed by the Secretary) on the basis of—

(i) the sum of the amounts described in subparagraphs (A), (B), and (C) thereof plus reasonable estimates of all such amounts to be incurred at any time by the borrower with respect to films which are commenced within the taxable year in which the loan is made, and

(ii) the percentage which, based on the experience of producers of similar films, the annual receipts of such producers from the sale, lease, or rental of such films outside the United States is of the annual gross receipts of such producers from the sale, lease, or rental of such films.

(B) Domestic film maker

For purposes of this paragraph, a borrower is a domestic film maker with respect to a film if—

(i) such borrower is a United States person within the meaning of section 7701(a)(30), except that with respect to a partnership, all of the partners must be United States persons, and with respect to a corporation, all of its officers and at least a majority of its directors must be United States persons;

(ii) such borrower is engaged in the trade or business of making the film with respect to which the loan is made;

(iii) the studio, if any, used or to be used for the taking of photographs and the recording of sound incorporated into such film is located in the United States;

(iv) the aggregate playing time of portions of such film photographed outside the United States does not or will not exceed 20 percent of the playing time of such film; and

(v) not less than 80 percent of the total amount paid or to be paid for services performed in the making of such film is paid or to be paid to persons who are United States persons at the time such services are performed or consists of amounts which are fully taxable by the United States.

(C) Special rules for application of subparagraph (B)(v)

For purposes of clause (v) of subparagraph (B)—

(i) there shall not be taken into account any amount which is contingent upon receipts or profits of the film and which is fully taxable by the United States (within the meaning of clause (ii)); and

(ii) any amount paid or to be paid to a United States person, to a non-resident alien individual, or to a corporation which furnishes the services of an officer or employee to the borrower with respect to the making of a film, shall be treated as fully taxable by the United States only if the total amount received by such person, individual, officer, or employee for services performed in the making of such film is fully included in gross income for purposes of this chapter.

(e) Related foreign export corporation

In determining whether a corporation (hereinafter in this subsection referred to as ''the domestic corporation'') is a DISC—

(1) Foreign international sales corporation

A foreign corporation is a related foreign export corporation if—

(A) stock possessing more than 50 percent of the total combined voting power of all

classes of stock entitled to vote is owned directly by the domestic corporation,

(B) 95 percent or more of such foreign corporation's gross receipts for its taxable year ending with or within the taxable year of the domestic corporation consists of qualified export receipts described in subparagraphs (A), (B), (C), and (D) of subsection (a)(1) and interest on any obligation described in paragraphs (3) and (4) of subsection (b), and

(C) the adjusted basis of the qualified export assets (described in paragraphs (1), (2), (3), and (4) of subsection (b)) held by such foreign corporation at the close of such taxable year equals or exceeds 95 percent of the sum of the adjusted basis of all assets held by it at the close of such taxable year.

(2) Real property holding company

A foreign corporation is a related foreign export corporation if—

(A) stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote is owned directly by the domestic corporation, and

(B) its exclusive function is to hold real property for the exclusive use (under a lease or otherwise) of the domestic corporation.

(3) Associated foreign corporation

A foreign corporation is a related foreign export corporation if—

(A) less than 10 percent of the total combined voting power of all classes of stock entitled to vote of such foreign corporation is owned (within the meaning of section 1563 (d) and (e)) by the domestic corporation or by a controlled group of corporations (within the meaning of section 1563) of which the domestic corporation is a member, and

(B) the ownership of stock or securities in such foreign corporation by the domestic corporation is determined (under regulations prescribed by the Secretary) to be reasonably in furtherance of a transaction or transactions giving rise to qualified export receipts of the domestic corporation.

(f) Gross receipts

For purposes of this part, the term ''gross receipts'' means the total receipts from the sale, lease, or rental of property held primarily for sale, lease, or rental in the ordinary course of trade or business, and gross income from all other sources. In the case of commissions on the sale, lease, or rental of property, the amount taken into account for purposes of this part as gross receipts shall be the gross receipts on the sale, lease, or rental of the property on which such commissions arose.

(g) United States defined

For purposes of this part, the term ''United States'' includes the Commonwealth of Puerto Rico and the possessions of the United States.

(Added Pub. L. 92–178, title V, § 501, Dec. 10, 1971, 85 Stat. 538; amended Pub. L. 93–482, § 3(a), Oct. 26, 1974, 88 Stat. 1456; Pub. L. 94–12, title VI, § 603(a), Mar. 29, 1975, 89 Stat. 64; Pub. L. 94–455, title XI, § 1101(b), (c), title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1658, 1834; Pub. L. 96–39, title II, § 202(c)(2), July 26, 1979, 93 Stat. 202; Pub. L. 96–72, § 22(c), Sept. 29, 1979, 93 Stat. 535; Pub. L. 98–369, div. A, title VIII, § 802(c)(2), July 18, 1984, 98 Stat. 999; Pub. L. 103–66, title XIII, § 13239(b), Aug. 10, 1993, 107 Stat. 509.)

REFERENCES IN TEXT

Sections 3(2)(C) and 7(a) of the Export Administration Act of 1979, referred to in subsec. (c)(2)(D), are classified, respectively, to sections 4602(2)(C) and 4606(a) of Title 50, War and National Defense.

AMENDMENTS

1993—Subsec. (c)(2). Pub. L. 103–66, § 13239(b)(2), inserted at end ''For purposes of subparagraph (E), the term 'unprocessed timber' means any log, cant, or similar form of timber.''

Subsec. (c)(2)(E). Pub. L. 103–66, § 13239(b)(1), added subpar. (E).

1984—Subsec. (a)(3). Pub. L. 98–369 substituted ''the term 'controlled group of corporations' by'' for ''such term by''.

1979—Subsec. (c)(1). Pub. L. 96–39 substituted ''of the Tariff Act of 1930 (19 U.S.C. 1401a)'' for ''402a of the Tariff Act of 1930 (19 U.S.C., sec. 1401a or 1402)''.

Subsec. (c)(2)(D). Pub. L. 96–72 substituted ''7(a) of the Export Administration Act of 1979'' for ''4(b) of the Export Administration Act of 1969 (50 U.S.C. App. 2403(b))'' and ''paragraph (2)(C)'' for ''paragraph (2)(A)''.

1976—Subsecs. (a)(2), (b)(9). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c). Pub. L. 94–455, §§ 1101(b), 1906(b)(13)(A), in par. (1) in provisions following subpar. (C), struck out ''or his delegate'' after ''Secretary'', in par. (2)(B) ''or'' after ''like property'', and in par. (2)(C), substituted ''under section 613 or 613A'' for ''under section 611'' after ''uranium products)''.

Subsec. (d)(1)(C). Pub. L. 94–455, § 1101(c)(1), inserted ''determined without regard to subparagraph (C) or (D) of subsection (c)(2)'' after ''export property''.

Subsec. (d)(2). Pub. L. 94–455, § 1101(c)(2), inserted ''(determined without regard to subparagraph (C) or (D) of subsection (c)(2))'' after ''would be export property''.

Subsecs. (d)(4)(A), (e)(3)(B). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

1975—Subsec. (c)(2). Pub. L. 94–12 added subpars. (C) and (D) and provisions following subpar. (D).

1974—Subsec. (b)(3). Pub. L. 93–482 inserted ''or of another corporation which is a DISC and which is a member of a controlled group which includes such corporation'' after ''such corporation''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to sales, exchanges, or other dispositions after Aug. 10, 1993, see section 13239(e) of Pub. L. 103–66, set out as a note under section 865 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by 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 1979 AMENDMENTS

Amendment by Pub. L. 96–72 effective upon the expiration of the Export Administration Act of 1969, which terminated on Sept. 30, 1979, or upon any prior date which the Congress by concurrent resolution or the President by proclamation designated, see References in Text note set out under section 4621 of Title 50, War and National Defense.

Amendment by Pub. L. 96–39 effective Jan. 1, 1981, with provision for an earlier effective date under certain circumstances, see section 204 of Pub. L. 96–39, set out as a note under section 1401a of Title 19, Customs Duties.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XI, §1101(g)(2), Oct. 4, 1976, 90 Stat. 1659, provided that: ''The amendments made by subsection (b) [amending this section] shall apply to sales, exchanges, and other dispositions made after March 18, 1975, in taxable years ending after such date.''

Pub. L. 94–455, title XI, §1101(g)(3), Oct. 4, 1976, 90 Stat. 1659, provided that: ''The amendments made by subsections (c) and (f) [amending this section] shall apply to taxable years ending after March 18, 1975.''

EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 94–12, title VI, §603(b), Mar. 29, 1975, 89 Stat. 65, as amended by Pub. L. 94–455, title XI, §1101(f), Oct. 4, 1976, 90 Stat. 1659; 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 subsection (a) [amending this section] shall apply to sales, exchanges, and other dispositions made after March 18, 1975, in taxable years ending after such date.

''(2) BINDING CONTRACT.—The amendments made by subsection (a) [amending this section] shall not apply to sales, exchanges, and other dispositions made after March 18, 1975, but before March 19, 1980, if such sales, exchanges, and other dispositions are made pursuant to a fixed contract. The term 'fixed contract' means a contract which was, on March 18, 1975, and is at all times thereafter binding on the DISC or a taxpayer which was a member of the same controlled group (within the meaning of section 993(a)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) as the DISC, which was entered into after the date on which the DISC qualified as a DISC and the DISC and the taxpayer became members of the same controlled group, and under which the price and quantity of the products sold, exchanged, or otherwise disposed of cannot be increased.''

EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93–482, §3(b), Oct. 26, 1974, 88 Stat. 1456, provided that: ''The amendment made by subsection (a) [amending this section] applies to taxable years beginning after December 31, 1973. The amendment shall, at the election of the taxpayer made within 90 days after the date of enactment of this Act [Oct. 26, 1974], also apply to any taxable year beginning after December 31, 1971, and before January 1, 1974.''

§ 994. Inter-company pricing rules

(a) In general

In the case of a sale of export property to a DISC by a person described in section 482, the taxable income of such DISC and such person shall be based upon a transfer price which would allow such DISC to derive taxable income attributable to such sale (regardless of the sales price actually charged) in an amount which does not exceed the greatest of—

(1) 4 percent of the qualified export receipts on the sale of such property by the DISC plus 10 percent of the export promotion expenses of such DISC attributable to such receipts,

(2) 50 percent of the combined taxable income of such DISC and such person which is attributable to the qualified export receipts on such property derived as the result of a sale by the DISC plus 10 percent of the export promotion expenses of such DISC attributable to such receipts, or

(3) taxable income based upon the sale price actually charged (but subject to the rules provided in section 482).

(b) Rules for commissions, rentals, and marginal costing

The Secretary shall prescribe regulations setting forth—

(1) rules which are consistent with the rules set forth in subsection (a) for the application of this section in the case of commissions, rentals, and other income, and

(2) rules for the allocation of expenditures in computing combined taxable income under subsection (a)(2) in those cases where a DISC is seeking to establish or maintain a market for export property.

(c) Export promotion expenses

For purposes of this section, the term ''export promotion expenses'' means those expenses incurred to advance the distribution or sale of export property for use, consumption, or distribution outside of the United States, but does not include income taxes. Such expenses shall also include freight expenses to the extent of 50 percent of the cost of shipping export property aboard airplanes owned and operated by United States persons or ships documented under the laws of the United States in those cases where law or regulations does not require that such property be shipped aboard such airplanes or ships.

(Added Pub. L. 92–178, title V, §501, Dec. 10, 1971, 85 Stat. 543; amended 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 B—TREATMENT OF DISTRIBUTIONS TO SHAREHOLDERS

§ 995. Taxation of DISC income to shareholders

(a) General rule

A shareholder of a DISC or former DISC shall be subject to taxation on the earnings and profits of a DISC as provided in this chapter, but subject to the modifications of this subpart.

(b) Deemed distributions

(1) Distributions in qualified years

A shareholder of a DISC shall be treated as having received a distribution taxable as a dividend with respect to his stock in an amount which is equal to his pro rata share of the sum (or, if smaller, the earnings and profits for the taxable year) of—

(A) the gross interest derived during the taxable year from producer's loans,

(B) the gain recognized by the DISC during the taxable year on the sale or exchange of property, other than property which in the hands of the DISC is a qualified export asset, previously transferred to it in a transaction in which gain was not recognized in whole or in part, but only to the extent that the transferor's gain on the previous transfer was not recognized,

(C) the gain (other than the gain described in subparagraph (B)) recognized by the DISC during the taxable year on the sale or exchange of property (other than property which in the hands of the DISC is stock in trade or other property described in section 1221(a)(1)) previously transferred to it in a transaction in which gain was not recognized in whole or in part, but only to the extent that the transferor's gain on the previous transfer was not recognized and would have been treated as ordinary income if the property had been sold or exchanged rather than transferred to the DISC,

(D) 50 percent of the taxable income of the DISC for the taxable year attributable to military property,

(E) the taxable income of the DISC attributable to qualified export receipts of the DISC for the taxable year which exceed $10,000,000,

(F) the sum of—

(i) in the case of a shareholder which is a C corporation, one-seventeenth of the excess of the taxable income of the DISC for the taxable year, before reduction for any distributions during the year, over the sum of the amounts deemed distributed for the taxable year under subparagraphs (A), (B), (C), (D), and (E),

(ii) an amount equal to $16/17$ of the excess referred to in clause (i), multiplied by the international boycott factor determined under section 999, and

(iii) any illegal bribe, kickback, or other payment (within the meaning of section 162(c)) paid by or on behalf of the DISC directly or indirectly to an official, employee, or agent in fact of a government, and

(G) the amount of foreign investment attributable to producer's loans (as defined in subsection (d)) of a DISC for the taxable year.

Distributions described in this paragraph shall be deemed to be received on the last day of the taxable year of the DISC in which the income was derived. In the case of a distribution described in subparagraph (G), earnings and profits for the taxable year shall include accumulated earnings and profits.

(2) Distributions upon disqualification

(A) A shareholder of a corporation which revoked its election to be treated as a DISC or failed to satisfy the conditions of section 992(a)(1) for a taxable year shall be deemed to have received (at the time specified in subparagraph (B)) a distribution taxable as a dividend equal to his pro rata share of the DISC income of such corporation accumulated during the immediately preceding consecutive taxable years for which the corporation was a DISC.

(B) Distributions described in subparagraph (A) shall be deemed to be received in equal installments on the last day of each of the 10 taxable years of the corporation following the year of the termination or disqualification described in subparagraph (A) (but in no case over more than twice the number of immediately preceding consecutive taxable years during which the corporation was a DISC).

(3) Taxable income attributable to military property

(A) In general

For purposes of paragraph (1)(D), taxable income of a DISC for the taxable year attributable to military property shall be determined by only taking into account—

(i) the gross income of the DISC for the taxable year which is attributable to military property, and

(ii) the deductions which are properly apportioned or allocated to such income.

(B) Military property

For purposes of subparagraph (A), the term ''military property'' means any property which is an arm, ammunition, or implement of war designated in the munitions list published pursuant to section 38 of the Arms Export Control Act (22 U.S.C. 2778).

(4) Aggregation of qualified export receipts

(A) In general

For purposes of applying paragraph (1)(E), all DISC's which are members of the same controlled group shall be treated as a single corporation.

(B) Allocation

The dollar amount under paragraph (1)(E) shall be allocated among the DISC's which are members of the same controlled group in a manner provided in regulations prescribed by the Secretary.

(c) Gain on disposition of stock in a DISC

(1) In general

If—

(A) a shareholder disposes of stock in a DISC or former DISC any gain recognized on such disposition shall be included in gross income as a dividend to the extent provided in paragraph (2), or

(B) stock of a DISC or former DISC is disposed of in a transaction in which the separate corporate existence of the DISC or former DISC is terminated other than by a mere change in place of organization, however effected, any gain realized on the disposition of such stock in the transaction shall be recognized notwithstanding any other provision of this title to the extent provided in paragraph (2) and to the extent so recognized shall be included in gross income as a dividend.

(2) Amount included

The amounts described in paragraph (1) shall be included in gross income as a dividend to the extent of the accumulated DISC income of the DISC or former DISC which is attributable to the stock disposed of and which was accumulated in taxable years of such corporation during the period or periods the stock disposed of was held by the shareholder which disposed of such stock.

(d) Foreign investment attributable to DISC earnings

For the purposes of this part—

(1) In general

The amount of foreign investment attributable to producer's loans of a DISC for a taxable year shall be the smallest of—

(A) the net increase in foreign assets by members of the controlled group (as defined in section 993(a)(3)) which includes the DISC,

(B) the actual foreign investment by domestic members of such group, or

(C) the amount of outstanding producer's loans by such DISC to members of such controlled group.

(2) Net increase in foreign assets

The term ''net increase in foreign assets'' of a controlled group means the excess of—

(A) the amount incurred by such group to acquire assets (described in section 1231(b)) located outside the United States over,

(B) the sum of—

(i) the depreciation with respect to assets of such group located outside the United States;

(ii) the outstanding amount of stock or debt obligations of such group issued after December 31, 1971, to persons other than the United States persons or any member of such group;

(iii) one-half the earnings and profits of foreign members of such group and foreign branches of domestic members of such group;

(iv) one-half the royalties and fees paid by foreign members of such group to domestic members of such group; and

(v) the uncommitted transitional funds of the group as determined under paragraph (4).

For purposes of this paragraph, assets which are qualified export assets of a DISC (or would be qualified export assets if owned by a DISC) shall not be taken into account. Amounts described in this paragraph (other than in subparagraphs (B)(ii) and (v)) shall be taken into account only to the extent they are attributable to taxable years beginning after December 31, 1971.

(3) Actual foreign investment

The term ''actual foreign investment'' by domestic members of a controlled group means the sum of—

(A) contributions to capital of foreign members of the group by domestic members of the group after December 31, 1971,

(B) the outstanding amount of stock or debt obligations of foreign members of such group (other than normal trade indebtedness) issued after December 31, 1971, to domestic members of such group,

(C) amounts transferred by domestic members of the group after December 31, 1971, to foreign branches of such members, and

(D) one-half the earnings and profits of foreign members of such group and foreign branches of domestic members of such group for taxable years beginning after December 31, 1971.

As used in this subsection, the term ''domestic member'' means a domestic corporation which is a member of a controlled group (as defined in section 993(a)(3)), and the term ''foreign member'' means a foreign corporation which is a member of such a controlled group.

(4) Uncommitted transitional funds

The uncommitted transitional funds of the group shall be an amount equal to the sum of—

(A) the excess of—

(i) the amount of stock or debt obligations of domestic members of such group outstanding on December 31, 1971, and issued on or after January 1, 1968, to persons other than United States persons or any members of such group, but only to the extent the taxpayer establishes that such amount constitutes a long-term borrowing for purposes of the foreign direct investment program, over

(ii) the net amount of actual foreign investment by domestic members of such group during the period that such stock or debt obligations have been outstanding; and

(B) the amount of liquid assets to the extent not included in subparagraph (A) held by foreign members of such group and foreign branches of domestic members of such group on October 31, 1971, in excess of their reasonable working capital needs on such date.

For purposes of this paragraph, the term ''liquid assets'' means money, bank deposits (not including time deposits), and indebtedness of 2 years or less to maturity on the date of acquisition; and the actual foreign investment shall be determined under paragraph (3) without regard to the date in subparagraph (A) of such paragraph and without regard to subparagraph (D) of such paragraph.

(5) Special rule

Under regulations prescribed by the Secretary the determinations under this subsection shall be made on a cumulative basis with proper adjustments for amounts previously taken into account.

(e) Certain transfers of DISC assets

If—

(1) a corporation owns, directly or indirectly, all of the stock of a subsidiary and a DISC,

(2) the subsidiary has been engaged in the active conduct of a trade or business (within the meaning of section 355(b)) throughout the 5–year period ending on the date of the transfer and continues to be so engaged thereafter, and

(3) during the taxable year of the subsidiary in which its stock is transferred and its preceding taxable year, such trade or business gives rise to qualified export receipts of the subsidiary and the DISC,

then, under such terms and conditions as the Secretary by regulations shall prescribe, transfers of assets, stock, or both, will be deemed to be a reorganization within the meaning of section 368, a transaction to which section 355 applies, an exchange of stock to which section 351

applies, or a combination thereof. The preceding sentence shall apply only to the extent that the transfer or transfers involved are for the purpose of preventing the separation of the ownership of the stock in the DISC from the ownership of the trade or business which (during the base period) produced the export gross receipts of the DISC.

(f) Interest on DISC-related deferred tax liability

(1) In general

A shareholder of a DISC shall pay for each taxable year interest in an amount equal to the product of—

(A) the shareholder's DISC-related deferred tax liability for such year, and

(B) the base period T-bill rate.

(2) Shareholder's DISC-related deferred tax liability

For purposes of this subsection—

(A) In general

The term ''shareholder's DISC-related deferred tax liability'' means, with respect to any taxable year of a shareholder of a DISC, the excess of—

(i) the amount which would be the tax liability of the shareholder for the taxable year if the deferred DISC income of such shareholder for such taxable year were included in gross income as ordinary income, over

(ii) the actual amount of the tax liability of such shareholder for such taxable year.

Determinations under the preceding sentence shall be made without regard to carrybacks to such taxable year.

(B) Adjustments for losses, credits, and other items

The Secretary shall prescribe regulations which provide such adjustments—

(i) to the accounts of the DISC, and

(ii) to the amount of any carryover or carryback of the shareholder,

as may be necessary or appropriate in the case of net operating losses, credits, and carryovers, and carrybacks of losses and credits.

(C) Tax liability

The term ''tax liability'' means the amount of the tax imposed by this chapter for the taxable year reduced by credits allowable against such tax (other than credits allowable under sections 31, 32, and 34).

(3) Deferred DISC income

For purposes of this subsection—

(A) In general

The term ''deferred DISC income'' means, with respect to any taxable year of a shareholder, the excess of—

(i) the shareholder's pro rata share of accumulated DISC income (for periods after 1984) of the DISC as of the close of the computation year, over

(ii) the amount of the distributions-in-excess-of-income for the taxable year of the DISC following the computation year.

(B) Computation year

For purposes of applying subparagraph (A) with respect to any taxable year of a shareholder, the computation year is the taxable year of the DISC which ends with (or within) the taxable year of the shareholder which precedes the taxable year of the shareholder for which the amount of deferred DISC income is being determined.

(C) Distributions-in-excess-of-income

For purposes of subparagraph (A), the term ''distributions-in-excess-of-income'' means, with respect to any taxable year of a DISC, the excess (if any) of—

(i) the amount of actual distributions to the shareholder out of accumulated DISC income, over

(ii) the shareholder's pro rata share of the DISC income for such taxable year.

(4) Base period T-bill rate

For purposes of this subsection, the term ''base period T-bill rate'' means the annual rate of interest determined by the Secretary to be equivalent to the average of the 1-year constant maturity Treasury yields, as published by the Board of Governors of the Federal Reserve System, for the 1-year period ending on September 30 of the calendar year ending with (or of the most recent calendar year ending before) the close of the taxable year of the shareholder.

(5) Short years

The Secretary shall prescribe such regulations as may be necessary for the application of this subsection to short years of the DISC, the shareholder, or both.

(6) Payment and assessment and collection of interest

The interest accrued during any taxable year which a shareholder is required to pay under paragraph (1) shall be treated, for purposes of this title, as interest payable under section 6601 and shall be paid by the shareholder at the time the tax imposed by this chapter for such taxable year is required to be paid.

(7) DISC includes former DISC

For purposes of this subsection, the term ''DISC'' includes a former DISC.

(g) Treatment of tax-exempt shareholders

If any organization described in subsection (a)(2) or (b)(2) of section 511 (or any other person otherwise subject to tax under section 511) is a shareholder in a DISC—

(1) any amount deemed distributed to such shareholder under subsection (b),

(2) any actual distribution to such shareholder which under section 996 is treated as out of accumulated DISC income, and

(3) any gain which is treated as a dividend under subsection (c),

shall be treated as derived from the conduct of an unrelated trade or business (and the modifications of section 512(b) shall not apply). The rules of the preceding sentence shall apply also for purposes of determining any such sharehold-

er's DISC-related deferred tax liability under subsection (f).

(Added Pub. L. 92–178, title V, §501, Dec. 10, 1971, 85 Stat. 544; amended Pub. L. 94–455, title X, §§1063, 1065(a)(2), title XI, §1101(a), (d)(1), title XIX, §§1901(b)(3)(K), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1650, 1654, 1655, 1658, 1793, 1834; Pub. L. 95–600, title VII, §§701(u)(12)(B), 703(i)(1), (2), Nov. 6, 1978, 92 Stat. 2918, 2940; Pub. L. 98–369, div. A, title I, §68(d), title VIII, §802(a), (b), July 18, 1984, 98 Stat. 588, 997, 999; Pub. L. 99–514, title XVIII, §1876(b)(2), (g), (p)(1), Oct. 22, 1986, 100 Stat. 2898, 2900, 2902; Pub. L. 100–647, title I, §§1006(e)(15), 1012(bb)(6)(A), Nov. 10, 1988, 102 Stat. 3402, 3535; Pub. L. 101–239, title VII, §7811(i)(12), Dec. 19, 1989, 103 Stat. 2411; Pub. L. 106–170, title V, §532(c)(2)(R), Dec. 17, 1999, 113 Stat. 1931; Pub. L. 106–554, §1(a)(7) [title III, §§307(c), 319(12)], Dec. 21, 2000, 114 Stat. 2763, 2763A–636, 2763A–646; Pub. L. 107–147, title IV, §417(15), Mar. 9, 2002, 116 Stat. 56.)

AMENDMENTS

2002—Subsec. (b)(3)(B). Pub. L. 107–147 substituted ''Arms Export Control Act'' for ''International Security Assistance and Arms Export Control Act of 1976''.

2000—Subsec. (b)(3)(B). Pub. L. 106–554, §1(a)(7) [title III, §319(12)], substituted ''section 38 of the International Security Assistance and Arms Export Control Act of 1976 (22 U.S.C. 2778)'' for ''the Military Security Act of 1954 (22 U.S.C. 1934)''.

Subsec. (f)(4). Pub. L. 106–554, §1(a)(7) [title III, §307(c)], substituted ''the average of the 1-year constant maturity Treasury yields, as published by the Board of Governors of the Federal Reserve System, for the 1-year period'' for ''the average investment yield of United States Treasury bills with maturities of 52 weeks which were auctioned during the 1-year period''.

1999—Subsec. (b)(1)(C). Pub. L. 106–170 substituted ''1221(a)(1)'' for ''1221(1)''.

1989—Subsec. (g). Pub. L. 101–239 substituted ''section 511 (or any other person otherwise subject to tax under section 511)'' for ''section 511'' in introductory provisions.

1988—Subsec. (c)(1). Pub. L. 100–647, §1006(e)(15), struck out subpar. (C) and last sentence which read as follows:

> ''(C) a shareholder distributes, sells, or exchanges stock in a DISC or former DISC in a transaction to which section 311, 336, or 337 applies, then an amount equal to the excess of the fair market value of such stock over its adjusted basis in the hands of the shareholder shall, notwithstanding any provision of this title, be included in gross income of the shareholder as a dividend to the extent provided in paragraph (2).

Subparagraph (C) shall not apply if the person receiving the stock in the disposition has a holding period for the stock which includes the period for which the stock was held by the shareholder disposing of such stock.''

Subsec. (g). Pub. L. 100–647, §1012(bb)(6)(A), added subsec. (g).

1986—Subsec. (b)(1)(F)(i). Pub. L. 99–514, §1876(b)(2)(A), inserted ''in the case of a shareholder which is a C corporation,''.

Subsec. (b)(1)(F)(ii). Pub. L. 99–514, §1876(b)(2)(B), substituted ''16/17 of the excess referred to in clause (i),'' for ''the amount determined under clause (i)''.

Subsec. (f)(4) to (6). Pub. L. 99–514, §1876(p)(1), redesignated as pars. (4), (5), and (6), respectively, former par. (3) relating to base period T-bill rate, (4) relating to short years, and (5) relating to payment and assessment and collection of interest.

Subsec. (f)(7). Pub. L. 99–514, §1876(g), added par. (7).

1984—Subsec. (b)(1)(E). Pub. L. 98–369, §802(b)(1), substituted ''of the DISC attributable to qualified export receipts of the DISC for the taxable year which exceed $10,000,000'' for ''for the taxable year attributable to base period export gross receipts (as defined in subsection (e))''.

Subsec. (b)(1)(F)(i). Pub. L. 98–369, §68(d), substituted ''one-seventeenth'' for ''one/half''.

Subsec. (b)(4). Pub. L. 98–369, §802(b)(2), added par. (4).

Subsec. (e). Pub. L. 98–369, §802(a)(1), (2), redesignated subsec. (g) as (e). Former subsec. (e), which related to definitions and special rules relating to computation of taxable income attributable to base period export gross receipts, was struck out.

Subsec. (f). Pub. L. 98–369, §802(a)(1), (3), added subsec. (f). Former subsec. (f), which related to small DISCs, was struck out.

Subsec. (g). Pub. L. 98–369, §802(a)(2), redesignated subsec. (g) as (e).

1978—Subsec. (b)(1). Pub. L. 95–600, §703(i)(1), (2), substituted in subpar. (G) ''subsection (d)'' for ''subsection (D)'', and in provisions following subpar. (G) ''income'' for ''gross income (taxable income in the case of subparagraph (D))'' and ''subparagraph (G)'' for ''subparagraph (E)''.

Subsec. (c)(1). Pub. L. 95–600, §701(u)(12)(B), inserted provision relating to application of subpar. (C).

1976—Subsec. (b)(1)(C). 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'' after ''treated as''.

Subsec. (b)(1)(D), (E). Pub. L. 94–455, §1101(a)(1), added subpars. (D) and (E) and redesignated former subpars. (D) and (E) as (F) and (G), respectively.

Subsec. (b)(1)(F). Pub. L. 94–455, §§1063(a), 1065(a)(2), 1101(a)(1), redesignated former subpar. (D) as (F), made existing provision cl. (i), added cls. (ii) and (iii), and substituted ''(C), (D), and (E)'' for ''(C)'' after ''(B), and''.

Subsec. (b)(1)(G). Pub. L. 94–455, §1101(a)(1), redesignated former subpar. (E) as (G).

Subsec. (b)(2)(B). Pub. L. 94–455, §1101(a)(2), substituted ''more than twice the number'' for ''more than the number'' after ''no case over''.

Subsec. (b)(3). Pub. L. 94–455, §1101(a)(3), added par. (3).

Subsec. (c). Pub. L. 94–455, §1101(d)(1), redesignated existing provisions as pars. (1) and (2) and, as redesignated, added subpar. (1)(C).

Subsec. (d)(5). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsecs. (e) to (g). Pub. L. 94–455, §1101(a)(4), added subsecs. (e) to (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 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 X, §1012(bb)(6)(B), Nov. 10, 1988, 102 Stat. 3536, provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to taxable years beginning after December 31, 1987.''

Amendment by section 1006(e)(15) 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 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 68(d) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1984, see section 68(e)(1) of Pub. L. 98–369, set out as a note under section 291 of this title.

Amendment by section 802(a), (b) 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 1978 AMENDMENT

Pub. L. 95–600, title VII, § 701(u)(12)(C), Nov. 6, 1978, 92 Stat. 2918, provided that: ''The amendment made by subparagraph (B) [amending this section] shall apply to dispositions made after December 31, 1976, in taxable years ending after such date.''

Amendment by section 703(i)(1), (2) 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.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1063(a) of Pub. L. 94–455 applicable to participation in or cooperation with an international boycott more than 30 days after Oct. 4, 1976, with special provisions for existing contracts, see section 1066(a) of Pub. L. 94–455, set out as a note under section 908 of this title.

Amendment by section 1065(a)(2) of Pub. L. 94–455 applicable to payments described in section 162(c) of this title made more than 30 days after Oct. 4, 1976, see section 1066(b) of Pub. L. 94–455, set out as a note under section 952 of this title.

Pub. L. 94–455, title XI, § 1101(g)(1), Oct. 4, 1976, 90 Stat. 1659, provided that: ''The amendments made by subsections (a) and (e) [amending this section and section 996 of this title] shall apply to taxable years beginning after December 31, 1975.''

Pub. L. 94–455, title XI, § 1101(g)(4), Oct. 4, 1976, 90 Stat. 1659, as amended by Pub. L. 95–600, title VII, § 701(u)(12)(A), Nov. 6, 1978, 92 Stat. 2918, provided that: ''The amendments made by subsection (d) [amending this section and section 751 of this title] shall apply to sales, exchanges, or other dispositions after December 31, 1976, in taxable years ending after such date.''

Amendment by section 1901(b)(3)(K) 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.

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.

PRORATION OF BASE PERIOD IN CASE OF FIXED CONTRACTS

Pub. L. 94–455, title XI, § 1101(g)(5), Oct. 4, 1976, 90 Stat. 1659, as amended by Pub. L. 95–600, title VII, § 703(i)(4), Nov. 6, 1978, 92 Stat. 2940; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''For purposes of determining adjusted base period export gross receipts (under section 995(e)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as amended by this section), if any DISC has export gross receipts from export property by reason of paragraph (2) of section 603(b) of the Tax Reduction Act of 1975, [set out as an Effective Date of 1975 Amendment note under section 993 of this title], then the export gross receipts of such DISC for the taxable years of the base period shall be increased by an amount equal to the amount of gross receipts which were excluded from export gross receipts during each taxable year of the base period by reason of the last sentence of section 995(e)(3) of such Code multiplied by a fraction, the numerator of which is the amount of the gross receipts in the taxable year which are export gross receipts by reason of paragraph (2) of section 603(b) of the Tax Reduction Act of 1975 and the denominator of which is the amount of total gross receipts which are excluded from export gross receipts in the taxable year by reason of subparagraph (C) or (D) of paragraph (2) of section 993(c) (determined without regard to paragraph (2) of section 603(b) of the Tax Reduction Act of 1975).''

§ 996. Rules for allocation in the case of distributions and losses

(a) Rules for actual distributions and certain deemed distributions

(1) In general

Any actual distribution (other than a distribution described in paragraph (2) or to which section 995(c) applies) to a shareholder by a DISC (or former DISC) which is made out of earnings and profits shall be treated as made—

(A) first, out of previously taxed income, to the extent thereof,

(B) second, out of accumulated DISC income, to the extent thereof, and

(C) finally, out of other earnings and profits.

(2) Qualifying distributions

Any actual distribution made pursuant to section 992(c) (relating to distributions to meet qualification requirements), and any deemed distribution pursuant to section 995(b)(1)(G) (relating to foreign investment attributable to producer's loans), shall be treated as made—

(A) first, out of accumulated DISC income, to the extent thereof,

(B) second, out of the earnings and profits described in paragraph (1)(C), to the extent thereof, and

(C) finally, out of previously taxed income.

In the case of any amount of any actual distribution to a C corporation made pursuant to section 992(c) which is required to satisfy the condition of section 992(a)(1)(A), the preceding sentence shall apply to 16/17ths of such amount and paragraph (1) shall apply to the remaining 1/17th of such amount.

(3) Exclusion from gross income

Amounts distributed out of previously taxed income shall be excluded by the distributee from gross income except for gains described in subsection (e)(2), and shall reduce the amount of the previously taxed income.

(b) Ordering rules for losses

If for any taxable year a DISC, or a former DISC, incurs a deficit in earnings and profits, such deficit shall be chargeable—

(1) first, to earnings and profits described in subsection (a)(1)(C), to the extent thereof,

(2) second, to accumulated DISC income, to the extent thereof, and

(3) finally, to previously taxed income, except that a deficit in earnings and profits shall not be applied against accumulated DISC income which has been determined is to be deemed distributed to the shareholders (pursuant to section 995(b)(2)(A)) as a result of a revocation of election or other disqualification.

(c) Priority of distributions

Any actual distribution made during a taxable year shall be treated as being made subsequent to any deemed distribution made during such year. Any actual distribution made pursuant to section 992(c) (relating to distributions to meet qualification requirements) shall be treated as being made before any other actual distributions during the taxable year.

(d) Subsequent effect of previous disposition of DISC stock

(1) Shareholder previously taxed income adjustment

If—

(A) gain with respect to a share of stock of a DISC or former DISC is treated under section 995(c) as a dividend or as ordinary income, and

(B) any person subsequently receives an actual distribution made out of accumulated DISC income, or a deemed distribution made pursuant to section 995(b)(2), with respect to such share,

such person shall treat such distribution in the same manner as a distribution from previously taxed income to the extent that (i) the gain referred to in subparagraph (A), exceeds (ii) any other amounts with respect to such share which were treated under this paragraph as made from previously taxed income. In applying this paragraph with respect to a share of stock in a DISC or former DISC, gain on the acquisition of such share by the DISC or former DISC or gain on a transaction prior to such acquisition shall not be considered gain referred to in subparagraph (A).

(2) Corporate adjustment upon redemption

If section 995(c) applies to a redemption of stock in a DISC or former DISC, the accumulated DISC income shall be reduced by an amount equal to the gain described in section 995(c) with respect to such stock which is (or has been) treated as ordinary income, except to the extent distributions with respect to such stock have been treated under paragraph (1).

(e) Adjustment to basis

(1) Additions to basis

Amounts representing deemed distributions as provided in section 995(b) shall increase the basis of the stock with respect to which the distribution is made.

(2) Reductions of basis

The portion of an actual distribution made out of previously taxed income shall reduce the basis of the stock with respect to which it is made, and to the extent that it exceeds the adjusted basis of such stock, shall be treated as gain from the sale or exchange of property. In the case of stock includible in the gross estate of a decedent for which an election is made under section 2032 (relating to alternate valuation), this paragraph shall not apply to any distribution made after the date of the decedent's death and before the alternate valuation date provided by section 2032.

(f) Definition of divisions of earnings and profits

For purposes of this part:

(1) DISC income

The earnings and profits derived by a corporation during a taxable year in which such corporation is a DISC, before reduction for any distributions during the year, but reduced by amounts deemed distributed under section 995(b)(1), shall constitute the DISC income for such year. The earnings and profits of a DISC for a taxable year include any amounts includible in such DISC's gross income pursuant to section 951(a) for such year. Accumulated DISC income shall be reduced by deemed distributions under section 995(b)(2).

(2) Previously taxed income

Earnings and profits deemed distributed under section 995(b) for a taxable year shall constitute previously taxed income for such year.

(3) Other earnings and profits

The earnings and profits for a taxable year which are described in neither paragraph (1) nor (2) shall constitute the other earnings and profits for such year.

(g) Effectively connected income

In the case of a shareholder who is a nonresident alien individual or a foreign corporation, trust, or estate, gains referred to in section 995(c) and all distributions out of accumulated DISC income including deemed distributions shall be treated as gains and distributions which are effectively connected with the conduct of a trade or business conducted through a permanent establishment of such shareholder within the United States and which are derived from sources within the United States.

(Added Pub. L. 92–178, title V, §501 Dec. 10, 1971, 85 Stat. 547; amended Pub. L. 94–455, title XI, §1101(e), title XIX, §§1901(b)(3)(I), Oct. 4, 1976, 90 Stat. 1659, 1793; Pub. L. 95–600, title VII, §703(i)(3), Nov. 6, 1978, 92 Stat. 2940; Pub. L. 98–369, div. A, title VIII, §801(d)(10), July 18, 1984, 98 Stat. 997; Pub. L. 99–514, title XVIII, §1876(k), Oct. 22, 1986, 100 Stat. 2900.)

AMENDMENTS

1986—Subsec. (a)(2). Pub. L. 99–514 inserted last sentence and struck out former last sentence which read as follows: ''In the case of any amount of any actual distribution made pursuant to section 992(c) which is required to satisfy the condition of section 992(a)(1)(A), the preceding sentence shall apply to one-half of such amount, and paragraph (1) shall apply to the remaining one-half of such amount.''

1984—Subsec. (g). Pub. L. 98–369 inserted ''and which are derived from sources within the United States''.

1978—Subsec. (a)(2). Pub. L. 95–600 substituted ''section (b)(1)(G)'' for ''section (b)(1)(E)''.

1976—Subsec. (a)(2). Pub. L. 94–455, §1101(e), inserted at end ''In the case of any amount of any actual dis-

tribution made pursuant to section 992(c) which is required to satisfy the condition of section 992(a)(1)(A), the preceding sentence shall apply to one-half of such amount, and paragraph (1) shall apply to the remaining one-half of such amount.''

Subsec. (d). 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'' in par. (1)(A) after ''dividend or as'' and, in par. (2), after ''treated as''.

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 on or after June 22, 1984, see section 805(a)(3) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by 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.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1101(e) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, see section 1101(g)(1) of Pub. L. 94–455, set out as a note under section 905 of this title.

Amendment by section 1901(b)(3)(I) 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.

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.

§ 997. Special subchapter C rules

For purposes of applying the provisions of subchapter C of chapter 1, any distribution in property to a corporation by a DISC or former DISC which is made out of previously taxed income or accumulated DISC income shall—

(1) be treated as a distribution in the same amount as if such distribution of property were made to an individual, and

(2) have a basis, in the hands of the recipient corporation, equal to the amount determined under paragraph (1).

(Added Pub. L. 92–178, title V, § 501, Dec. 10, 1971, 85 Stat. 549.)

PART V—INTERNATIONAL BOYCOTT DETERMINATIONS

AMENDMENTS

1976—Pub. L. 94–455, title X, § 1064(a), Oct. 4, 1976, 90 Stat. 1650, added part heading and analysis of sections.

§ 999. Reports by taxpayers; determinations

(a) International boycott reports by taxpayers

(1) Report required

If any person, or a member of a controlled group (within the meaning of section 993(a)(3)) which includes that person, has operations in, or related to—

(A) a country (or with the government, a company, or a national of a country) which is on the list maintained by the Secretary under paragraph (3), or

(B) any other country (or with the government, a company, or a national of that country) in which such person or such member had operations during the taxable year if such person (or, if such person is a foreign corporation, any United States shareholder of that corporation) knows or has reason to know that participation in or co-operation with an international boycott is required as a condition of doing business within such country or with such government, company, or national,

that person or shareholder (within the meaning of section 951(b)) shall report such operations to the Secretary at such time and in such manner as the Secretary prescribes, except that in the case of a foreign corporation such report shall be required only of a United States shareholder (within the meaning of such section) of such corporation.

(2) Participation and cooperation; request therefor

A taxpayer shall report whether he, a foreign corporation of which he is a United States shareholder, or any member of a controlled group which includes the taxpayer or such foreign corporation has participated in or cooperated with an international boycott at any time during the taxable year, or has been requested to participate in or cooperate with such a boycott, and, if so, the nature of any operation in connection with which there was participation in or cooperation with such boycott (or there was a request to participate or cooperate).

(3) List to be maintained

The Secretary shall maintain and publish not less frequently than quarterly a current list of countries which require or may require participation in or cooperation with an international boycott (within the meaning of subsection (b)(3)).

(b) Participation in or cooperation with an international boycott

(1) General rule

If the person or a member of a controlled group (within the meaning of section 993(a)(3)) which includes the person participates in or cooperates with an international boycott in the taxable year, all operations of the taxpayer or such group in that country and in any other country which requires participation in or cooperation with the boycott as a condition of doing business within that country, or with the government, a company, or a national of that country, shall be treated as operations in

connection with which such participation or cooperation occurred, except to the extent that the person can clearly demonstrate that a particular operation is a clearly separate and identifiable operation in connection with which there was no participation in or cooperation with an international boycott.

(2) Special rule

(A) Nonboycott operations

A clearly separate and identifiable operation of a person, or of a member of the controlled group (within the meaning of section 993(a)(3)) which includes that person, in or related to any country within the group of countries referred to in paragraph (1) shall not be treated as an operation in or related to a group of countries associated in carrying out an international boycott if the person can clearly demonstrate that he, or that such member, did not participate in or cooperate with the international boycott in connection with that operation.

(B) Separate and identifiable operations

A taxpayer may show that different operations within the same country, or operations in different countries, are clearly separate and identifiable operations.

(3) Definition of boycott participation and cooperation

For purposes of this section, a person participates in or cooperates with an international boycott if he agrees—

(A) as a condition of doing business directly or indirectly within a country or with the government, a company, or a national of a country—

(i) to refrain from doing business with or in a country which is the object of the boycott or with the government, companies, or nationals of that country;

(ii) to refrain from doing business with any United States person engaged in trade in a country which is the object of the boycott or with the government, companies, or nationals of that country;

(iii) to refrain from doing business with any company whose ownership or management is made up, all or in part, of individuals of a particular nationality, race, or religion, or to remove (or refrain from selecting) corporate directors who are individuals of a particular nationality, race, or religion; or

(iv) to refrain from employing individuals of a particular nationality, race, or religion; or

(B) as a condition of the sale of a product to the government, a company, or a national of a country, to refrain from shipping or insuring that product on a carrier owned, leased, or operated by a person who does not participate in or cooperate with an international boycott (within the meaning of subparagraph (A)).

(4) Compliance with certain laws

This section shall not apply to any agreement by a person (or such member)—

(A) to meet requirements imposed by a foreign country with respect to an international boycott if United States law or regulations, or an Executive Order, sanctions participation in, or cooperation with, that international boycott,

(B) to comply with a prohibition on the importation of goods produced in whole or in part in any country which is the object of an international boycott, or

(C) to comply with a prohibition imposed by a country on the exportation of products obtained in such country to any country which is the object of an international boycott.

(c) International boycott factor

(1) International boycott factor

For purposes of sections 908(a), 952(a)(3), and 995(b)(1)(F)(ii), the international boycott factor is a fraction, determined under regulations prescribed by the Secretary, the numerator of which reflects the world-wide operations of a person (or, in the case of a controlled group (within the meaning of section 993(a)(3)) which includes that person, of the group) which are operations in or related to a group of countries associated in carrying out an international boycott in or with which that person or a member of that controlled group has participated or cooperated in the taxable year, and the denominator of which reflects the world-wide operations of that person or group.

(2) Specifically attributable taxes and income

If the taxpayer clearly demonstrates that the foreign taxes paid and income earned for the taxable year are attributable to specific operations, then, in lieu of applying the international boycott factor for such taxable year, the amount of the credit disallowed under section 908(a), the addition to subpart F income under section 952(a)(3), and the amount of deemed distribution under section 995(b)(1)(F)(ii) for the taxable year, if any, shall be the amount specifically attributable to the operations in which there was participation in or cooperation with an international boycott under section 999(b)(1).

(3) World-wide operations

For purposes of this subsection, the term ''world-wide operations'' means operations in or related to countries other than the United States.

(d) Determination with respect to particular operations

Upon a request made by the taxpayer, the Secretary shall issue a determination with respect to whether a particular operation of a person, or of a member of a controlled group which includes that person, constitutes participation in or cooperation with an international boycott. The Secretary may issue such a determination in advance of such operation in cases which are of such a nature that an advance determination is possible and appropriate under the circumstances. If the request is made before the operation is commenced, or before the end of a taxable year in which the operation is carried out, the Secretary may decline to issue such a determination before close of the taxable year.

(e) Participation or cooperation by related persons

If a person controls (within the meaning of section 304(c)) a corporation—

(1) participation in or cooperation with an international boycott by such corporation shall be presumed to be such participation or cooperation by such person, and

(2) participation in or cooperation with such a boycott by such person shall be presumed to be such participation or cooperation by such corporation.

(f) Willful failure to report

Any person (within the meaning of section 6671(b)) required to report under this section who willfully fails to make such report shall, in addition to other penalties provided by law, be fined not more than $25,000, imprisoned for not more than one year, or both.

(Added Pub. L. 94–455, title X, §1064(a), Oct. 4, 1976, 90 Stat. 1650; amended Pub. L. 95–600, title VII, §703(h)(2), (3), Nov. 6, 1978, 92 Stat. 2940; Pub. L. 98–369, div. A, title VIII, §802(c)(3), July 18, 1984, 98 Stat. 999; Pub. L. 99–514, title XVIII, §1876(p)(3), Oct. 22, 1986, 100 Stat. 2902; Pub. L. 106–519, §4(5), Nov. 15, 2000, 114 Stat. 2433; Pub. L. 108–357, title I, §101(b)(8), Oct. 22, 2004, 118 Stat. 1423.)

AMENDMENTS

2004—Subsec. (c)(1). Pub. L. 108–357 struck out ''941(a)(5),'' after ''sections 908(a),''.

2000—Subsec. (c)(1). Pub. L. 106–519 inserted ''941(a)(5),'' after ''908(a),''.

1986—Subsec. (c)(1), (2). Pub. L. 99–514 repealed section 802(c)(3) of Pub. L. 98–369 thereby restoring former text. See 1984 Amendment note below.

1984—Subsec. (c)(1), (2). Pub. L. 98–369 which substituted ''995(b)(1)(F)(i)'' for ''995(b)(1)(F)(ii)'' wherever appearing was repealed. See 1986 Amendment note above.

1978—Subsec. (c)(1). Pub. L. 95–600, §703(h)(2), substituted ''995(b)(1)(F)(ii)'' for ''995(b)(3)''.

Subsec. (c)(2). Pub. L. 95–600, §703(h)(3), substituted ''995(b)(1)(F)(ii)'' for ''995(b)(1)(D)(ii)''.

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 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 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 1978 AMENDMENT

Amendment by 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.

EFFECTIVE DATE

Section applicable to participation in or cooperation with an international boycott more than 30 days after Oct. 4, 1976, with special provisions for existing contracts, see section 1066(a) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 908 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.

REPORTS BY THE SECRETARY

Pub. L. 94–455, title X, §1067, Oct. 4, 1976, 90 Stat. 1654, as amended by Pub. L. 98–369, div. A, title IV, §441(c), July 18, 1984, 98 Stat. 815, which required the Secretary to transmit a report every four years to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate relating to reports filed under section 999(a) of this title and describing the administration of provisions relating to international boycott activity, 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 141 of House Document No. 103–7.

[§ 1000. Reserved]

Subchapter O—Gain or Loss on Disposition of Property

AMENDMENTS

1995—Pub. L. 104–7, §2(c), Apr. 11, 1995, 109 Stat. 93, struck out item for part V ''Changes to effectuate F.C.C. policy''.

1990—Pub. L. 101–508, title XI, §11801(b)(9), Nov. 5, 1990, 104 Stat. 1388–522, struck out item for part VIII ''Distributions pursuant to Bank Holding Company Act''.

1981—Pub. L. 97–34, title V, §501(d)(3), Aug. 13, 1981, 95 Stat. 327, substituted ''Wash sales; straddles'' for ''Wash sales of stock or securities'' in item for part VII.

1976—Pub. L. 94–455, title XIX, §1901(b)(32)(I), Oct. 4, 1976, 90 Stat. 1800, struck out item for part IX ''Distributions pursuant to orders enforcing the antitrust laws''.

Pub. L. 94–452, §2(c), Oct. 2, 1976, 90 Stat. 1512, struck out ''of 1956'' after ''Bank Holding Company Act'' in item for part VIII.

1962—Pub. L. 87–403, §1(b), Feb. 2, 1962, 76 Stat. 5, added item for part IX.

1956—Act May 9, 1956, ch. 240, §10(b), 70 Stat. 146, added item for part VIII.

PART I—DETERMINATION OF AMOUNT OF AND RECOGNITION OF GAIN OR LOSS

[1] Part repealed by Pub. L. 109–135 without corresponding amendment of subchapter analysis.

Sec.
[1002. Repealed.]

AMENDMENTS

1976—Pub. L. 94–455, title XIX, §1901(b)(28)(B)(ii), Oct. 4, 1976, 90 Stat. 1799, struck out item 1002 ''Recognition of gain or loss''.

§ 1001. Determination of amount of and recognition of gain or loss

(a) Computation of gain or loss

The gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the adjusted basis provided in section 1011 for determining gain, and the loss shall be the excess of the adjusted basis provided in such section for determining loss over the amount realized.

(b) Amount realized

The amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of the property (other than money) received. In determining the amount realized—

(1) there shall not be taken into account any amount received as reimbursement for real property taxes which are treated under section 164(d) as imposed on the purchaser, and

(2) there shall be taken into account amounts representing real property taxes which are treated under section 164(d) as imposed on the taxpayer if such taxes are to be paid by the purchaser.

(c) Recognition of gain or loss

Except as otherwise provided in this subtitle, the entire amount of the gain or loss, determined under this section, on the sale or exchange of property shall be recognized.

(d) Installment sales

Nothing in this section shall be construed to prevent (in the case of property sold under contract providing for payment in installments) the taxation of that portion of any installment payment representing gain or profit in the year in which such payment is received.

(e) Certain term interests

(1) In general

In determining gain or loss from the sale or other disposition of a term interest in property, that portion of the adjusted basis of such interest which is determined pursuant to section 1014, 1015, or 1041 (to the extent that such adjusted basis is a portion of the entire adjusted basis of the property) shall be disregarded.

(2) Term interest in property defined

For purposes of paragraph (1), the term ''term interest in property'' means—

(A) a life interest in property,

(B) an interest in property for a term of years, or

(C) an income interest in a trust.

(3) Exception

Paragraph (1) shall not apply to a sale or other disposition which is a part of a transaction in which the entire interest in property is transferred to any person or persons.

(Aug. 16, 1954, ch. 736, 68A Stat. 295; Pub. L. 91–172, title II, §231(c)(2), title V, §516(a), Dec. 30, 1969, 83 Stat. 579, 646; Pub. L. 94–455, title XIX, §1901(a)(121), Oct. 4, 1976, 90 Stat. 1784; Pub. L. 95–600, title VII, §702(c)(9), Nov. 6, 1978, 92 Stat. 2928; Pub. L. 96–223, title IV, §401(a), Apr. 2, 1980, 94 Stat. 299; Pub. L. 98–369, div. A, title IV, §421(b)(4), July 18, 1984, 98 Stat. 794; Pub. L. 103–66, title XIII, §13213(a)(2)(E), Aug. 10, 1993, 107 Stat. 474.)

AMENDMENTS

1993—Subsec. (f). Pub. L. 103–66 struck out heading and text of subsec. (f). Text read as follows: ''For treatment of certain expenses incident to the sale of a residence which were deducted as moving expenses by the taxpayer or his spouse under section 217(a), see section 217(e).''

1984—Subsec. (e)(1). Pub. L. 98–369 inserted reference to section 1041.

1980—Subsec. (e)(1). Pub. L. 96–223 repealed the amendment made by Pub. L. 95–600. See 1978 Amendment note below.

1978—Subsec. (e)(1). Pub. L. 95–600 inserted reference to section 1023. See Repeals note below.

1976—Subsec. (c). Pub. L. 94–455 substituted provision recognizing the entire amount of gain or loss, except as otherwise provided, for provision referring to section 1002 for the determination of the extent of gain or loss to be recognized.

1969—Subsec. (e). Pub. L. 91–172, §516(a), added subsec. (e).

Subsec. (f). Pub. L. 91–172, §231(c)(2), added subsec. (f).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to expenses incurred after Dec. 31, 1993, see section 13213(e) of Pub. L. 103–66 set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to transfers after July 18, 1984, in taxable years ending after such date, subject to election to have amendment apply to transfers after 1983 or to transfers pursuant to existing decrees, see section 421(d) of Pub. L. 98–369, set out as an Effective Date note under section 1041 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT AND REVIVAL OF PRIOR LAW

Amendment by Pub. L. 96–223 (repealing section 702(c)(9) of Pub. L. 95–600 and the amendment 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.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 effective as if included in the amendments and additions made by, and the appropriate provisions of Pub. L. 94–455, see section 702(c)(10) of Pub. L. 95–600, set out as a note under section 1014 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 1969 AMENDMENT

Amendment by section 231(c)(2) of Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 231(d) of Pub. L. 91–172, set out as a note under section 217 of this title.

Pub. L. 91–172, title V, §516(d), Dec. 30, 1969, 83 Stat. 648, 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 sales or other dispositions after October 9, 1969.

''(2) The amendment made by subsection (b) [amending section 1231 of this title] shall apply to taxable years beginning after December 31, 1969.

''(3) The amendments made by subsection (c) [enacting section 1253 and amending sections 162 and 1016 of this title] shall apply to transfers after December 31, 1969, except that section 1253(d)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (c) shall, at the election of the taxpayer (made at such time and in such manner as the Secretary or his delegate may by regulations prescribe), apply to transfers before January 1, 1970, but only with respect to payments made in taxable years ending after December 31, 1969, and beginning before January 1, 1980.''

REPEALS

Pub. L. 95–600, § 702(c)(9), cited as a credit to this section, and the amendment 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 702(c)(9). See Effective Date of 1980 Amendment and Revival of Prior Law note set out above.

[§ 1002. Repealed. Pub. L. 94–455, title XIX, § 1901(b)(28)(B)(i), Oct. 4, 1976, 90 Stat. 1799]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 295, related to the recognition of the entire amount of gain or loss determined under section 1001 on the sale or exchange of property.

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 II—BASIS RULES OF GENERAL APPLICATION

Sec.

AMENDMENTS

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)(6), had never been enacted. See 2001 Amendment note below.

2001—Pub. L. 107–16, title V, § 542(e)(6), June 7, 2001, 115 Stat. 86, added item 1022.

1980—Pub. L. 96–589, § 6(h)(2), Dec. 24, 1980, 94 Stat. 3410, struck out item 1018 ''Adjustments of capital structure before September 22, 1938''.

Pub. L. 96–223, title IV, § 401(a), Apr. 2, 1980, 94 Stat. 299, repealed section 2005(e)(1) of Pub. L. 94–455 and the amendment made thereby. See 1986 Amendment note below.

1978—Pub. L. 95–600, title V, § 515(5), Nov. 6, 1978, 92 Stat. 2884, substituted ''December 31, 1979'' for ''December 31, 1976'' in item 1023.

1976—Pub. L. 94–455, title XX, § 2005(e)(1), Oct. 4, 1976, 90 Stat. 1878, which added item 1023 and redesignated former item 1023 as 1024, was repealed by Pub. L. 96–223, § 401(a). See section 401(b), (e) of Pub. L. 96–223, set out as an Effective Date of 1980 Amendments and Revival of Prior Law note under section 1023 of this title.

Pub. L. 94–455, title XIX, § 1901(b)(29)(B), (30)(C), Oct. 4, 1976, 90 Stat. 1799, struck out item 1020 ''Election in respect of depreciation, etc., allowed before 1952'', and item 1022 ''Increase in basis with respect to certain foreign personal holding company stock or securities''.

1964—Pub. L. 88–272, title II, § 225(j)(3), Feb. 26, 1964, 78 Stat. 93, added item 1022 and redesignated former item 1022 as 1023.

§ 1011. Adjusted basis for determining gain or loss

(a) General rule

The adjusted basis for determining the gain or loss from the sale or other disposition of property, whenever acquired, shall be the basis (determined under section 1012 or other applicable sections of this subchapter and subchapters C (relating to corporate distributions and adjustments), K (relating to partners and partnerships), and P (relating to capital gains and losses)), adjusted as provided in section 1016.

(b) Bargain sale to a charitable organization

If a deduction is allowable under section 170 (relating to charitable contributions) by reason of a sale, then the adjusted basis for determining the gain from such sale shall be that portion of the adjusted basis which bears the same ratio to the adjusted basis as the amount realized bears to the fair market value of the property.

(Aug. 16, 1954, ch. 736, 68A Stat. 296; Pub. L. 91–172, title II, § 201(f), Dec. 30, 1969, 83 Stat. 564.)

AMENDMENTS

1969—Pub. L. 91–172 redesignated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to sales made after Dec. 19, 1969, see section 201(g)(6) of Pub. L. 91–172, set out as a note under section 170 of this title.

§ 1012. Basis of property—cost

(a) In general

The basis of property shall be the cost of such property, except as otherwise provided in this subchapter and subchapters C (relating to corporate distributions and adjustments), K (relating to partners and partnerships), and P (relating to capital gains and losses).

(b) Special rule for apportioned real estate taxes

The cost of real property shall not include any amount in respect of real property taxes which are treated under section 164(d) as imposed on the taxpayer.

(c) Determinations by account

(1) In general

In the case of the sale, exchange, or other disposition of a specified security on or after the applicable date, the conventions prescribed by regulations under this section shall be applied on an account by account basis.

(2) Application to certain regulated investment companies

(A) In general

Except as provided in subparagraph (B), any stock for which an average basis method is permissible under this section which is acquired before January 1, 2012, shall be treated as a separate account from any such stock acquired on or after such date.

(B) Election for treatment as single account

If a regulated investment company described in subparagraph (A) elects to have this subparagraph apply with respect to one or more of its stockholders—

(i) subparagraph (A) shall not apply with respect to any stock in such regulated investment company held by such stockholders, and

(ii) all stock in such regulated investment company which is held by such stockholders shall be treated as covered securities described in section 6045(g)(3) without regard to the date of the acquisition of such stock.

A rule similar to the rule of the preceding sentence shall apply with respect to a broker holding such stock as a nominee.

(3) Definitions

For purposes of this section, the terms ''specified security'' and ''applicable date'' shall have the meaning given such terms in section 6045(g).

(d) Average basis for stock acquired pursuant to a dividend reinvestment plan

(1) In general

In the case of any stock acquired after December 31, 2011, in connection with a dividend reinvestment plan, the basis of such stock while held as part of such plan shall be determined using one of the methods which may be used for determining the basis of stock in a regulated investment company.

(2) Treatment after transfer

In the case of the transfer to another account of stock to which paragraph (1) applies, such stock shall have a cost basis in such other account equal to its basis in the dividend reinvestment plan immediately before such transfer (properly adjusted for any fees or other charges taken into account in connection with such transfer).

(3) Separate accounts; election for treatment as single account

(A) In general

Rules similar to the rules of subsection (c)(2) shall apply for purposes of this subsection.

(B) Average basis method

Notwithstanding paragraph (1), in the case of an election under rules similar to the rules of subsection (c)(2)(B) with respect to stock held in connection with a dividend reinvestment plan, the average basis method is permissible with respect to all such stock without regard to the date of the acquisition of such stock.

(4) Dividend reinvestment plan

For purposes of this subsection—

(A) In general

The term ''dividend reinvestment plan'' means any arrangement under which dividends on any stock are reinvested in stock identical to the stock with respect to which the dividends are paid.

(B) Initial stock acquisition treated as acquired in connection with plan

Stock shall be treated as acquired in connection with a dividend reinvestment plan if such stock is acquired pursuant to such plan or if the dividends paid on such stock are subject to such plan.

(Aug. 16, 1954, ch. 736, 68A Stat. 296; Pub. L. 110–343, div. B, title IV, § 403(b), Oct. 3, 2008, 122 Stat. 3857; Pub. L. 113–295, div. A, title II, §§ 210(f)(1)–(3), 220(n), Dec. 19, 2014, 128 Stat. 4031, 4032, 4036.)

AMENDMENTS

2014—Subsec. (c)(2). Pub. L. 113–295, § 210(f)(1)(A), substituted ''regulated investment companies'' for ''funds'' in heading.

Subsec. (c)(2)(A). Pub. L. 113–295, § 220(n), substituted ''this section'' for ''section 1012''.

Subsec. (c)(2)(B). Pub. L. 113–295, § 210(f)(1)(C), substituted ''regulated investment company'' for ''fund'' wherever appearing.

Pub. L. 113–295, § 210(f)(1)(B), struck out ''fund'' after ''Election'' in heading.

Subsec. (d)(1). Pub. L. 113–295, § 210(f)(2), substituted ''December 31, 2011'' for ''December 31, 2010'' and ''a regulated investment company'' for ''an open-end fund''.

Subsec. (d)(3). Pub. L. 113–295, § 210(f)(3), amended par. (3) generally. Prior to amendment, text read as follows: ''Rules similar to the rules of subsection (c)(2) shall apply for purposes of this subsection.''

2008—Pub. L. 110–343 designated first sentence as subsec. (a) and second sentence as subsec. (b), inserted headings, and added subsecs. (c) and (d).

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by section 210(f)(1)–(3) of Pub. L. 113–295 effective as if included in the provisions of the Energy Improvement and Extension Act of 2008, Pub. L. 110–343, div. B, to which such amendment relates, see section 210(h) of Pub. L. 113–295, set out as a note under section 45 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title IV, § 403(e), Oct. 3, 2008, 122 Stat. 3860, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting sections 6045A and 6045B of this title and amending this section and sections 6045 and 6724 of this title] shall take effect on January 1, 2011.

''(2) EXTENSION OF PERIOD FOR STATEMENTS SENT TO CUSTOMERS.—The amendments made by subsection (a)(3) [amending section 6045 of this title] shall apply to statements required to be furnished after December 31, 2008.''

§ 1013. Basis of property included in inventory

If the property should have been included in the last inventory, the basis shall be the last inventory value thereof.

(Aug. 16, 1954, ch. 736, 68A Stat. 296.)

§ 1014. Basis of property acquired from a decedent

(a) In general

Except as otherwise provided in this section, the basis of property in the hands of a person acquiring the property from a decedent or to whom the property passed from a decedent shall, if not sold, exchanged, or otherwise disposed of before the decedent's death by such person, be—

(1) the fair market value of the property at the date of the decedent's death,

(2) in the case of an election under section 2032, its value at the applicable valuation date prescribed by such section,

(3) in the case of an election under section 2032A, its value determined under such section, or

(4) to the extent of the applicability of the exclusion described in section 2031(c), the basis in the hands of the decedent.

(b) Property acquired from the decedent

For purposes of subsection (a), the following property shall be considered to have been acquired from or to have passed from the decedent:

(1) Property acquired by bequest, devise, or inheritance, or by the decedent's estate from the decedent;

(2) Property transferred by the decedent during his lifetime in trust to pay the income for life to or on the order or direction of the decedent, with the right reserved to the decedent at all times before his death to revoke the trust;

(3) In the case of decedents dying after December 31, 1951, property transferred by the decedent during his lifetime in trust to pay the income for life to or on the order or direction of the decedent with the right reserved to the decedent at all times before his death to make any change in the enjoyment thereof through the exercise of a power to alter, amend, or terminate the trust;

(4) Property passing without full and adequate consideration under a general power of appointment exercised by the decedent by will;

(5) In the case of decedents dying after August 26, 1937, and before January 1, 2005, property acquired by bequest, devise, or inheritance or by the decedent's estate from the decedent, if the property consists of stock or securities of a foreign corporation, which with respect to its taxable year next preceding the date of the decedent's death was, under the law applicable to such year, a foreign personal holding company. In such case, the basis shall be the fair market value of such property at the date of the decedent's death or the basis in the hands of the decedent, whichever is lower;

(6) In the case of decedents dying after December 31, 1947, property which represents the surviving spouse's one-half share of community property held by the decedent and the surviving spouse under the community property laws of any State, or possession of the United States or any foreign country, if at least one-half of the whole of the community interest in such property was includible in determining the value of the decedent's gross estate under chapter 11 of subtitle B (section 2001 and following, relating to estate tax) or section 811 of the Internal Revenue Code of 1939;

[(7), (8) Repealed. Pub. L. 113–295, div. A, title II, § 221(a)(74)(B), Dec. 19, 2014, 128 Stat. 4049]

(9) In the case of decedents dying after December 31, 1953, property acquired from the decedent by reason of death, form of ownership, or other conditions (including property acquired through the exercise or non-exercise of a power of appointment), if by reason thereof the property is required to be included in determining the value of the decedent's gross estate under chapter 11 of subtitle B or under the Internal Revenue Code of 1939. In such case, if the property is acquired before the death of the decedent, the basis shall be the amount determined under subsection (a) reduced by the amount allowed to the taxpayer as deductions in computing taxable income under this subtitle or prior income tax laws for exhaustion, wear and tear, obsolescence, amortization, and depletion on such property before the death of the decedent. Such basis shall be applicable to the property commencing on the death of the decedent. This paragraph shall not apply to—

(A) annuities described in section 72;

(B) property to which paragraph (5) would apply if the property had been acquired by bequest; and

(C) property described in any other paragraph of this subsection.

(10) Property includible in the gross estate of the decedent under section 2044 (relating to certain property for which marital deduction was previously allowed). In any such case, the last 3 sentences of paragraph (9) shall apply as if such property were described in the first sentence of paragraph (9).

(c) Property representing income in respect of a decedent

This section shall not apply to property which constitutes a right to receive an item of income in respect of a decedent under section 691.

(d) Special rule with respect to DISC stock

If stock owned by a decedent in a DISC or former DISC (as defined in section 992(a)) acquires a new basis under subsection (a), such basis (determined before the application of this subsection) shall be reduced by the amount (if any) which would have been included in gross income under section 995(c) as a dividend if the decedent had lived and sold the stock at its fair market value on the estate tax valuation date. In computing the gain the decedent would have had if he had lived and sold the stock, his basis shall be determined without regard to the last sentence of section 996(e)(2) (relating to reductions of basis of DISC stock). For purposes of this subsection, the estate tax valuation date is the date of the decedent's death or, in the case of an election under section 2032, the applicable valuation date prescribed by that section.

(e) Appreciated property acquired by decedent by gift within 1 year of death

(1) In general

In the case of a decedent dying after December 31, 1981, if—

(A) appreciated property was acquired by the decedent by gift during the 1-year period ending on the date of the decedent's death, and

(B) such property is acquired from the decedent by (or passes from the decedent to) the donor of such property (or the spouse of such donor),

the basis of such property in the hands of such donor (or spouse) shall be the adjusted basis of such property in the hands of the decedent immediately before the death of the decedent.

(2) Definitions

For purposes of paragraph (1)—

(A) Appreciated property

The term ''appreciated property'' means any property if the fair market value of such property on the day it was transferred to the decedent by gift exceeds its adjusted basis.

(B) Treatment of certain property sold by estate

In the case of any appreciated property described in subparagraph (A) of paragraph (1) sold by the estate of the decedent or by a trust of which the decedent was the grantor, rules similar to the rules of paragraph (1) shall apply to the extent the donor of such property (or the spouse of such donor) is entitled to the proceeds from such sale.

(f) Basis must be consistent with estate tax return

For purposes of this section—

(1) In general

The basis of any property to which subsection (a) applies shall not exceed—

(A) in the case of property the final value of which has been determined for purposes of the tax imposed by chapter 11 on the estate of such decedent, such value, and

(B) in the case of property not described in subparagraph (A) and with respect to which a statement has been furnished under section 6035(a) identifying the value of such property, such value.

(2) Exception

Paragraph (1) shall only apply to any property whose inclusion in the decedent's estate increased the liability for the tax imposed by chapter 11 (reduced by credits allowable against such tax) on such estate.

(3) Determination

For purposes of paragraph (1), the basis of property has been determined for purposes of the tax imposed by chapter 11 if—

(A) the value of such property is shown on a return under section 6018 and such value is not contested by the Secretary before the expiration of the time for assessing a tax under chapter 11,

(B) in a case not described in subparagraph (A), the value is specified by the Secretary and such value is not timely contested by the executor of the estate, or

(C) the value is determined by a court or pursuant to a settlement agreement with the Secretary.

(4) Regulations

The Secretary may by regulations provide exceptions to the application of this subsection.

(Aug. 16, 1954, ch. 736, 68A Stat. 296; Pub. L. 85–320, §2, Feb. 11, 1958, 72 Stat. 5; Pub. L. 92–178, title V, §502(f), Dec. 10, 1971, 85 Stat. 550; Pub. L. 94–455, title XIX, §1901(c)(8), title XX, §2005(a)(1), Oct. 4, 1976, 90 Stat. 1803, 1872; Pub. L. 95–600, title V, §515(1), title VII, §702(c)(1)(A), Nov. 6, 1978, 92 Stat. 2884, 2926; Pub. L. 96–222, title I, §107(a)(2)(A), Apr. 1, 1980, 94 Stat. 222; Pub. L. 96–223, title IV, §401(a), Apr. 2, 1980, 94 Stat. 299; Pub. L. 97–34, title IV, §425(a), Aug. 13, 1981, 95 Stat. 318; Pub. L. 97–448, title I, §104(a)(1)(A), Jan. 12, 1983, 96 Stat. 2379; Pub. L. 105–34, title V, §508(b), Aug. 5, 1997, 111 Stat. 860; Pub. L. 107–16, title V, §541, June 7, 2001, 115 Stat. 76; Pub. L. 108–357, title IV, §413(c)(18), Oct. 22, 2004, 118 Stat. 1508; Pub. L. 111–312, title III, §301(a), Dec. 17, 2010, 124 Stat. 3300; Pub. L. 113–295, div. A, title II, §221(a)(74), Dec. 19, 2014, 128 Stat. 4049; Pub. L. 114–41, title II, §2004(a), July 31, 2015, 129 Stat. 454.)

REFERENCES IN TEXT

Section 811 of the Internal Revenue Code of 1939, referred to in subsec. (b)(6), was classified to section 811 of former Title 26, Internal Revenue Code. 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.

The Internal Revenue Code of 1939, referred to in subsec. (b)(9), is act Feb. 10, 1939, ch. 2, 53 Stat. 1. Prior to the enactment of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the 1939 Code was classified to former Title 26, Internal Revenue Code. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title.

AMENDMENTS

2015—Subsec. (f). Pub. L. 114–41 added subsec. (f).

2014—Subsec. (a)(2). Pub. L. 113–295, §221(a)(74)(A), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''in the case of an election under either section 2032 or section 811(j) of the Internal Revenue Code of 1939 where the decedent died after October 21, 1942, its value at the applicable valuation date prescribed by those sections,''.

Subsec. (b)(7), (8). Pub. L. 113–295, §221(a)(74)(B), struck out pars. (7) and (8). Prior to repeal, par. (7) related to property representing a surviving spouse's one-half share of community property held by the surviving spouse and a decedent dying after Oct. 21, 1942, and on or before Dec. 31, 1947, and par. (8) related to property representing certain interests of the survivor in a joint and survivor's annuity in the case of a decedent dying after Dec. 31, 1950, and before Jan. 1, 1954.

2010—Subsec. (f). Pub. L. 111–312 amended section to read as if amendment by Pub. L. 107–16, §541, had never been enacted. See 2001 Amendment note below. Prior to amendment, text of subsec. (f) read as follows: ''This section shall not apply with respect to decedents dying after December 31, 2009.''

2004—Subsec. (b)(5). Pub. L. 108–357 inserted ''and before January 1, 2005,'' after ''August 26, 1937,''.

2001—Subsec. (f). Pub. L. 107–16, §541, added subsec. (f).

1997—Subsec. (a). Pub. L. 105–34 struck out ''or'' at end of pars. (1) and (2), struck out the period at end of par. (3) and inserted '', or'', and added par. (4).

1983—Subsec. (b)(10). Pub. L. 97–448 added par. (10).

1981—Subsec. (e). Pub. L. 97–34 added subsec. (e).

1980—Subsec. (a)(3). Pub. L. 96–222 substituted ''section 2032A'' for ''section 2032.1''.

Subsec. (d). Pub. L. 96–223 repealed the amendment made by Pub. L. 94–455, § 2005(a)(1). See 1976 Amendment note below.

1978—Subsec. (a). Pub. L. 95–600, § 702(c)(1)(A), designated existing provisions as pars. (1) and (2) and added par. (3).

Subsec. (d). Pub. L. 95–600, § 515(1), substituted ''December 31, 1979'' for ''December 31, 1976'' in heading and text.

1976—Subsec. (b)(6), (7). Pub. L. 94–455, § 1901(c)(8), struck out ''Territory,'' after ''under the community property laws of any State,''.

Subsec. (d). Pub. L. 94–455, § 2005(a)(1), substituted provision relating to the applicability of this section to decedents dying after 1976 for provision relating to a special rule with respect to DISC stock. See Repeals note below.

1971—Subsec. (d). Pub. L. 92–178 added subsec. (d).

1958—Subsec. (d). Pub. L. 85–320 repealed subsec. (d) which made section inapplicable to restricted stock options described in section 421 which the employee has not exercised at death.

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114–41, title II, § 2004(d), July 31, 2015, 129 Stat. 456, provided that: ''The amendments made by this section [enacting section 6035 of this title and amending this section and sections 6662 and 6724 of this title] shall apply to property with respect to which an estate tax return is filed after the date of the enactment of this Act [July 31, 2015].''

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

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 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

Pub. L. 105–34, title V, § 508(e)(1), Aug. 5, 1997, 111 Stat. 860, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 2031 of this title] shall apply to estates of decedents dying after December 31, 1997.''

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 IV, § 425(b), Aug. 13, 1981, 95 Stat. 318, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to property acquired after the date of the enactment of this Act [Aug. 13, 1981] by decedents dying after December 31, 1981.''

EFFECTIVE DATE OF 1980 AMENDMENTS AND REVIVAL OF PRIOR LAW

Amendment by Pub. L. 96–223 (repealing section 2005(a)(1) of Pub. L. 94–455 and the amendment 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.

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

Pub. L. 95–600, title VII, § 702(c)(10), Nov. 6, 1978, 92 Stat. 2928, provided that: ''The amendments made by this subsection [amending this section and sections 1001, 1223, and 2614 of this title] shall take effect as if included in the amendments and additions made by, and the appropriate provisions of the Tax Reform Act of 1976 [Pub. L. 94–455, Oct. 4, 1976, 90 Stat 1525].''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(c)(8) 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 2005(a)(1) of Pub. L. 94–455 applicable in respect of decedents dying after Dec. 31, 1976, see section 2005(f) of Pub. L. 94–455, set out as an Effective Date note under section 1015 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. 1972, see section 507 of Pub. L. 92–178, set out as a note under section 991 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–320 applicable with respect to taxable years ending after Dec. 31, 1956, but only in the case of employees dying after such date, see section 3 of Pub. L. 85–320, set out as a note under section 421 of this title.

REPEALS

Pub. L. 94–455, § 2005(a)(1), cited as a credit to this section, and the amendment 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)(1). See Effective Date of 1980 Amendments and Revival of Prior Law note above.

ELECTION OF CARRYOVER BASIS RULES BY CERTAIN ESTATES

Pub. L. 96–223, title IV, § 401(d), Apr. 2, 1980, 94 Stat. 300, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Notwithstanding any other provision of law, in the case of a decedent dying after December 31, 1976, and before November 7, 1978, the executor (within the meaning of section 2203 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) of such decedent's estate may irrevocably elect, within 120 days following the date of enactment of this Act [Apr. 2, 1980] and in such manner as the Secretary of the Treasury or his delegate shall prescribe, to have the basis of all property acquired from or passing from the decedent (within the meaning of section 1014(b) of the Internal Revenue Code of 1986) determined for all purposes under such Code as though the provisions of section 2005 of the Tax Reform Act of 1976 [Pub. L. 94–455] (as amended by the provisions of section 702(c) of the Revenue Act of 1978 [Pub. L. 95–600] applied to such property acquired or passing from such decedent.''

§ 1015. Basis of property acquired by gifts and transfers in trust

(a) Gifts after December 31, 1920

If the property was acquired by gift after December 31, 1920, the basis shall be the same as it would be in the hands of the donor or the last preceding owner by whom it was not acquired by gift, except that if such basis (adjusted for the period before the date of the gift as provided in section 1016) is greater than the fair market value of the property at the time of the gift, then for the purpose of determining loss the basis shall be such fair market value. If the facts necessary to determine the basis in the hands of the donor or the last preceding owner are unknown to the donee, the Secretary shall, if possible, obtain such facts from such donor or last preceding owner, or any other person cognizant thereof. If the Secretary finds it impossible to obtain such facts, the basis in the hands of such donor or last preceding owner shall be the fair market value of such property as found by the Secretary as of the date or approximate date at which, according to the best information that the Secretary is able to obtain, such property was acquired by such donor or last preceding owner.

(b) Transfer in trust after December 31, 1920

If the property was acquired after December 31, 1920, by a transfer in trust (other than by a transfer in trust by a gift, bequest, or devise), the basis shall be the same as it would be in the hands of the grantor increased in the amount of gain or decreased in the amount of loss recognized to the grantor on such transfer under the law applicable to the year in which the transfer was made.

(c) Gift or transfer in trust before January 1, 1921

If the property was acquired by gift or transfer in trust on or before December 31, 1920, the basis shall be the fair market value of such property at the time of such acquisition.

(d) Increased basis for gift tax paid

(1) In general

If—

(A) the property is acquired by gift on or after September 2, 1958, the basis shall be the basis determined under subsection (a), increased (but not above the fair market value of the property at the time of the gift) by the amount of gift tax paid with respect to such gift, or

(B) the property was acquired by gift before September 2, 1958, and has not been sold, exchanged, or otherwise disposed of before such date, the basis of the property shall be increased on such date by the amount of gift tax paid with respect to such gift, but such increase shall not exceed an amount equal to the amount by which the fair market value of the property at the time of the gift exceeded the basis of the property in the hands of the donor at the time of the gift.

(2) Amount of tax paid with respect to gift

For purposes of paragraph (1), the amount of gift tax paid with respect to any gift is an amount which bears the same ratio to the amount of gift tax paid under chapter 12 with respect to all gifts made by the donor for the calendar year (or preceding calendar period) in which such gift is made as the amount of such gift bears to the taxable gifts (as defined in section 2503(a) but computed without the deduction allowed by section 2521) made by the donor during such calendar year or period. For purposes of the preceding sentence, the amount of any gift shall be the amount included with respect to such gift in determining (for the purposes of section 2503(a)) the total amount of gifts made during the calendar year or period, reduced by the amount of any deduction allowed with respect to such gift under section 2522 (relating to charitable deduction) or under section 2523 (relating to marital deduction).

(3) Gifts treated as made one-half by each spouse

For purposes of paragraph (1), where the donor and his spouse elected, under section 2513 to have the gift considered as made one-half by each, the amount of gift tax paid with respect to such gift under chapter 12 shall be the sum of the amounts of tax paid with respect to each half of such gift (computed in the manner provided in paragraph (2)).

(4) Treatment as adjustment to basis

For purposes of section 1016(b), an increase in basis under paragraph (1) shall be treated as an adjustment under section 1016(a).

(5) Application to gifts before 1955

With respect to any property acquired by gift before 1955, references in this subsection to any provision of this title shall be deemed to refer to the corresponding provision of the Internal Revenue Code of 1939 or prior revenue laws which was effective for the year in which such gift was made.

(6) Special rule for gifts made after December 31, 1976

(A) In general

In the case of any gift made after December 31, 1976, the increase in basis provided by this subsection with respect to any gift for the gift tax paid under chapter 12 shall be an amount (not in excess of the amount of tax so paid) which bears the same ratio to the amount of tax so paid as—

(i) the net appreciation in value of the gift, bears to

(ii) the amount of the gift.

(B) Net appreciation

For purposes of paragraph (1), the net appreciation in value of any gift is the amount by which the fair market value of the gift exceeds the donor's adjusted basis immediately before the gift.

(e) Gifts between spouses

In the case of any property acquired by gift in a transfer described in section 1041(a), the basis of such property in the hands of the transferee shall be determined under section 1041(b)(2) and not this section.

(Aug. 16, 1954, ch. 736, 68A Stat. 298; Pub. L. 85–866, title I, § 43(a), Sept. 2, 1958, 72 Stat. 1640;

Pub. L. 91–614, title I, § 102(d)(1), Dec. 31, 1970, 84 Stat. 1841; Pub. L. 94–455, title XIX, §§ 1901(a)(122), 1906(b) (13)(A), title XX, § 2005(c), Oct. 4, 1976, 90 Stat. 1784, 1834, 1877; Pub. L. 97–34, title IV, § 442(d)(1), Aug. 13, 1981, 95 Stat. 322; Pub. L. 98–369, div. A, title IV, § 421(b)(5), July 18, 1984, 98 Stat. 794.)

REFERENCES IN TEXT

Section 2521, referred to in subsec. (d)(2), was repealed by Pub. L. 94–455, title XX, § 2001(b)(3), Oct. 4, 1976, 90 Stat. 1849.

The Internal Revenue Code of 1939, referred to in subsec. (d)(5), is act Feb. 10, 1939, ch. 2, 53 Stat. 1, as amended. Prior to the enactment of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the 1939 Code was classified to former Title 26, Internal Revenue Code. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title.

AMENDMENTS

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

1981—Subsec. (d)(2). Pub. L. 97–34 substituted ''calendar year (or preceding calendar period)'' for ''calendar quarter (or calendar year if the gift was made before January 1, 1971)'' and ''calendar year or period'' for ''calendar quarter or year'' in two places.

1976—Subsec. (a). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' in four places.

Subsec. (d)(1)(A), (B). Pub. L. 94–455, § 1901(a)(122), substituted ''September 2, 1958'' for ''the date of enactment of the Technical Amendments Act of 1958''.

Subsec. (d)(6). Pub. L. 94–455, § 2005(c), added par. (6).

1970—Subsec. (d)(2). Pub. L. 91–614 substituted ''calendar quarter (or calendar year if the gift was made before January 1, 1971)'' for ''calendar year'' the first place it appears and ''calendar quarter or year'' for ''calendar year'' every other place it appears.

1958—Subsec. (d). Pub. L. 85–866 added subsec. (d).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to transfers after July 18, 1984, in taxable years ending after such date, subject to election to have amendment apply to transfers after 1983 or to transfers pursuant to existing decrees, see section 421(d) of Pub. L. 98–369, set out as an Effective Date note under section 1041 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable with respect to gifts made after Dec. 31, 1981, see section 442(e) of Pub. L. 97–34, set out as a note under section 2501 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(122) 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 XX, § 2005(f), Oct. 4, 1976, 90 Stat. 1878, as amended by Pub. L. 95–600, title V, § 515(6), Nov. 6, 1978, 92 Stat. 2884, provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [enacting sections 1023, 1040, 6039A, and 6694 of this title, amending sections 691, 1016, and 1246 of this title, and renumbering former section 1023 as 1024] shall apply in respect of decedents dying after December 31, 1979.

''(2) The amendment made by subsection (c) [amending this section] shall apply to gifts made after December 31, 1976.''

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91–614, set out as a note under section 2501 of this title.

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.

§ 1016. Adjustments to basis

(a) General rule

Proper adjustment in respect of the property shall in all cases be made—

(1) for expenditures, receipts, losses, or other items, properly chargeable to capital account, but no such adjustment shall be made—

(A) for—

(i) taxes or other carrying charges described in section 266; or

(ii) expenditures described in section 173 (relating to circulation expenditures),

for which deductions have been taken by the taxpayer in determining taxable income for the taxable year or prior taxable years; or

(B) for mortality, expense, or other reasonable charges incurred under an annuity or life insurance contract;

(2) in respect of any period since February 28, 1913, for exhaustion, wear and tear, obsolescence, amortization, and depletion, to the extent of the amount—

(A) allowed as deductions in computing taxable income under this subtitle or prior income tax laws, and

(B) resulting (by reason of the deductions so allowed) in a reduction for any taxable year of the taxpayer's taxes under this subtitle (other than chapter 2, relating to tax on self-employment income), or prior income, war-profits, or excess-profits tax laws,

but not less than the amount allowable under this subtitle or prior income tax laws. Where no method has been adopted under section 167 (relating to depreciation deduction), the amount allowable shall be determined under the straight line method. Subparagraph (B) of this paragraph shall not apply in respect of any period since February 28, 1913, and before January 1, 1952, unless an election has been made under section 1020 (as in effect before the date of the enactment of the Tax Reform Act of 1976). Where for any taxable year before the taxable year 1932 the depletion allowance was based on discovery value or a percentage of income, then the adjustment for depletion for such year shall be based on the depletion which would have been allowable for such year if computed without reference to discovery value or a percentage of income;

(3) in respect of any period—

(A) before March 1, 1913,

(B) since February 28, 1913, during which such property was held by a person or an organization not subject to income taxation under this chapter or prior income tax laws,

(C) since February 28, 1913, and before January 1, 1958, during which such property was held by a person subject to tax under part I of subchapter L (or the corresponding provisions of prior income tax laws), to the extent that paragraph (2) does not apply, and

(D) since February 28, 1913, during which such property was held by a person subject

to tax under part II[1] of subchapter L (or the corresponding provisions of prior income tax laws), to the extent that paragraph (2) does not apply,

for exhaustion, wear and tear, obsolescence, amortization, and depletion, to the extent sustained;

(4) in the case of stock (to the extent not provided for in the foregoing paragraphs) for the amount of distributions previously made which, under the law applicable to the year in which the distribution was made, either were tax-free or were applicable in reduction of basis (not including distributions made by a corporation which was classified as a personal service corporation under the provisions of the Revenue Act of 1918 (40 Stat. 1057), or the Revenue Act of 1921 (42 Stat. 227), out of its earnings or profits which were taxable in accordance with the provisions of section 218 of the Revenue Act of 1918 or 1921);

(5) in the case of any bond (as defined in section 171(d)) the interest on which is wholly exempt from the tax imposed by this subtitle, to the extent of the amortizable bond premium disallowable as a deduction pursuant to section 171(a)(2), and in the case of any other bond (as defined in section 171(d)) to the extent of the deductions allowable pursuant to section 171(a)(1) (or the amount applied to reduce interest payments under section 171(e)(2)) with respect thereto;

(6) in the case of any municipal bond (as defined in section 75(b)), to the extent provided in section 75(a)(2);

(7) in the case of a residence the acquisition of which resulted, under section 1034 (as in effect on the day before the date of the enactment of the Taxpayer Relief Act of 1997), in the nonrecognition of any part of the gain realized on the sale, exchange, or involuntary conversion of another residence, to the extent provided in section 1034(e) (as so in effect);

(8) in the case of property pledged to the Commodity Credit Corporation, to the extent of the amount received as a loan from the Commodity Credit Corporation and treated by the taxpayer as income for the year in which received pursuant to section 77, and to the extent of any deficiency on such loan with respect to which the taxpayer has been relieved from liability;

(9) for amounts allowed as deductions as deferred expenses under section 616(b) (relating to certain expenditures in the development of mines) and resulting in a reduction of the taxpayer's taxes under this subtitle, but not less than the amounts allowable under such section for the taxable year and prior years;

[(10) Repealed. Pub. L. 94–455, title XIX, § 1901(b)(21)(G), Oct. 4, 1976, 90 Stat. 1798]

(11) for deductions to the extent disallowed under section 268 (relating to sale of land with unharvested crops), notwithstanding the provisions of any other paragraph of this subsection;

[(12) Repealed. Pub. L. 113–295, div. A, title II, § 221(a)(75), Dec. 19, 2014, 128 Stat. 4049]

[(13) Repealed. Pub. L. 108–357, title IV, § 413(c)(19), Oct. 22, 2004, 118 Stat. 1509]

(14) for amounts allowed as deductions as deferred expenses under section 174(b)(1)[1] (relating to research and experimental expenditures) and resulting in a reduction of the taxpayers' taxes under this subtitle, but not less than the amounts allowable under such section for the taxable year and prior years;

(15) for deductions to the extent disallowed under section 272 (relating to disposal of coal or domestic iron ore), notwithstanding the provisions of any other paragraph of this subsection;

(16) in the case of any evidence of indebtedness referred to in section 811(b) (relating to amortization of premium and accrual of discount in the case of life insurance companies), to the extent of the adjustments required under section 811(b) (or the corresponding provisions of prior income tax laws) for the taxable year and all prior taxable years;

(17) to the extent provided in section 1367 in the case of stock of, and indebtedness owed to, shareholders of an S corporation;

(18) to the extent provided in section 961 in the case of stock in controlled foreign corporations (or foreign corporations which were controlled foreign corporations) and of property by reason of which a person is considered as owning such stock;

(19) to the extent provided in section 50(c), in the case of expenditures with respect to which a credit has been allowed under section 38;

(20) for amounts allowed as deductions under section 59(e) (relating to optional 10-year writeoff of certain tax preferences);

(21) to the extent provided in section 1059 (relating to reduction in basis for extraordinary dividends);

(22) in the case of qualified replacement property the acquisition of which resulted under section 1042 in the nonrecognition of any part of the gain realized on the sale or exchange of any property, to the extent provided in section 1042(d),[2]

(23) in the case of property the acquisition of which resulted under section 1043, 1045, or 1397B in the nonrecognition of any part of the gain realized on the sale of other property, to the extent provided in section 1043(c), 1045(b)(3), or 1397B(b)(4), as the case may be,[2]

[(24) Repealed. Pub. L. 113–295, div. A, title II, § 221(a)(34)(G), Dec. 19, 2014, 128 Stat. 4042]

[(25) Repealed. Pub. L. 113–295, div. A, title II, § 221(a)(2)(D), Dec. 19, 2014, 128 Stat. 4037]

(26) to the extent provided in sections 23(g) and 137(e),[2]

(27) in the case of a residence with respect to which a credit was allowed under section 1400C, to the extent provided in section 1400C(h),[2]

(28) in the case of a facility with respect to which a credit was allowed under section 45F, to the extent provided in section 45F(f)(1),[2]

(29) in the case of railroad track with respect to which a credit was allowed under section 45G, to the extent provided in section 45G(e)(3),[2]

[1] See References in Text note below.

[2] So in original. The comma probably should be a semicolon.

[1] See References in Text note below.

(30) to the extent provided in section 179B(c),[2]

(31) to the extent provided in section 179D(e),[2]

(32) to the extent provided in section 45L(e), in the case of amounts with respect to which a credit has been allowed under section 45L,[2]

(33) to the extent provided in section 25C(f), in the case of amounts with respect to which a credit has been allowed under section 25C,[2]

(34) to the extent provided in section 25D(f), in the case of amounts with respect to which a credit has been allowed under section 25D,[2]

(35) to the extent provided in section 30B(h)(4),[2]

(36) to the extent provided in section 30C(e)(1),[2]

(37) to the extent provided in section 30D(f)(1),[2] and

(38) to the extent provided in subsections (b)(2) and (c) of section 1400Z–2.

(b) Substituted basis

Whenever it appears that the basis of property in the hands of the taxpayer is a substituted basis, then the adjustments provided in subsection (a) shall be made after first making in respect of such substituted basis proper adjustments of a similar nature in respect of the period during which the property was held by the transferor, donor, or grantor, or during which the other property was held by the person for whom the basis is to be determined. A similar rule shall be applied in the case of a series of substituted bases.

(c) Increase in basis of property on which additional estate tax is imposed

(1) Tax imposed with respect to entire interest

If an additional estate tax is imposed under section 2032A(c)(1) with respect to any interest in property and the qualified heir makes an election under this subsection with respect to the imposition of such tax, the adjusted basis of such interest shall be increased by an amount equal to the excess of—

(A) the fair market value of such interest on the date of the decedent's death (or the alternate valuation date under section 2032, if the executor of the decedent's estate elected the application of such section), over

(B) the value of such interest determined under section 2032A(a).

(2) Partial dispositions

(A) In general

In the case of any partial disposition for which an election under this subsection is made, the increase in basis under paragraph (1) shall be an amount—

(i) which bears the same ratio to the increase which would be determined under paragraph (1) (without regard to this paragraph) with respect to the entire interest, as

(ii) the amount of the tax imposed under section 2032A(c)(1) with respect to such disposition bears to the adjusted tax difference attributable to the entire interest (as determined under section 2032A(c)(2)(B)).

(B) Partial disposition

For purposes of subparagraph (A), the term ''partial disposition'' means any disposition or cessation to which subsection (c)(2)(D), (h)(1)(B), or (i)(1)(B) of section 2032A applies.

(3) Time adjustment made

Any increase in basis under this subsection shall be deemed to have occurred immediately before the disposition or cessation resulting in the imposition of the tax under section 2032A(c)(1).

(4) Special rule in the case of substituted property

If the tax under section 2032A(c)(1) is imposed with respect to qualified replacement property (as defined in section 2032A(h)(3)(B)) or qualified exchange property (as defined in section 2032A(i)(3)), the increase in basis under paragraph (1) shall be made by reference to the property involuntarily converted or exchanged (as the case may be).

(5) Election

(A) In general

An election under this subsection shall be made at such time and in such manner as the Secretary shall by regulations prescribe. Such an election, once made, shall be irrevocable.

(B) Interest on recaptured amount

If an election is made under this subsection with respect to any additional estate tax imposed under section 2032A(c)(1), for purposes of section 6601 (relating to interest on underpayments), the last date prescribed for payment of such tax shall be deemed to be the last date prescribed for payment of the tax imposed by section 2001 with respect to the estate of the decedent (as determined for purposes of section 6601).

(d) Reduction in basis of automobile on which gas guzzler tax was imposed

If—

(1) the taxpayer acquires any automobile with respect to which a tax was imposed by section 4064, and

(2) the use of such automobile by the taxpayer begins not more than 1 year after the date of the first sale for ultimate use of such automobile,

the basis of such automobile shall be reduced by the amount of the tax imposed by section 4064 with respect to such automobile. In the case of importation, if the date of entry or withdrawal from warehouse for consumption is later than the date of the first sale for ultimate use, such later date shall be substituted for the date of such first sale in the preceding sentence.

(e) Cross reference

For treatment of separate mineral interests as one property, see section 614.

(Aug. 16, 1954, ch. 736, 68A Stat. 299; June 29, 1956, ch. 464, § 4(c), 70 Stat. 407; Pub. L. 85–866, title I, §§ 2(b), 64(d)(2), Sept. 2, 1958, 72 Stat. 1607, 1656; Pub. L. 86–69, § 3(d), June 25, 1959, 73 Stat. 139; Pub. L. 87–834, §§ 2(f), 8(g)(2), 12(b)(4), Oct. 16, 1962, 76 Stat. 972, 998, 1031; Pub. L. 88–272, title II,

§§ 203(a)(3)(C), 225(j)(2), 227(b)(5), Feb. 26, 1964, 78 Stat. 34, 93, 98; Pub. L. 91–172, title II, § 231(c)(3), title V, §§ 504(c)(4), 516(c)(2)(B), Dec. 30, 1969, 83 Stat. 580, 633, 648; Pub. L. 94–455, title XIX, § 1901(a)(123), (b)(1)(F)(ii), (21)(G), (29)(A), (30)(A), title XX, § 2005(a)(3), Oct. 4, 1976, 90 Stat. 1784, 1790, 1798, 1799, 1876; Pub. L. 95–472, § 4(b), Oct. 17, 1978, 92 Stat. 1335; Pub. L. 95–600, title V, § 515(2), title VI, § 601(b)(3), title VII, § 702(r)(3), Nov. 6, 1978, 92 Stat. 2884, 2896, 2938; Pub. L. 95–618, title I, § 101(b)(3), title II, § 201(b), Nov. 9, 1978, 92 Stat. 3179, 3183; Pub. L. 96–222, title I, §§ 106(a)(2), (3), 107(a)(2)(C), Apr. 1, 1980, 94 Stat. 221, 222; Pub. L. 96–223, title IV, § 401(a), (c)(1), Apr. 2, 1980, 94 Stat. 299, 300; Pub. L. 97–34, title II, § 212(d)(2)(G), title IV, § 421(g), Aug. 13, 1981, 95 Stat. 239, 310; Pub. L. 97–248, title II, §§ 201(c)(2), 205(a)(5)(B), Sept. 3, 1982, 96 Stat. 418, 429; Pub. L. 97–354, § 5(a)(33), Oct. 19, 1982, 96 Stat. 1695; Pub. L. 98–369, div. A, title I, §§ 43(a)(2), 53(d)(3), title II, § 211(b)(14), title IV, § 474(r)(23), title V, § 541(b)(2), July 18, 1984, 98 Stat. 558, 568, 756, 844, 890; Pub. L. 99–514, title II, § 241(b)(2), title VII, § 701(e)(4)(D), title XIII, § 1303(b)(3), title XVIII, § 1899A(25), Oct. 22, 1986, 100 Stat. 2181, 2343, 2658, 2959; Pub. L. 100–647, title I, §§ 1006(j)(1)(B), 1018(u)(22), Nov. 10, 1988, 102 Stat. 3411, 3591; Pub. L. 101–194, title V, § 502(b)(2), Nov. 30, 1989, 103 Stat. 1755; Pub. L. 101–508, title XI, §§ 11801(c)(1), 11812(b)(10), 11813(b)(19), Nov. 5, 1990, 104 Stat. 1388–522, 1388–535, 1388–555; Pub. L. 102–486, title XIX, § 1913(a)(3)(A), (b)(2)(B), Oct. 24, 1992, 106 Stat. 3019, 3020; Pub. L. 103–66, title XIII, §§ 13114(b), 13213(a)(2)(F), 13261(f)(3), Aug. 10, 1993, 107 Stat. 431, 474, 539; Pub. L. 104–188, title I, §§ 1704(t)(56), 1807(c)(5), Aug. 20, 1996, 110 Stat. 1890, 1902; Pub. L. 105–34, title III, §§ 312(d)(6), 313(b)(1), title VII, § 701(b)(2), Aug. 5, 1997, 111 Stat. 840, 842, 869; Pub. L. 106–554, § 1(a)(7) [title I, § 116(b)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–603; Pub. L. 107–16, title II, § 205(b)(3), June 7, 2001, 115 Stat. 53; Pub. L. 108–357, title II, § 245(c)(2), title III, §§ 338(b)(4), 339(d), title IV, § 413(c)(19), Oct. 22, 2004, 118 Stat. 1448, 1481, 1484, 1509; Pub. L. 109–58, title XIII, §§ 1331(b)(1), 1332(c), 1333(b)(1), 1335(b)(4), 1341(b)(2), 1342(b)(2), Aug. 8, 2005, 119 Stat. 1023, 1026, 1029, 1036, 1049, 1051; Pub. L. 109–135, title IV, § 412(nn), Dec. 21, 2005, 119 Stat. 2639; Pub. L. 110–172, §§ 7(a)(1)(C), 11(a)(21), (22), Dec. 29, 2007, 121 Stat. 2481, 2486; Pub. L. 110–343, div. B, title II, § 205(d)(2), Oct. 3, 2008, 122 Stat. 3839; Pub. L. 111–5, div. B, title I, §§ 1141(b)(3), 1142(b)(6), Feb. 17, 2009, 123 Stat. 328, 331; Pub. L. 111–148, title X, § 10909(b)(2)(L), (c), Mar. 23, 2010, 124 Stat. 1023; Pub. L. 111–312, title I, § 101(b)(1), Dec. 17, 2010, 124 Stat. 3298; Pub. L. 113–295, div. A, title II, §§ 209(j)(2), 221(a)(2)(D), (34)(G), (75), Dec. 19, 2014, 128 Stat. 4030, 4037, 4042, 4049; Pub. L. 115–97, title I, §§ 13313(b), 13521(a), 13823(b), Dec. 22, 2017, 131 Stat. 2133, 2151, 2188.)

References in Text

Section 1020, referred to in subsec. (a)(2), was repealed by Pub. L. 94–455, title XIX, § 1901(a)(125), Oct. 4, 1976, 90 Stat. 1784.

The Tax Reform Act of 1976, referred to in subsec. (a)(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.

Part II of subchapter L, referred to in subsec. (a)(3)(D), was repealed and part III of subchapter L was redesignated as part II by Pub. L. 99–514, title X, § 1024(a)(1), (2), Oct. 22, 1986, 100 Stat. 2405.

The Revenue Act of 1918 (40 Stat. 1057), referred to in subsec. (a)(4), is act Feb. 24, 1919, ch. 18, 40 Stat. 1057. For complete classification of this Act to the Code, see Tables.

The Revenue Act of 1921 (42 Stat. 227), referred to in subsec. (a)(4), is act Nov. 23, 1921, ch. 136, 42 Stat. 227. For complete classification of this Act to the Code, see Tables.

Section 218 of the Revenue Act of 1918 or 1921, referred to in subsec. (a)(4), was not classified to the Code.

The date of the enactment of the Taxpayer Relief Act of 1997, referred to in subsec. (a)(7), is the date of enactment of Pub. L. 105–34, which was approved Aug. 5, 1997.

Section 174, referred to in subsec. (a)(14), was amended generally by Pub. L. 115–97, title I, § 13206(a), Dec. 22, 2017, 131 Stat. 2111. For provisions similar to those in former subsec. (b)(1) of section 174 relating to amortization of certain research and experimental expenditures, see subsecs. (a) and (b) of section 174.

Codification

Section 10909(b)(2)(L) of Pub. L. 111–148, which directed the amendment of section 1016(a)(26) without specifying the act to be amended, was executed to this section, which is section 1016 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2010 Amendment note below.

Amendments

2017—Subsec. (a)(1). Pub. L. 115–97, § 13521(a), substituted subpars. (A) and (B) for former subpars. (A) and (B) and concluding provisions which read as follows:

''(A) for taxes or other carrying charges described in section 266, or

''(B) for expenditures described in section 173 (relating to circulation expenditures),

for which deductions have been taken by the taxpayer in determining taxable income for the taxable year or prior taxable years;''.

Subsec. (a)(23). Pub. L. 115–97, § 13313(b), struck out ''1044,'' after ''section 1043,'' and ''1044(d),'' after ''section 1043(c),''.

Subsec. (a)(38). Pub. L. 115–97, § 13823(b), added par. (38).

2014—Subsec. (a)(12). Pub. L. 113–295, § 221(a)(75), struck out par. (12) which read as follows: ''to the extent provided in section 28(h) of the Internal Revenue Code of 1939 in the case of amounts specified in a shareholder's consent made under section 28 of such code;''.

Subsec. (a)(24). Pub. L. 113–295, § 221(a)(34)(G), struck out par. (24) which read as follows: ''to the extent provided in section 179A(e)(6)(A),''.

Subsec. (a)(25). Pub. L. 113–295, § 221(a)(2)(D), struck out par. (25) which read as follows: ''to the extent provided in section 30(e)(1),''.

Subsec. (a)(37). Pub. L. 113–295, § 209(j)(2), substituted ''section 30D(f)(1)'' for ''section 30D(e)(4)''.

2010—Subsec. (a)(26). Pub. L. 111–148, § 10909(b)(2)(L), (c), as amended by Pub. L. 111–312, temporarily substituted ''36C(g)'' for ''23(g)''. See Codification note above and Effective and Termination Dates of 2010 Amendment note below.

2009—Subsec. (a)(25). Pub. L. 111–5, § 1142(b)(6), substituted ''section 30(e)(1)'' for ''section 30(d)(1)''.

Pub. L. 111–5, § 1141(b)(3), which directed amendment of subsec. (a)(25) by substituting ''section 30D(f)(1)'' for ''section 30D(e)(4)'', could not be executed because ''section 30D(e)(4)'' did not appear in text.

2008—Subsec. (a)(37). Pub. L. 110–343 added par. (37).

2007—Subsec. (a)(31), (32). Pub. L. 110–172, § 7(a)(1)(C), redesignated pars. (32) and (33) as (31) and (32), respectively, and struck out former par. (31) which read as follows: ''in the case of a facility with respect to which a credit was allowed under section 45H, to the extent provided in section 45H(d),''.

Subsec. (a)(33). Pub. L. 110–172, § 11(a)(21), substituted ''section 25C(f)'' for ''section 25C(e)''.

Pub. L. 110–172, §7(a)(1)(C), redesignated par. (34) as (33). Former par. (33) redesignated (32).

Subsec. (a)(34), (35). Pub. L. 110–172, §7(a)(1)(C), redesignated pars. (35) and (36) as (34) and (35), respectively. Former par. (34) redesignated (33).

Subsec. (a)(36). Pub. L. 110–172, §11(a)(22), substituted ''section 30C(e)(1)'' for ''section 30C(f)''.

Pub. L. 110–172, §7(a)(1)(C), redesignated par. (37) as (36). Former par. (36) redesignated (35).

Subsec. (a)(37). Pub. L. 110–172, §7(a)(1)(C), redesignated par. (37) as (36).

2005—Subsec. (a)(23). Pub. L. 109–135 substituted ''1045(b)(3)'' for ''1045(b)(4)''.

Subsec. (a)(32). Pub. L. 109–58, §1331(b)(1), added par. (32).

Subsec. (a)(33). Pub. L. 109–58, §1332(c), added par. (33).

Subsec. (a)(34). Pub. L. 109–58, §1333(b)(1), added par. (34).

Subsec. (a)(35). Pub. L. 109–58, §1335(b)(4), added par. (35).

Subsec. (a)(36). Pub. L. 109–58, §1341(b)(2), added par. (36).

Subsec. (a)(37). Pub. L. 109–58, §1342(b)(2), added par. (37).

2004—Subsec. (a)(13). Pub. L. 108–357, §413(c)(19), struck out par. (13) which read as follows: ''to the extent provided in section 551(e) in the case of the stock of United States shareholders in a foreign personal holding company;''.

Subsec. (a)(29). Pub. L. 108–357, §245(c)(2), added par. (29).

Subsec. (a)(30). Pub. L. 108–357, §338(b)(4), added par. (30).

Subsec. (a)(31). Pub. L. 108–357, §339(d), added par. (31).

2001—Subsec. (a)(28). Pub. L. 107–16 added par. (28).

2000—Subsec. (a)(23). Pub. L. 106–554 substituted ''1045, or 1397B'' for ''or 1045'' and ''1045(b)(4), or 1397B(b)(4)'' for ''or 1045(b)(4)''.

1997—Subsec. (a)(7). Pub. L. 105–34, §312(d)(6), inserted ''(as in effect on the day before the date of the enactment of the Taxpayer Relief Act of 1997)'' after ''section 1034'' and ''(as so in effect)'' after ''section 1034(e)''.

Subsec. (a)(23). Pub. L. 105–34, §313(b)(1), substituted '', 1044, or 1045'' for ''or 1044'' and '', 1044(d), or 1045(b)(4)'' for ''or 1044(d)''.

Subsec. (a)(27). Pub. L. 105–34, §701(b)(2), added par. (27).

1996—Subsec. (a)(20). Pub. L. 104–188, §1704(t)(56), provided that section 11813(b)(19) of Pub. L. 101–508 shall be applied as if ''Paragraph (20) of section 1016(a), as redesignated by section 11801,'' appeared instead of ''paragraph (21) of section 1016(a)''. See 1990 Amendment note below.

Subsec. (a)(26). Pub. L. 104–188, §1807(c)(5), added par. (26).

1993—Subsec. (a)(19) to (23). Pub. L. 103–66, §13261(f)(3), redesignated pars. (20) to (24) as (19) to (23), respectively, and struck out former par. (19) which read as follows: ''for amounts allowed as deductions for payments made on account of transfers of franchises, trademarks, or trade names under section 1253(d)(2);''.

Subsec. (a)(24). Pub. L. 103–66, §13261(f)(3), redesignated par. (25) as (24). Former par. (24) redesignated (23).

Pub. L. 103–66, §13114(b), substituted ''section 1043 or 1044'' for ''section 1043'' and ''section 1043(c) or 1044(d), as the case may be'' for ''section 1043(c)''.

Subsec. (a)(25), (26). Pub. L. 103–66, §13261(f)(3), redesignated pars. (25) and (26) as (24) and (25), respectively.

Subsec. (e). Pub. L. 103–66, §13213(a)(2)(F), amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows:

''(1) For treatment of certain expenses incident to the purchase of a residence which were deducted as moving expenses by the taxpayer or his spouse under section 217(a), see section 217(e).

''(2) For treatment of separate mineral interests as one property, see section 614.''

1992—Subsec. (a)(25), (26). Pub. L. 102–486 added pars. (25) and (26).

1990—Subsec. (a)(2). Pub. L. 101–508, §11812(b)(10), substituted ''under the straight line method'' for ''under section 167(b)(1)'' in concluding provisions.

Subsec. (a)(20). Pub. L. 101–508, §11813(b)(19), which directed the amendment of subsec. (a)(21) by striking ''section 48(q)'' and inserting ''section 50(c)'', was executed to subsec. (a)(20). See 1996 Amendment note above.

Pub. L. 101–508, §11801(c)(1), redesignated par. (21) as (20) and struck out former par. (20) which read as follows: ''to the extent provided in section 23(e), in the case of property with respect to which a credit has been allowed under section 23;''.

Subsec. (a)(21) to (25). Pub. L. 101–508, §11801(c)(1), redesignated pars. (21) to (25) as (20) to (24), respectively.

1989—Subsec. (a)(25). Pub. L. 101–194 added par. (25).

1988—Subsec. (a)(5). Pub. L. 100–647, §1006(j)(1)(B), inserted ''(or the amount applied to reduce interest payments under section 171(e)(2))'' after ''allowable pursuant to section 171(a)(1)''.

Subsec. (a)(21) to (26). Pub. L. 100–647, §1018(u)(22), added pars. (21) to (24) and struck out former pars. (23) to (26) which read as follows:

''(23) to the extent provided in section 48(q) in the case of expenditures with respect to which a credit has been allowed under section 38;

''(24) for amounts allowed as deductions under section 59(d) (relating to optional 10-year writeoff of certain tax preferences);

''(25) to the extent provided in section 1059 (relating to reduction in basis for extraordinary dividends); and

''(26) in the case of qualified replacement property, the acquisition of which resulted under section 1042 in the nonrecognition of any part of the gain realized on the sale or exchange of any property, to the extent provided in section 1042(c).''

Former pars. (21) and (22) had been struck out previously.

1986—Subsec. (a). Pub. L. 99–514, §1899A(25), which directed the amendment of pars. (23) to (26) by substituting a semicolon for a comma at the end thereof was executed to pars. (24) to (26) in view of the prior repeal of par. (23).

Pub. L. 99–514, §1303(b)(3), which directed the amendment of subsec. (a) by striking out par. (22) and redesignating pars. (23) to (27) as (22) to (26), respectively, was executed by striking out par. (21) to reflect the probable intent of Congress in view of the amendment by section 241(b)(2) of Pub. L. 99–514. Prior to the amendment, par. (21) read as follows: ''to the extent provided in section 1395 in the case of stock of shareholders of a general stock ownership corporation (as defined in section 1391) which makes the election provided by section 1392;''.

Pub. L. 99–514, §241(b)(2), redesignated pars. (17) to (27) as (16) to (26), respectively, and struck out former par. (16) which read as follows: ''for amounts allowed as deductions for expenditures treated as deferred expenses under section 177 (relating to trademark and trade name expenditures) and resulting in a reduction of the taxpayer's taxes under this subtitle, but not less than the amounts allowable under such section for the taxable year and prior years;''.

Subsec. (a)(24). Pub. L. 99–514, §701(e)(4)(D), substituted ''section 59(d)'' for ''section 58(i)''.

1984—Subsec. (a)(17). Pub. L. 98–369, §211(b)(14), substituted ''section 811(b)'' for ''section 818(b)'' in two places.

Subsec. (a)(21). Pub. L. 98–369, §474(r)(23), substituted ''section 23(e)'' for ''section 44C(e)'' and ''section 23'' for ''section 44C''.

Subsec. (a)(26). Pub. L. 98–369, §53(d)(3), added par. (26).

Subsec. (a)(27). Pub. L. 98–369, §541(b)(2), added par. (27).

Subsec. (b). Pub. L. 98–369, §43(a)(2), struck out ''The term 'substituted basis' as used in this section means a basis determined under any provision of this subchapter and subchapters C (relating to corporate distributions and adjustments), K (relating to partners

and partnerships), and P (relating to capital gains and losses), or under any corresponding provision of a prior income tax law, providing that the basis shall be determined (1) by reference to the basis in the hands of a transferor, donor, or grantor, or (2) by reference to other property held at any time by the person for whom the basis is to be determined.'' See section 7701(a)(42) of this title.

1982—Subsec. (a)(18). Pub. L. 97–354 substituted ''section 1367'' for ''section 1376'', ''indebtedness owed to'' for ''indebtedness owing'', and ''an S corporation'' for ''an electing small business corporation (as defined in section 1371(b))''.

Subsec. (a)(24). Pub. L. 97–248, §205(a)(5)(B), substituted ''to the extent provided in section 48(q)'' for ''to the extent provided in section 48(g)(5)''.

Subsec. (a)(25). Pub. L. 97–248, §201(c)(2), added par. (25).

1981—Subsec. (a)(24). Pub. L. 97–34, §212(d)(2)(G), added par. (24).

Subsec. (c). Pub. L. 97–34, §421(g), substituted provisions respecting increase in basis of property on which additional estate tax is imposed for provisions for increase in basis in the case of certain involuntary conversions, if such compulsory or involuntary conversions are within the meaning of section 1033, and an additional estate tax is imposed under section 2032A, and provisions respecting time adjustment made.

1980—Subsec. (a)(22). Pub. L. 96–222, §106(a)(2), redesignated par. (21), relating to the extent provided in section 1395 in the case of stock of shareholders of a general stock ownership corporation, as (22).

Subsec. (a)(23). Pub. L. 96–223, §401(a), repealed the amendments made by Pub. L. 94–455, §2005(a)(3), and Pub. L. 95–600, §702(r)(3). See 1976 and 1978 Amendment notes below.

Subsec. (c). Pub. L. 96–223, §401(c)(1), struck out provision relating to the net appreciation of in value of certain property and struck out references to section 1023 of this title.

1978—Subsec. (a)(21). Pub. L. 95–618, §101(b)(3), added par. (21) relating to an adjustment to the extent provided in section 44C.

Pub. L. 95–600, §601(b)(3), as amended by Pub. L. 96–222, §106(a)(3), added par. (21) relating to an adjustment to the extent provided in section 1395.

Subsec. (a)(23). Pub. L. 95–600, §702(r)(3), which redesignated par. (23) as (21), was repealed by Pub. L. 96–222, §107(a)(2)(C), and Pub. L. 96–223, §401(a). See Repeals note below.

Pub. L. 95–600, §515(2), substituted ''December 31, 1979'' for ''December 31, 1976''.

Subsec. (c). Pub. L. 95–472 added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 95–618, §201(b), added subsec. (d). Former subsec. (d) redesignated (e).

Pub. L. 95–472 redesignated former subsec. (c) as (d).

Subsec. (e). Pub. L. 95–618, §201(b), redesignated former subsec. (d) as (e).

1976—Subsec. (a)(2). Pub. L. 94–455, §1901(b)(29)(A), inserted ''(as in effect before the date of the enactment of the Tax Reform Act of 1976)'' after ''under section 1020''.

Subsec. (a)(10). Pub. L. 94–455, §1901(b)(21)(G), struck out par. (10) which related to adjustment for the amounts allowed as deductions as deferred expenses under section 615(b) of this title.

Subsec. (a)(13). Pub. L. 94–455, §1901(b)(1)(F)(ii), substituted ''section 551(e)'' for ''section 551(f)''.

Subsec. (a)(19). Pub. L. 94–455, §1901(a)(123), (b)(30)(A), redesignated par. (20) as (19). Former par. (19), which related to adjustment of section 38 property to the extent provided in sections 48(g) and 203 of this title, was struck out.

Subsec. (a)(20). Pub. L. 94–455, §1901(b)(30)(A), redesignated par. (22) as (20). Former par. (20) redesignated (19).

Subsec. (a)(21). Pub. L. 94–455, §1901(b)(30)(A), struck out par. (21) which related to property adjustment to the extent provided in section 1022 of this title.

Subsec. (a)(22). Pub. L. 94–455, §1901(b)(30)(A), redesignated par. (22) as (20).

Subsec. (a)(23). Pub. L. 94–455, §2005(a)(3), added par. (23). See Repeals note below.

1969—Subsec. (a)(22). Pub. L. 91–172, §516(c)(2)(B), added par. (22).

Subsec. (a)(10). Pub. L. 91–172, §504(c)(4), limited exploration expenditures referred to in this par. to pre-1970 exploration expenditures.

Subsec. (c). Pub. L. 91–172, §231(c)(3), redesignated existing provisions as par. (2) and added par. (1).

1964—Subsec. (a)(15). Pub. L. 88–272, §227(b)(5), inserted ''or domestic iron ore''.

Subsec. (a)(19). Pub. L. 88–272, §203(a)(3)(C), inserted ''and in section 203(a)(2) of the Revenue Act of 1964''.

Subsec. (a)(21). Pub. L. 88–272, §225(j)(2), added par. (21).

1962—Subsec. (a)(3)(D). Pub. L. 87–834, §8(g)(2), added subpar. (D).

Subsec. (a)(19). Pub. L. 87–834, §2(f), added par. (19).

Subsec. (a)(20). Pub. L. 87–834, §12(b)(4), added par. (20).

1959—Subsec. (a)(3)(C). Pub. L. 86–69, §3(d)(1), added subpar. (C).

Subsec. (a)(17). Pub. L. 86–69, §3(d)(2), added par. (17).

1958—Subsec. (a)(6). Pub. L. 85–866, §2(b), struck out ''short-term'' before ''municipal bond''.

Subsec. (a)(18). Pub. L. 85–866, §64(d)(2), added par. (18).

1956—Subsec. (a)(16). Act June 29, 1956, added par. (16).

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–97, title I, §13313(c), Dec. 22, 2017, 131 Stat. 2133, provided that: ''The amendments made by this section [amending this section and repealing section 1044 of this title] shall apply to sales after December 31, 2017.''

Pub. L. 115–97, title I, §13521(b), Dec. 22, 2017, 131 Stat. 2151, provided that: ''The amendment made by this section [amending this section] shall apply to transactions entered into after August 25, 2009.''

Pub. L. 115–97, title I, §13823(d), Dec. 22, 2017, 131 Stat. 2188, provided that: ''The amendments made by this section [enacting subchapter Z of this chapter and amending this section] shall take effect on the date of the enactment of this Act [Dec. 22, 2017].''

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by section 209(j)(2) of 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, 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.

Amendment by section 221(a)(2)(D), (34)(G), (75) 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 AND TERMINATION DATES OF 2010 AMENDMENT

Amendment by Pub. L. 111–148 terminated applicable to taxable years beginning after Dec. 31, 2011, and section is amended to read as if such amendment had never been enacted, see section 10909(c) of Pub. L. 111–148, set out as a note under section 1 of this title.

Amendment by Pub. L. 111–148 applicable to taxable years beginning after Dec. 31, 2009, see section 10909(d) of Pub. L. 111–148, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by section 1141(b)(3) of Pub. L. 111–5 applicable to vehicles acquired after Dec. 31, 2009, see section 1141(c) of Pub. L. 111–5, set out as a note under section 30B of this title.

Amendment by section 1142(b)(6) of Pub. L. 111–5 applicable to vehicles acquired after Feb. 17, 2009, see section 1142(c) of Pub. L. 111–5, set out as an Effective and

Termination Dates of 2009 Amendment note under section 24 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–343 applicable to taxable years beginning after Dec. 31, 2008, see section 205(e) of Pub. L. 110–343, set out as an Effective and Termination Dates of 2008 Amendment note under section 24 of this title.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by section 7(a)(1)(C) of 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 OF 2005 AMENDMENT

Amendment by section 1331(b)(1) of Pub. L. 109–58 applicable to property placed in service after Dec. 31, 2005, see section 1331(d) of Pub. L. 109–58, set out as an Effective Date note under section 179D of this title.

Amendment by section 1332(c) of Pub. L. 109–58 applicable to qualified new energy efficient homes acquired after Dec. 31, 2005, in taxable years ending after such date, see section 1332(f) of Pub. L. 109–58, set out as a note under section 38 of this title.

Amendment by section 1333(b)(1) of Pub. L. 109–58 applicable to property placed in service after Dec. 31, 2005, see section 1333(c) of Pub. L. 109–58, set out as an Effective Date note under section 25C of this title.

Amendment by section 1335(b)(4) of Pub. L. 109–58 applicable to property placed in service after Dec. 31, 2005, in taxable years ending after such date, see section 1335(c) of Pub. L. 109–58, set out as a note under section 23 of this title.

Amendment by section 1341(b)(2) of Pub. L. 109–58 applicable to property placed in service after Dec. 31, 2005, in taxable years ending after such date, see section 1341(c) of Pub. L. 109–58, set out as an Effective Date note under section 30B of this title.

Amendment by section 1342(b)(2) of Pub. L. 109–58 applicable to property placed in service after Dec. 31, 2005, in taxable years ending after such date, see section 1342(c) of Pub. L. 109–58, set out as an Effective Date note under section 30C of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 245(c)(2) of Pub. L. 108–357 applicable to taxable years beginning after Dec. 31, 2004, see section 245(e) of Pub. L. 108–357, set out as a note under section 38 of this title.

Amendment by section 338(b)(4) of Pub. L. 108–357 applicable to expenses paid or incurred after Dec. 31, 2002, in taxable years ending after such date, see section 338(c) of Pub. L. 108–357, set out as an Effective Date note under section 179B of this title.

Amendment by section 339(d) of Pub. L. 108–357 applicable to expenses paid or incurred after Dec. 31, 2002, in taxable years ending after such date, see section 339(f) of Pub. L. 108–357, set out as a note under section 38 of this title.

Amendment by section 413(c)(19) 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.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 205(c) of Pub. L. 107–16, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(7) [title I, § 116(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–604, provided that: ''The amendments made by this section [enacting subpart C of part III of subchapter U of this chapter, amending this section and sections 1223, 1394, 1400, and 1400B of this title, redesignating subpart C of part III of subchapter U of this chapter as subpart D of part III of subchapter U of this chapter, and renumbering sections 1397B and 1397C of this title as 1397C and 1397D, respectively, of this title] shall apply to qualified empowerment zone assets acquired after the date of the enactment of this Act [Dec. 21, 2000].''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 312(d)(6) of Pub. L. 105–34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105–34, set out as a note under section 121 of this title.

Pub. L. 105–34, title III, § 313(c), Aug. 5, 1997, 111 Stat. 842, provided that: ''The amendments made by this section [enacting section 1045 of this title and amending this section and section 1223 of this title] shall apply to sales after the date of enactment of this Act [Aug. 5, 1997].''

Amendment by section 701(b)(2) of Pub. L. 105–34 effective Aug. 5, 1997, see section 701(d) of Pub. L. 105–34, set out as a note under section 39 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1807(c)(5) 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, § 13114(d), Aug. 10, 1993, 107 Stat. 431, provided that: ''The amendments made by this section [enacting section 1044 of this title and amending this section] shall apply to sales on and after the date of the enactment of this Act [Aug. 10, 1993], in taxable years ending on and after such date.''

Amendment by section 13213(a)(2)(F) of Pub. L. 103–66 applicable to expenses incurred after Dec. 31, 1993, see section 13213(e) of Pub. L. 103–66 set out as a note under section 62 of this title.

Amendment by section 13261(f)(3) 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 1992 AMENDMENT

Amendment by Pub. L. 102–486 applicable to property placed in service after June 30, 1993, see section 1913(c) of Pub. L. 102–486, set out as a note under section 53 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11812(b)(10) 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.

Amendment by section 11813(b)(19) 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. 101–194, title V, § 502(c), Nov. 30, 1989, 103 Stat. 1755, provided that: ''The amendments made by this

section [enacting section 1043 of this title and amending this section and section 1223 of this title] shall apply to sales after the date of the enactment of this Act [Nov. 30, 1989].''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1006(j)(1)(B) of Pub. L. 100–647 applicable in the case of obligations acquired after Dec. 31, 1987, with exception allowing taxpayer to elect to have amendment apply to obligations acquired after Oct. 22, 1986, see section 1006(j)(1)(C) of Pub. L. 100–647, set out as a note under section 171 of this title.

Amendment by section 1018(u)(22) 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 241(b)(2) of Pub. L. 99–514 applicable to expenditures paid or incurred after Dec. 31, 1986, except as otherwise provided, see section 241(c) of Pub. L. 99–514, set out as an Effective Date of Repeal note under former section 177 of this title.

Amendment by section 701(e)(4)(D) 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 1303(b)(3) of Pub. L. 99–514 effective Oct. 22, 1986, see section 1311(f) of Pub. L. 99–514, as amended, set out as an Effective Date; Transitional Rules note under section 141 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 43(a)(2) 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 53(d)(3) of Pub. L. 98–369 applicable to distribution after Mar. 1, 1984, in taxable years ending after such date, see section 53(e)(1) of Pub. L. 98–369, set out as an Effective Date note under section 1059 of this title.

Amendment by section 211(b)(14) of 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.

Amendment by section 474(r)(23) 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 541(b)(2) of Pub. L. 98–369 applicable to sales of securities in taxable years beginning after July 18, 1984, see section 541(c) of Pub. L. 98–369, set out as an Effective Date note under section 1042 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.

Amendment by section 201(c)(2) 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 205(a)(5)(B) of Pub. L. 97–248 applicable to periods after Dec. 31, 1982, under rules similar to the rules of section 48(m) of this title, with certain qualifications, see section 205(c)(1) of Pub. L. 97–248, set out as an Effective Date note under section 196 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 212(d)(2)(G) of Pub. L. 97–34 applicable to expenditures incurred after Dec. 31, 1981, in taxable years ending after that date, see section 212(e) of Pub. L. 97–34, set out as a note under section 46 of this title.

Amendment by section 421(g) of Pub. L. 97–34 applicable with respect to the estates of decedents dying after Dec. 31, 1981, see section 421(k) of Pub. L. 97–34, set out as a note under section 2032A of this title.

EFFECTIVE DATE OF 1980 AMENDMENT AND REVIVAL OF PRIOR LAW

Amendment by section 401(a) of Pub. L. 96–223 (repealing section 2005(a)(3) of Pub. L. 94–455 and section 702(r)(3) of Pub. L. 96–500 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 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.

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

Pub. L. 95–618, title I, §101(c), Nov. 9, 1978, 92 Stat. 3180, provided that: ''The amendments made by this section [enacting section 23 of this title and amending this section and sections 56 and 6096 of this title] shall apply to taxable years ending on or after April 20, 1977.''

Amendment by section 201(b) of Pub. L. 95–618 applicable with respect to 1980 and later model year automobiles, see section 201(g) of Pub. L. 95–618, set out as an Effective Date note under section 4064 of this title.

Amendment by section 601(b)(3) of Pub. L. 95–600 effective with respect to corporations chartered after Dec. 31, 1978, and before Jan. 1, 1984, see section 601(d) of Pub. L. 95–600, set out as a note under section 172 of this title.

Amendment by section 702(r)(3) of Pub. L. 95–600 applicable to estates of decedents dying after Dec. 31, 1976, see section 702(r)(5) of Pub. L. 95–600, set out as a note under section 2051 of this title.

Pub. L. 95–472, §4(d), Oct. 17, 1978, 92 Stat. 1336, provided that: ''The amendments made by this section [amending this section and section 2032A of this title] shall apply to involuntary conversions after December 31, 1976.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(123), (b)(1)(F)(ii), (21)(G), (29)(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.

Pub. L. 94–455, title XIX, §1901(b)(30)(B), Oct. 4, 1976, 90 Stat. 1799, provided that: ''The amendment made by subparagraph (A)(i) [amending this section] shall apply with respect to stock or securities acquired from a decedent dying after the date of the enactment of this Act [Oct. 4, 1976].''

Amendment by section 2005(a)(3) of Pub. L. 94–455 applicable in respect of decedents dying after Dec. 31, 1976, see section 2005(f) of Pub. L. 94–455 set out as an Effective Date note under section 1015 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 231(c)(3) of Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 231(d) of Pub. L. 91–172, set out as a note under section 217 of this title.

Amendment by section 504(c)(4) of 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 a note under section 243 of this title.

Amendment by section 516(c)(2)(B) of Pub. L. 91–172 applicable to transfers after Dec. 31, 1969, see section 516(d)(3) of Pub. L. 91–172, set out as an Effective Date note under section 1001 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by section 203(a)(3)(C) of Pub. L. 88–272 applicable in case of property placed in service after Dec. 31, 1963, with respect to taxable years ending after such date, and in case of property placed in service before Jan. 1, 1964, with respect to taxable years beginning after Dec. 31, 1963, see section 203(a)(4) of Pub. L. 88–272, set out as a note under section 48 of this title.

Amendment by section 225(j)(2) of Pub. L. 88–272 applicable in respect of decedents dying after Dec. 31, 1963, see section 225(*l*) of Pub. L. 88–272, set out as a note under section 316 of this title.

Amendment by section 227(b)(5) of 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.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by section 2(f) of Pub. L. 87–834 applicable with respect to taxable years ending after Dec. 31, 1961, see section 2(h) of Pub. L. 87–834, set out as an Effective Date note under section 46 of this title.

Amendment by section 8(g)(2) of 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.

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 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 1958 AMENDMENT

Amendment by section 2(b) of Pub. L. 85–866 applicable with respect to taxable years ending after December 31, 1957, but only with respect to obligations acquired after such date, see section 2(c) of Pub. L. 85–866, set out as a note under section 75 of this title.

Amendment by section 64(d)(2) of Pub. L. 85–866 applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 64(e) of Pub. L. 85–866, set out as a note under section 172 of this title.

REPEALS

Section 2005(a)(3) of Pub. L. 94–455 and section 702(r)(3) of Pub. L. 95–600, cited as credits to this section, and the amendments made by those sections, 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 sections 2005(a)(3) and 702(r)(3). See Effective Date of 1980 Amendments and Revival of Prior Law note above.

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)(D) 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.

CHANGE FROM RETIREMENT TO STRAIGHT LINE METHOD OF COMPUTING DEPRECIATION IN CERTAIN CASES

Pub. L. 85–866, title I, § 94, Sept. 2, 1958, 72 Stat. 1669, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) SHORT TITLE.—This section may be cited as the 'Retirement-Straight Line Adjustment Act of 1958'.

''(b) MAKING OF ELECTION.—Any taxpayer who held retirement-straight line property on his 1956 adjustment date may elect to have this section apply. Such an election shall be made at such time and in such manner as the Secretary shall prescribe. Any election under this section shall be irrevocable and shall apply to all retirement-straight line property as hereinafter provided in this section (including such property for periods when held by predecessors of the taxpayer).

''(c) RETIREMENT-STRAIGHT LINE PROPERTY DEFINED.—For purposes of this section, the term 'retirement-straight line property' means any property of a kind or class with respect to which the taxpayer or a predecessor (under the terms and conditions prescribed for him by the Commissioner) for any taxable year beginning after December 31, 1940, and before January 1, 1956, changed from the retirement to the straight line method of computing the allowance of deductions for depreciation.

''(d) BASIS ADJUSTMENTS AS OF 1956 ADJUSTMENT DATE.—If the taxpayer has made an election under this section, then in determining the adjusted basis on his 1956 adjustment date of all retirement-straight line property held by the taxpayer, in lieu of the adjustments for depreciation provided in section 1016(a)(2) and (3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the following adjustments shall be made (effective as of his 1956 adjustment date) in respect of all periods before the 1956 adjustment date:

''(1) DEPRECIATION SUSTAINED BEFORE MARCH 1, 1913.—For depreciation sustained before March 1, 1913, on retirement-straight line property held by the taxpayer or a predecessor on such date for which cost was or is claimed as basis and which either—

''(A) RETIRED BEFORE CHANGEOVER.—Was retired by the taxpayer or a predecessor before the changeover date, but only if (i) a deduction was allowed in computing net income by reason of such retirement, and (ii) such deduction was computed on the basis of cost without adjustment for depreciation sustained before March 1, 1913. In the case of any such property retired during any taxable year beginning after December 31, 1929, the adjustment under this subparagraph shall not exceed that portion of the amount attributable to depreciation sus-

tained before March 1, 1913, which resulted (by reason of the deduction so allowed) in a reduction in taxes under the Internal Revenue Code of 1986 or prior income, war-profits, or excess-profits tax laws.

''(B) HELD ON CHANGEOVER DATE.—Was held by the taxpayer or a predecessor on the changeover date. This subparagraph shall not apply to property to which paragraph (2) applies.

The adjustment determined under this paragraph shall be allocated (in the manner prescribed by the Secretary) among all retirement-straight line property held by the taxpayer on his 1956 adjustment date.

''(2) PROPERTY DISPOSED OF AFTER CHANGEOVER AND BEFORE 1956 ADJUSTMENT DATE.—For that portion of the reserve prescribed by the Commissioner in connection with the changeover which was applicable to property—

''(A) sold, or

''(B) with respect to which a deduction was allowed for Federal income tax purposes by reason of casualty or 'abnormal' retirement in the nature of special obsolescence,

if such sale occurred in, or such deduction was allowed for, a period on or after the changeover date and before the taxpayer's 1956 adjustment date.

''(3) DEPRECIATION ALLOWABLE FROM CHANGEOVER TO 1956 ADJUSTMENT DATE.—For depreciation allowable, under the terms and conditions prescribed by the Commissioner in connection with the changeover, for all periods on and after the changeover date and before the taxpayer's 1956 adjustment date.

This subsection shall apply only with respect to taxable years beginning after December 31, 1955.

''(e) EFFECT ON PERIOD FROM CHANGEOVER TO 1956 ADJUSTMENT DATE.—If the taxpayer has made an election under this section, then in determining the adjusted basis of any retirement-straight line property as of any time on or after the changeover date and before the taxpayer's 1956 adjustment date, in lieu of the adjustments for depreciation provided in section 1016(a)(2) and (3) of the Internal Revenue Code of 1986 and the corresponding provisions of prior revenue laws, the following adjustments shall be made:

''(1) FOR PRESCRIBED RESERVE.—For the amount of the reserve prescribed by the Commissioner in connection with the changeover.

''(2) FOR ALLOWABLE DEPRECIATION.—For the depreciation allowable under the terms and conditions prescribed by the Commissioner in connection with the changeover.

This subsection shall not apply in determining adjusted basis for purposes of section 437(c) of the Internal Revenue Code of 1939. This subsection shall apply only with respect to taxable years beginning on or after the changeover date and before the taxpayer's 1956 adjustment date.

''(f) EQUITY INVESTED CAPITAL, ETC.—If an election is made under this section, then (not withstanding the terms and conditions prescribed by the Commissioner in connection with the changeover)—

''(1) EQUITY INVESTED CAPITAL.—In determining equity invested capital under sections 458 and 718 of the Internal Revenue Code of 1939, accumulated earnings and profits as of the changeover date, and as of the beginning of each taxable year thereafter, shall be reduced by the depreciation sustained before March 1, 1913, as computed under subsection (d)(1)(B); and

''(2) DEFINITION OF EQUITY CAPITAL.—In determining the adjusted basis of assets for the purpose of section 437(c) of the Internal Revenue Code of 1939 (and in addition to any other adjustments required by such Code), the basis shall be reduced by depreciation sustained before March 1, 1913 (as computed under subsection (d)), together with any depreciation allowable under subsection (e)(2) for any period before the year for which the excess profits credit is being computed.

''(g) DEFINITIONS.—For purposes of this section—

''(1) DEPRECIATION.—The term 'depreciation' means exhaustion, wear and tear, and obsolescence.

''(2) CHANGEOVER.—The term 'changeover' means a change from the retirement to the straight line method of computing the allowance of deductions for depreciation.

''(3) CHANGEOVER DATE.—The term 'changeover date' means the first day of the first taxable year for which the changeover was effective.

''(4) 1956 ADJUSTMENT DATE.—The term '1956 adjustment date' means, in the case of any taxpayer, the first day of his first taxable year beginning after December 31, 1955.

''(5) PREDECESSOR.—The term 'predecessor' means any person from whom property of a kind or class to which this section refers was acquired, if the basis of such property is determined by reference to its basis in the hands of such person. Where a series of transfers of property has occurred and where in each instance the basis of the property was determined by reference to its basis in the hands of the prior holder, the term includes each such prior holder.

''(6) The term 'Secretary' means the Secretary of the Treasury or his delegate.

''(7) The term 'Commissioner' means the Commissioner of Internal Revenue.''

§ 1017. Discharge of indebtedness

(a) General rule

If—

(1) an amount is excluded from gross income under subsection (a) of section 108 (relating to discharge of indebtedness), and

(2) under subsection (b)(2)(E), (b)(5), or (c)(1) of section 108, any portion of such amount is to be applied to reduce basis,

then such portion shall be applied in reduction of the basis of any property held by the taxpayer at the beginning of the taxable year following the taxable year in which the discharge occurs.

(b) Amount and properties determined under regulations

(1) In general

The amount of reduction to be applied under subsection (a) (not in excess of the portion referred to in subsection (a)), and the particular properties the bases of which are to be reduced, shall be determined under regulations prescribed by the Secretary.

(2) Limitation in title 11 case or insolvency

In the case of a discharge to which subparagraph (A) or (B) of section 108(a)(1) applies, the reduction in basis under subsection (a) of this section shall not exceed the excess of—

(A) the aggregate of the bases of the property held by the taxpayer immediately after the discharge, over

(B) the aggregate of the liabilities of the taxpayer immediately after the discharge.

The preceding sentence shall not apply to any reduction in basis by reason of an election under section 108(b)(5).

(3) Certain reductions may only be made in the basis of depreciable property

(A) In general

Any amount which under subsection (b)(5) or (c)(1) of section 108 is to be applied to reduce basis shall be applied only to reduce the basis of depreciable property held by the taxpayer.

(B) Depreciable property

For purposes of this section, the term ''depreciable property'' means any property of a

character subject to the allowance for depreciation, but only if a basis reduction under subsection (a) will reduce the amount of depreciation or amortization which otherwise would be allowable for the period immediately following such reduction.

(C) Special rule for partnership interests

For purposes of this section, any interest of a partner in a partnership shall be treated as depreciable property to the extent of such partner's proportionate interest in the depreciable property held by such partnership. The preceding sentence shall apply only if there is a corresponding reduction in the partnership's basis in depreciable property with respect to such partner.

(D) Special rule in case of affiliated group

For purposes of this section, if—

(i) a corporation holds stock in another corporation (hereinafter in this subparagraph referred to as the ''subsidiary''), and

(ii) such corporations are members of the same affiliated group which file a consolidated return under section 1501 for the taxable year in which the discharge occurs,

then such stock shall be treated as depreciable property to the extent that such subsidiary consents to a corresponding reduction in the basis of its depreciable property.

(E) Election to treat certain inventory as depreciable property

(i) In general

At the election of the taxpayer, for purposes of this section, the term ''depreciable property'' includes any real property which is described in section 1221(a)(1).

(ii) Election

An election under clause (i) shall be made on the taxpayer's return for the taxable year in which the discharge occurs or at such other time as may be permitted in regulations prescribed by the Secretary. Such an election, once made, may be revoked only with the consent of the Secretary.

(F) Special rules for qualified real property business indebtedness

In the case of any amount which under section 108(c)(1) is to be applied to reduce basis—

(i) depreciable property shall only include depreciable real property for purposes of subparagraphs (A) and (C),

(ii) subparagraph (E) shall not apply, and

(iii) in the case of property taken into account under section 108(c)(2)(B), the reduction with respect to such property shall be made as of the time immediately before disposition if earlier than the time under subsection (a).

(4) Special rules for qualified farm indebtedness

(A) In general

Any amount which under subsection (b)(2)(E) of section 108 is to be applied to reduce basis and which is attributable to an amount excluded under subsection (a)(1)(C) of section 108—

(i) shall be applied only to reduce the basis of qualified property held by the taxpayer, and

(ii) shall be applied to reduce the basis of qualified property in the following order:

(I) First the basis of qualified property which is depreciable property.

(II) Second the basis of qualified property which is land used or held for use in the trade or business of farming.

(III) Then the basis of other qualified property.

(B) Qualified property

For purposes of this paragraph, the term ''qualified property'' has the meaning given to such term by section 108(g)(3)(C).

(C) Certain rules made applicable

Rules similar to the rules of subparagraphs (C), (D), and (E) of paragraph (3) shall apply for purposes of this paragraph and section 108(g).

(c) Special rules

(1) Reduction not to be made in exempt property

In the case of an amount excluded from gross income under section 108(a)(1)(A), no reduction in basis shall be made under this section in the basis of property which the debtor treats as exempt property under section 522 of title 11 of the United States Code.

(2) Reductions in basis not treated as dispositions

For purposes of this title, a reduction in basis under this section shall not be treated as a disposition.

(d) Recapture of reductions

(1) In general

For purposes of sections 1245 and 1250—

(A) any property the basis of which is reduced under this section and which is neither section 1245 property nor section 1250 property shall be treated as section 1245 property, and

(B) any reduction under this section shall be treated as a deduction allowed for depreciation.

(2) Special rule for section 1250

For purposes of section 1250(b), the determination of what would have been the depreciation adjustments under the straight line method shall be made as if there had been no reduction under this section.

(Aug. 16, 1954, ch. 736, 68A Stat. 301; Pub. L. 94–455, title XIX, §§1906(b)(13)(A), 1951(c)(1), Oct. 4, 1976, 90 Stat. 1834, 1840; Pub. L. 96–589, §2(b), Dec. 24, 1980, 94 Stat. 3394; Pub. L. 99–514, title IV, §405(b), title VIII, §822(b)(4), (5), Oct. 22, 1986, 100 Stat. 2224, 2373; Pub. L. 100–647, title I, §1004(a)(5), Nov. 10, 1988, 102 Stat. 3386; Pub. L. 101–508, title XI, §11704(a)(12), Nov. 5, 1990, 104 Stat. 1388–518; Pub. L. 103–66, title XIII, §13150(c)(6)–(8), Aug. 10, 1993, 107 Stat. 448; Pub. L. 104–188, title I, §1703(n)(5), Aug. 20, 1996, 110

Stat. 1877; Pub. L. 105–206, title VI, § 6023(11), July 22, 1998, 112 Stat. 825; Pub. L. 106–170, title V, § 532(c)(2)(S), Dec. 17, 1999, 113 Stat. 1931.)

AMENDMENTS

1999—Subsec. (b)(3)(E)(i). Pub. L. 106–170 substituted ''1221(a)(1)'' for ''1221(1)''.

1998—Subsec. (a)(2). Pub. L. 105–206 substituted ''(b)(2)(E)'' for ''(b)(2)(D)''.

1996—Subsec. (b)(4)(A). Pub. L. 104–188 substituted ''subsection (b)(2)(E)'' for ''subsection (b)(2)(D)''.

1993—Subsec. (a)(2). Pub. L. 103–66, § 13150(c)(6), substituted '', (b)(5), or (c)(1)'' for ''or (b)(5)''.

Subsec. (b)(3)(A). Pub. L. 103–66, § 13150(c)(7), inserted ''or (c)(1)'' after ''subsection (b)(5)''.

Subsec. (b)(3)(F). Pub. L. 103–66, § 13150(c)(8), added subpar. (F).

1990—Subsec. (b)(4)(C). Pub. L. 101–508 substituted ''subparagraphs'' for ''subparagraph''.

1988—Subsec. (b)(4). Pub. L. 100–647 substituted ''Special rules for'' for ''Ordering rule in the case of'' in heading, and amended text generally. Prior to amendment, text read as follows: ''Any amount which is excluded from gross income under section 108(a) by reason of the discharge of qualified farm indebtedness (within the meaning of section 108(g)(2)) and which under subsection (b) of section 108 is to be applied to reduce basis shall be applied—

''(A) first to reduce the tax attributes described in section 108(b)(2) (other than subparagraph (D) thereof),

''(B) then to reduce basis of property other than property described in subparagraph (C), and

''(C) then to reduce the basis of land used or held for use in the trade or business of farming.''

1986—Subsec. (a)(2). Pub. L. 99–514, § 822(b)(4), substituted ''or (b)(5)'' for '', (b)(5), or (c)(1)(A)''.

Subsec. (b)(3)(A). Pub. L. 99–514, § 822(b)(5), struck out ''or (c)(1)(A)'' after ''subsection (b)(5)''.

Subsec. (b)(4). Pub. L. 99–514, § 405(b), added par. (4).

1980—Pub. L. 96–589 generally revised and expanded the section to specify the amount of reduction of basis of property under different subsections of section 108 of this title and the property to which such reduction is applicable, and provided for recapture of reductions for purposes of gains from depreciable property.

1976—Pub. L. 94–455, §§ 1906(b)(13)(A), 1951(c)(1), substituted ''section 108'' for ''section 108(a)'' in three places and struck out ''or his delegate'' after ''Secretary''.

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 Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§ 13001–13444, to which such amendment relates, see section 1703(*o*) of Pub. L. 104–188, set out as a note under section 39 of this title.

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 405(b) of Pub. L. 99–514 applicable to discharges of indebtedness occurring after Apr. 9, 1986, in taxable years ending after such date, see section 405(c) of Pub. L. 99–514, set out as a note under section 108 of this title.

Amendment by section 822(b)(4), (5) of Pub. L. 99–514 applicable to discharges after Dec. 31, 1986, see section 822(c) of Pub. L. 99–514, set out as a note under section 108 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) and (f) of Pub. L. 96–589, set out as a note under section 108 of this title.

[§ 1018. Repealed. Pub. L. 96–589, § 6(h)(1), Dec. 24, 1980, 94 Stat. 3410]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 301; Oct. 4, 1976, Pub. L. 94–455, title XIX, § 1901(a)(124), 90 Stat. 1784, provided for adjustment of capital structure before Sept. 22, 1938.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1979, but not to apply to proceedings under Title 11, Bankruptcy, commenced before Oct. 1, 1979, see section 7(e) of Pub. L. 96–589, set out as an Effective Date of 1980 Amendment note under section 108 of this title.

§ 1019. Property on which lessee has made improvements

Neither the basis nor the adjusted basis of any portion of real property shall, in the case of the lessor of such property, be increased or diminished on account of income derived by the lessor in respect of such property and excludable from gross income under section 109 (relating to improvements by lessee on lessor's property).

(Aug. 16, 1954, ch. 736, 68A Stat. 301; Pub. L. 113–295, div. A, title II, § 221(a)(76), Dec. 19, 2014, 128 Stat. 4049.)

AMENDMENTS

2014—Pub. L. 113–295 struck out last sentence which read as follows: ''If an amount representing any part of the value of real property attributable to buildings erected or other improvements made by a lessee in respect of such property was included in gross income of the lessor for any taxable year beginning before January 1, 1942, the basis of each portion of such property shall be properly adjusted for the amount so included in gross income.''

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.

[§ 1020. Repealed. Pub. L. 94–455, title XIX, § 1901(a)(125), Oct. 4, 1976, 90 Stat. 1784]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 302, related to election to have section 1016(a)(2)(B) of this title apply in respect of periods since Feb. 28, 1913, and before Jan. 1, 1952.

§ 1021. Sale of annuities

In case of the sale of an annuity contract, the adjusted basis shall in no case be less than zero.

(Aug. 16, 1954, ch. 736, 68A Stat. 302.)

[§ 1022. Repealed. Pub. L. 111–312, title III, § 301(a), Dec. 17, 2010, 124 Stat. 3300]

Section, added Pub. L. 107–16, title V, § 542(a), June 7, 2001, 115 Stat. 76, related to treatment of property acquired from a decedent dying after Dec. 31, 2009.

PRIOR PROVISIONS

A prior section 1022, added Pub. L. 88–272, title II, § 225(j)(1), Feb. 26, 1964, 78 Stat. 92, dealt with the increase in basis with respect to certain foreign personal holding company stock or securities, prior to repeal by Pub. L. 94–455, title XIX, § 1901(a)(126), Oct. 4, 1976, 90 Stat. 1784, applicable with respect to stock or securities acquired from a decedent dying after Oct. 4, 1976.

Another prior section 1022, act Aug. 16, 1954, ch. 736, 68A Stat. 302, relating to cross references, was renumbered section 1023.

EFFECTIVE DATE OF REPEAL

Repeal of section 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.

§ 1023. Cross references

(1) For certain distributions by a corporation which are applied in reduction of basis of stock, see section 301(c)(2).

(2) For basis in case of construction of new vessels, see chapter 533 of title 46, United States Code.

(Aug. 16, 1954, ch. 736, 68A Stat. 302, § 1022; renumbered § 1023, Pub. L. 88–272, title II, § 225(j)(1), Feb. 26, 1964, 78 Stat. 92; renumbered § 1024 and amended Pub. L. 94–455, title XIX, § 1901(a)(127), title XX, § 2005(a)(2), Oct. 4, 1976, 90 Stat. 1784, 1872; renumbered § 1023, Pub. L. 96–223, title IV, § 401(a), Apr. 2, 1980, 94 Stat. 299; Pub. L. 96–589, § 6(i)(4), Dec. 24, 1980, 94 Stat. 3410; Pub. L. 109–304, § 17(e)(4), Oct. 6, 2006, 120 Stat. 1708.)

PRIOR PROVISIONS

A prior section 1023, added Pub. L. 94–455, title XX, § 2005(a)(2), Oct. 4, 1976, 90 Stat. 1872; amended Pub. L. 95–600, title V, § 515(3), (4), title VII, § 702(c)(2)–(4), (6)–(8), Nov. 6, 1978, 92 Stat. 2884, 2926–2928, related to carryover basis for certain property acquired from a decedent dying after Dec. 31, 1979, prior to repeal by Pub. L. 96–223, title IV, § 401(a), Apr. 2, 1980, 94 Stat. 299. The repeal was achieved by repealing section 2005(a)(2) of Pub. L. 94–455 and the amendment made thereby, which had enacted prior section 1023.

AMENDMENTS

2006—Par. (2). Pub. L. 109–304 substituted ''chapter 533 of title 46, United States Code'' for ''section 511 of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1161)''.

1980—Pub. L. 96–589 redesignated par. (3) as (2). Former par. (2), which provided reference to sections 670, 796, and 922 of Title 11, Bankruptcy, for basis of property in case of certain reorganizations and arrangements under the Bankruptcy Act, was struck out.

1976—Par. (4). Pub. L. 94–455, § 1901(a)(127), struck out par. (4) which referred to section 405 of the Defense Production Act of 1950 for rules applicable in case of payments in violation of that Act.

EFFECTIVE DATE OF 1980 AMENDMENT AND REVIVAL OF PRIOR LAW

Amendment by Pub. L. 96–589 effective Oct. 1, 1979, but not to apply to proceedings under Title 11, Bankruptcy, commenced before Oct. 1, 1979, see section 7(e) of Pub. L. 96–589, set out as an Effective Date of 1980 Amendment note under section 108 of this title.

Pub. L. 96–223, title IV, § 401(b), Apr. 2, 1980, 94 Stat. 299, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Except to the extent necessary to carry out subsection (d) [set out as a note under section 1014 of this title], the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall be applied and administered as if the provisions repealed by subsection (a), and the amendments made by those provisions [enacting this section and sections 6039A and 6698A of this title, redesignating former section 1023 as section 1024 of this title, and amending sections 306, 691, 1001, 1014, 1016, 1223, and 1246 of this title], had not been enacted.''

Pub. L. 96–223, title IV, § 401(e), Apr. 2, 1980, 94 Stat. 301, provided that: ''The amendments made by this section [amending sections 306, 691, 1001, 1014, 1016, 1040, 1223, 1246, and 2614 of this title, repealing former section 1023 and sections 6039A and 6698A of this title, redesignating former section 1024 of this title as 1023, and enacting provisions set out as notes under this section and section 1014 of this title] shall apply in respect of decedents dying after December 31, 1976.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(127) 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.

REPEALS

Pub. L. 94–455, § 1901(a)(127), cited as a credit to this section, which renumbered this section as section 1024 of this title, was repealed by Pub. L. 96–223, title IV, § 401(a), Apr. 2, 1980, 94 Stat. 299, resulting in the redesignation of this section as section 1023 of this title. See Effective Date of 1980 Amendments and Revival of Prior Law note set out above.

[§ 1024. Renumbered § 1023]

PART III—COMMON NONTAXABLE EXCHANGES

Sec.

AMENDMENTS

2017—Pub. L. 115–97, title I, §§ 13303(b)(6), 13313(a), Dec. 22, 2017, 131 Stat. 2124, 2133, substituted ''Exchange of real property held for productive use or investment'' for ''Exchange of property held for productive use or investment'' in item 1031 and struck out item 1044 ''Rollover of publicly traded securities gain into specialized small business investment companies''.

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(d)(2), had never been enacted. See 2001 Amendment note below.

2001—Pub. L. 107–16, title V, § 542(d)(2), June 7, 2001, 115 Stat. 84, substituted ''Use of appreciated carryover basis property to satisfy pecuniary bequest'' for ''Transfer of certain farm, etc., real property'' in item 1040.

1997—Pub. L. 105–34, title III, §§ 312(d)(15), 313(b)(3), Aug. 5, 1997, 111 Stat. 841, 842, struck out item 1034 ''Rollover of gain on sale of principal residence'' and added item 1045.

1993—Pub. L. 103–66, title XIII, § 13114(c), Aug. 10, 1993, 107 Stat. 431, added item 1044.

1990—Pub. L. 101–508, title XI, § 11801(b)(8), Nov. 5, 1990, 104 Stat. 1388–522, struck out item 1039 ''Certain sales of low-income housing projects''.

1989—Pub. L. 101–194, title V, § 502(b)(3), Nov. 30, 1989, 103 Stat. 1755, added item 1043.

1986—Pub. L. 99–514, title XVIII, § 1854(a)(12), Oct. 22, 1986, 100 Stat. 2878, substituted ''employee stock ownership plans or certain cooperatives'' for ''employees'' in item 1042.

1984—Pub. L. 98–369, div. A, title IV, § 421(c), title V, § 541(b)(3), July 18, 1984, 98 Stat. 794, 890, added items 1041 and 1042.

1981—Pub. L. 97–34, title IV, § 421(j)(2)(C), Aug. 13, 1981, 95 Stat. 312, substituted ''Transfer of certain farm, etc., real property'' for ''Use of farm, etc., real property to satisfy pecuniary bequest'' in item 1040.

1980—Pub. L. 96–223, title IV, § 401(a), (c)(2)(B), Apr. 2, 1980, 94 Stat. 299, 300, amended item 1040 generally and repealed Pub. L. 94–455, § 2005(e)(1), and the amendment made thereby. See 1976 Amendment note below.

1978—Pub. L. 95–600, title IV, § 405(c)(2), Nov. 6, 1978, 92 Stat. 2871, substituted ''Rollover of gain on sale of principal residence'' for ''Sale or exchange of residence'' in item 1034.

1976—Pub. L. 94–455, title XX, § 2005(e)(2), Oct. 4, 1976, 90 Stat. 1878, which added item 1040, was repealed by Pub. L. 96–223, § 401(a). See section 401(b), (e) of Pub. L. 96–223, set out as an Effective Date of 1980 Amendments and Revival of Prior Law note under section 1023 of this title.

1969—Pub. L. 91–172, title IX, § 910(c), Dec. 30, 1969, 83 Stat. 722, added item 1039.

1964—Pub. L. 88–570, § 2(b), Sept. 2, 1964, 78 Stat. 856, added item 1038.

1959—Pub. L. 86–346, title II, § 201(b), Sept. 22, 1959, 73 Stat. 623, added item 1037.

§ 1031. Exchange of real property held for productive use or investment

(a) Nonrecognition of gain or loss from exchanges solely in kind

(1) In general

No gain or loss shall be recognized on the exchange of real property held for productive use in a trade or business or for investment if such real property is exchanged solely for real property of like kind which is to be held either for productive use in a trade or business or for investment.

(2) Exception for real property held for sale

This subsection shall not apply to any exchange of real property held primarily for sale.

(3) Requirement that property be identified and that exchange be completed not more than 180 days after transfer of exchanged property

For purposes of this subsection, any property received by the taxpayer shall be treated as property which is not like-kind property if—

(A) such property is not identified as property to be received in the exchange on or before the day which is 45 days after the date on which the taxpayer transfers the property relinquished in the exchange, or

(B) such property is received after the earlier of—

(i) the day which is 180 days after the date on which the taxpayer transfers the property relinquished in the exchange, or

(ii) the due date (determined with regard to extension) for the transferor's return of the tax imposed by this chapter for the taxable year in which the transfer of the relinquished property occurs.

(b) Gain from exchanges not solely in kind

If an exchange would be within the provisions of subsection (a), of section 1035(a), of section 1036(a), or of section 1037(a), if it were not for the fact that the property received in exchange consists not only of property permitted by such provisions to be received without the recognition of gain, but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property.

(c) Loss from exchanges not solely in kind

If an exchange would be within the provisions of subsection (a), of section 1035(a), of section 1036(a), or of section 1037(a), if it were not for the fact that the property received in exchange consists not only of property permitted by such provisions to be received without the recognition of gain or loss, but also of other property or money, then no loss from the exchange shall be recognized.

(d) Basis

If property was acquired on an exchange described in this section, section 1035(a), section 1036(a), or section 1037(a), then the basis shall be the same as that of the property exchanged, decreased in the amount of any money received by the taxpayer and increased in the amount of gain or decreased in the amount of loss to the taxpayer that was recognized on such exchange. If the property so acquired consisted in part of the type of property permitted by this section, section 1035(a), section 1036(a), or section 1037(a), to be received without the recognition of gain or loss, and in part of other property, the basis provided in this subsection shall be allocated between the properties (other than money) received, and for the purpose of the allocation there shall be assigned to such other property an amount equivalent to its fair market value at the date of the exchange. For purposes of this section, section 1035(a), and section 1036(a), where as part of the consideration to the taxpayer another party to the exchange assumed (as determined under section 357(d)) a liability of the taxpayer, such assumption shall be considered as money received by the taxpayer on the exchange.

(e) Application to certain partnerships

For purposes of this section, an interest in a partnership which has in effect a valid election under section 761(a) to be excluded from the application of all of subchapter K shall be treated as an interest in each of the assets of such partnership and not as an interest in a partnership.

(f) Special rules for exchanges between related persons

(1) In general

If—

(A) a taxpayer exchanges property with a related person,

(B) there is nonrecognition of gain or loss to the taxpayer under this section with respect to the exchange of such property (determined without regard to this subsection), and

(C) before the date 2 years after the date of the last transfer which was part of such exchange—

(i) the related person disposes of such property, or

(ii) the taxpayer disposes of the property received in the exchange from the related person which was of like kind to the property transferred by the taxpayer,

there shall be no nonrecognition of gain or loss under this section to the taxpayer with respect to such exchange; except that any gain or loss recognized by the taxpayer by reason of this subsection shall be taken into account as of the date on which the disposition referred to in subparagraph (C) occurs.

(2) Certain dispositions not taken into account

For purposes of paragraph (1)(C), there shall not be taken into account any disposition—

(A) after the earlier of the death of the taxpayer or the death of the related person,

(B) in a compulsory or involuntary conversion (within the meaning of section 1033) if the exchange occurred before the threat or imminence of such conversion, or

(C) with respect to which it is established to the satisfaction of the Secretary that neither the exchange nor such disposition had as one of its principal purposes the avoidance of Federal income tax.

(3) Related person

For purposes of this subsection, the term ''related person'' means any person bearing a relationship to the taxpayer described in section 267(b) or 707(b)(1).

(4) Treatment of certain transactions

This section shall not apply to any exchange which is part of a transaction (or series of transactions) structured to avoid the purposes of this subsection.

(g) Special rule where substantial diminution of risk

(1) In general

If paragraph (2) applies to any property for any period, the running of the period set forth in subsection (f)(1)(C) with respect to such property shall be suspended during such period.

(2) Property to which subsection applies

This paragraph shall apply to any property for any period during which the holder's risk of loss with respect to the property is substantially diminished by—

(A) the holding of a put with respect to such property,

(B) the holding by another person of a right to acquire such property, or

(C) a short sale or any other transaction.

(h) Special rules for foreign real property

Real property located in the United States and real property located outside the United States are not property of a like kind.

(Aug. 16, 1954, ch. 736, 68A Stat. 302; Pub. L. 85–866, title I, § 44, Sept. 2, 1958, 72 Stat. 1641; Pub. L. 86–346, title II, § 201(c)–(e), Sept. 22, 1959, 73 Stat. 624; Pub. L. 91–172, title II, § 212(c)(1), Dec. 30, 1969, 83 Stat. 571; Pub. L. 98–369, div. A, title I, § 77(a), July 18, 1984, 98 Stat. 595; Pub. L. 99–514, title XVIII, § 1805(d), Oct. 22, 1986, 100 Stat. 2810; Pub. L. 101–239, title VII, § 7601(a), Dec. 19, 1989, 103 Stat. 2370; Pub. L. 101–508, title XI, §§ 11701(h), 11703(d)(1), Nov. 5, 1990, 104 Stat. 1388–508, 1388–517; Pub. L. 105–34, title X, § 1052(a), Aug. 5, 1997, 111 Stat. 940; Pub. L. 106–36, title III, § 3001(c)(2), June 25, 1999, 113 Stat. 183; Pub. L. 109–135, title IV, § 412(pp), Dec. 21, 2005, 119 Stat. 2640; Pub. L. 110–234, title XV, § 15342(a), May 22, 2008, 122 Stat. 1518; Pub. L. 110–246, § 4(a), title XV, § 15342(a), June 18, 2008, 122 Stat. 1664, 2280; Pub. L. 115–97, title I, § 13303(a)–(b)(5), Dec. 22, 2017, 131 Stat. 2123, 2124.)

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—Pub. L. 115–97, § 13303(b)(5), substituted ''real property'' for ''property'' in section catchline.

Subsec. (a)(1). Pub. L. 115–97, § 13303(a), substituted ''real property'' for ''property'' wherever appearing.

Subsec. (a)(2). Pub. L. 115–97, § 13303(b)(1)(A), amended par. (2) generally. Prior to amendment, text read as follows: ''This subsection shall not apply to any exchange of—

''(A) stock in trade or other property held primarily for sale,

''(B) stocks, bonds, or notes,

''(C) other securities or evidences of indebtedness or interest,

''(D) interests in a partnership,

''(E) certificates of trust or beneficial interests, or

''(F) choses in action.

For purposes of this section, an interest in a partnership which has in effect a valid election under section 761(a) to be excluded from the application of all of subchapter K shall be treated as an interest in each of the assets of such partnership and not as an interest in a partnership.''

Subsec. (e). Pub. L. 115–97, § 13303(b)(2), (3), added subsec. (e) and struck out former subsec. (e). Prior to amendment, text read as follows: ''For purposes of this section, livestock of different sexes are not property of a like kind.''

Subsec. (h). Pub. L. 115–97, § 13303(b)(4), amended subsec. (h) generally. Prior to amendment, subsec. (h) related to special rules for foreign real and personal property.

Subsec. (i). Pub. L. 115–97, § 13303(b)(1)(B), struck out subsec. (i). Text read as follows: ''For purposes of subsection (a)(2)(B), the term 'stocks' shall not include shares in a mutual ditch, reservoir, or irrigation company if at the time of the exchange—

''(1) the mutual ditch, reservoir, or irrigation company is an organization described in section 501(c)(12)(A) (determined without regard to the percentage of its income that is collected from its members for the purpose of meeting losses and expenses), and

''(2) the shares in such company have been recognized by the highest court of the State in which such company was organized or by applicable State statute as constituting or representing real property or an interest in real property.''

2008—Subsec. (i). Pub. L. 110–246 added subsec. (i).

2005—Subsec. (h)(2)(B). Pub. L. 109–135 substituted ''subparagraphs'' for ''subparagraph'' in introductory provisions.

1999—Subsec. (d). Pub. L. 106–36, in last sentence, substituted ''assumed (as determined under section 357(d)) a liability of the taxpayer'' for ''assumed a liability of the taxpayer or acquired from the taxpayer property subject to a liability'' and struck out ''or acquisition (in the amount of the liability)'' after ''such assumption''.

1997—Subsec. (h). Pub. L. 105–34 amended heading and text of subsec. (h) generally. Prior to amendment, text read as follows: ''For purposes of this section, real property located in the United States and real property located outside the United States are not property of a like kind.''

1990—Subsec. (a)(2). Pub. L. 101–508, §11703(d)(1), inserted at end ''For purposes of this section, an interest in a partnership which has in effect a valid election under section 761(a) to be excluded from the application of all of subchapter K shall be treated as an interest in each of the assets of such partnership and not as an interest in a partnership.''

Subsec. (f)(3). Pub. L. 101–508, §11701(h), substituted ''section 267(b) or 707(b)(1)'' for ''section 267(b)''.

1989—Subsecs. (f) to (h). Pub. L. 101–239 added subsecs. (f) to (h).

1986—Subsec. (a)(3)(A). Pub. L. 99–514 substituted ''on or before the day'' for ''before the day''.

1984—Subsec. (a). Pub. L. 98–369, §77(a), in amending subsec. generally, designated existing provisions as par. (1), substituted ''No gain or loss shall be recognized on the exchange of property held for productive use in a trade or business or for investment if such property is exchanged solely for property of like kind which is to be held either for productive use in a trade or business or for investment'' for ''No gain or loss shall be recognized if property held for productive use in trade or business or for investment (not including stock in trade or other property held primarily for sale, nor stocks, bonds, notes, choses in action, certificates of trust or beneficial interest, or other securities or evidences of indebtedness or interest) is exchanged solely for property of a like kind to be held either for productive use in trade or business or for investment'', and added pars. (2) and (3).

1969—Subsec. (e). Pub. L. 91–172 added subsec. (e).

1959—Subsecs. (b) to (d). Pub. L. 86–346 inserted references to section 1037(a) in subsecs. (b) and (c) and in first two sentences of subsec. (d).

1958—Subsec. (d). Pub. L. 85–866 inserted in first sentence a comma between ''exchanged'' and ''decreased'' and ''or decreased in the amount of loss'', and substituted in second sentence ''subsection'' for ''paragraph''.

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–97, title I, §13303(c), Dec. 22, 2017, 131 Stat. 2124, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section] shall apply to exchanges completed after December 31, 2017.

''(2) TRANSITION RULE.—The amendments made by this section shall not apply to any exchange if—

''(A) the property disposed of by the taxpayer in the exchange is disposed of on or before December 31, 2017, or

''(B) the property received by the taxpayer in the exchange is received on or before December 31, 2017.''

EFFECTIVE DATE OF 2008 AMENDMENT

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, §15342(b), May 22, 2008, 122 Stat. 1518, and Pub. L. 110–246, §4(a), title XV, §15342(b), June 18, 2008, 122 Stat. 1664, 2280, provided that: ''The amendment made by this section [amending this section] shall apply to exchanges completed 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 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 1997 AMENDMENT

Pub. L. 105–34, title X, §1052(b), Aug. 5, 1997, 111 Stat. 941, provided that:

''(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to transfers after June 8, 1997, in taxable years ending after such date.

''(2) BINDING CONTRACTS.—The amendment made by this section shall not apply to any transfer pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before the disposition of property. A contract shall not fail to meet the requirements of the preceding sentence solely because—

''(A) it provides for a sale in lieu of an exchange, or

''(B) the property to be acquired as replacement property was not identified under such contract before June 9, 1997.''

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11701(h), Nov. 5, 1990, 104 Stat. 1388–508, provided that the amendment made by that section is effective with respect to transfers after Aug. 3, 1990.

Pub. L. 101–508, title XI, §11703(d)(2), Nov. 5, 1990, 104 Stat. 1388–517, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to transfers after July 18, 1984.''

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7601(b), Dec. 19, 1989, 103 Stat. 2371, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to transfers after July 10, 1989, in taxable years ending after such date.

''(2) BINDING CONTRACT.—The amendments made by this section shall not apply to any transfer pursuant to a written binding contract in effect on July 10, 1989, and at all times thereafter before the transfer.''

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

Pub. L. 98–369, div. A, title I, §77(b), July 18, 1984, 98 Stat. 596, 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 amendment made by subsection (a) [amending this section] shall apply to transfers made after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.

''(2) BINDING CONTRACT EXCEPTION FOR TRANSFER OF PARTNERSHIP INTERESTS.—Paragraph (2)(D) of section

1031(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by subsection (a)) shall not apply in the case of any exchange pursuant to a binding contract in effect on March 1, 1984, and at all times thereafter before the exchange.

''(3) REQUIREMENT THAT PROPERTY BE IDENTIFIED WITHIN 45 DAYS AND THAT EXCHANGE BE COMPLETED WITHIN 180 DAYS.—Paragraph (3) of section 1031(a) of the Internal Revenue Code of 1986 (as amended by subsection (a)) shall apply—

''(A) to transfers after the date of the enactment of this Act [July 18, 1984], and

''(B) to transfers on or before such date of enactment if the property to be received in the exchange is not received before January 1, 1987.

In the case of any transfer on or before the date of the enactment of this Act which the taxpayer treated as part of a like-kind exchange, the period for assessing any deficiency of tax attributable to the amendment made by subsection (a) [amending this section] shall not expire before January 1, 1988.

''(4) SPECIAL RULE WHERE PROPERTY IDENTIFIED IN BINDING CONTRACT.—If the property to be received in the exchange is identified in a binding contract in effect on June 13, 1984, and at all times thereafter before the transfer, paragraph (3) shall be applied—

''(A) by substituting 'January 1, 1989' for 'January 1, 1987', and

''(B) by substituting 'January 1, 1990' for 'January 1, 1988'.

''(5) SPECIAL RULE FOR LIKE-KIND EXCHANGE OF PARTNERSHIP INTERESTS.—Paragraph (2)(D) of section 1031(a) of the Internal Revenue Code of 1986 (as amended by subsection (a)) shall not apply to any exchange of an interest as general partner pursuant to a plan of reorganization of ownership interest under a contract which took effect on March 29, 1984, and which was executed on or before March 31, 1984, but only if all the exchanges contemplated by the reorganization plan are completed on or before December 31, 1984.''

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title II, § 212(c)(2), Dec. 30, 1969, 83 Stat. 571, 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 to taxable years to which the Internal Revenue Code of 1986 [formerly I.R.C. 1954] applies.''

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–346 effective for taxable years ending after Sept. 22, 1959, see section 203 of Pub. L. 86–346, set out as an Effective Date note under section 1037 of this title.

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.

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.

§ 1032. Exchange of stock for property

(a) Nonrecognition of gain or loss

No gain or loss shall be recognized to a corporation on the receipt of money or other property in exchange for stock (including treasury stock) of such corporation. No gain or loss shall be recognized by a corporation with respect to any lapse or acquisition of an option, or with respect to a securities futures contract (as defined in section 1234B), to buy or sell its stock (including treasury stock).

(b) Basis

For basis of property acquired by a corporation in certain exchanges for its stock, see section 362.

(Aug. 16, 1954, ch. 736, 68A Stat. 303; Pub. L. 98–369, div. A, title I, § 57(a), July 18, 1984, 98 Stat. 574; Pub. L. 106–554, § 1(a)(7) [title IV, § 401(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–649.)

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–554 inserted '', or with respect to a securities futures contract (as defined in section 1234B),'' after ''an option'' in second sentence.

1984—Subsec. (a). Pub. L. 98–369 inserted provision that no gain or loss shall be recognized by a corporation with respect to any lapse or acquisition of an option to buy or sell its stock (including treasury stock).

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(7) [title IV, § 401(j)], Dec. 21, 2000, 114 Stat. 2763, 2763A–651, provided that: ''The amendments made by this section [enacting section 1234B of this title and amending this section and sections 1091, 1092, 1223, 1233, 1234A, 1256 and 7701 of this title] shall take effect on the date of the enactment of this Act [Dec. 21, 2000].''

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, § 57(b), July 18, 1984, 1984, 98 Stat. 574, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to options acquired or lapsed after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.''

§ 1033. Involuntary conversions

(a) General rule

If property (as a result of its destruction in whole or in part, theft, seizure, or requisition or condemnation or threat or imminence thereof) is compulsorily or involuntarily converted—

(1) Conversion into similar property

Into property similar or related in service or use to the property so converted, no gain shall be recognized.

(2) Conversion into money

Into money or into property not similar or related in service or use to the converted property, the gain (if any) shall be recognized except to the extent hereinafter provided in this paragraph:

(A) Nonrecognition of gain

If the taxpayer during the period specified in subparagraph (B), for the purpose of replacing the property so converted, purchases other property similar or related in service or use to the property so converted, or purchases stock in the acquisition of control of a corporation owning such other property, at the election of the taxpayer the gain shall be recognized only to the extent that the amount realized upon such conversion (regardless of whether such amount is received in one or more taxable years) exceeds the cost of such other property or such stock.

Such election shall be made at such time and in such manner as the Secretary may by regulations prescribe. For purposes of this paragraph—

(i) no property or stock acquired before the disposition of the converted property shall be considered to have been acquired for the purpose of replacing such converted property unless held by the taxpayer on the date of such disposition; and

(ii) the taxpayer shall be considered to have purchased property or stock only if, but for the provisions of subsection (b) of this section, the unadjusted basis of such property or stock would be its cost within the meaning of section 1012.

(B) Period within which property must be replaced

The period referred to in subparagraph (A) shall be the period beginning with the date of the disposition of the converted property, or the earliest date of the threat or imminence of requisition or condemnation of the converted property, whichever is the earlier, and ending—

(i) 2 years after the close of the first taxable year in which any part of the gain upon the conversion is realized, or

(ii) subject to such terms and conditions as may be specified by the Secretary, at the close of such later date as the Secretary may designate on application by the taxpayer. Such application shall be made at such time and in such manner as the Secretary may by regulations prescribe.

(C) Time for assessment of deficiency attributable to gain upon conversion

If a taxpayer has made the election provided in subparagraph (A), then—

(i) the statutory period for the assessment of any deficiency, for any taxable year in which any part of the gain on such conversion is realized, attributable to such gain shall not expire prior to the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may by regulations prescribe) of the replacement of the converted property or of an intention not to replace, and

(ii) such deficiency may be assessed before the expiration of such 3–year period notwithstanding the provisions of section 6212(c) or the provisions of any other law or rule of law which would otherwise prevent such assessment.

(D) Time for assessment of other deficiencies attributable to election

If the election provided in subparagraph (A) is made by the taxpayer and such other property or such stock was purchased before the beginning of the last taxable year in which any part of the gain upon such conversion is realized, any deficiency, to the extent resulting from such election, for any taxable year ending before such last taxable year may be assessed (notwithstanding the provisions of section 6212(c) or 6501 or the provisions of any other law or rule of law which would otherwise prevent such assessment) at any time before the expiration of the period within which a deficiency for such last taxable year may be assessed.

(E) Definitions

For purposes of this paragraph—

(i) Control

The term ''control'' means the ownership of stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and at least 80 percent of the total number of shares of all other classes of stock of the corporation.

(ii) Disposition of the converted property

The term ''disposition of the converted property'' means the destruction, theft, seizure, requisition, or condemnation of the converted property, or the sale or exchange of such property under threat or imminence of requisition or condemnation.

(b) Basis of property acquired through involuntary conversion

(1) Conversions described in subsection (a)(1)

If the property was acquired as the result of a compulsory or involuntary conversion described in subsection (a)(1), the basis shall be the same as in the case of the property so converted—

(A) decreased in the amount of any money received by the taxpayer which was not expended in accordance with the provisions of law (applicable to the year in which such conversion was made) determining the taxable status of the gain or loss upon such conversion, and

(B) increased in the amount of gain or decreased in the amount of loss to the taxpayer recognized upon such conversion under the law applicable to the year in which such conversion was made.

(2) Conversions described in subsection (a)(2)

In the case of property purchased by the taxpayer in a transaction described in subsection (a)(2) which resulted in the nonrecognition of any part of the gain realized as the result of a compulsory or involuntary conversion, the basis shall be the cost of such property decreased in the amount of the gain not so recognized; and if the property purchased consists of more than 1 piece of property, the basis determined under this sentence shall be allocated to the purchased properties in proportion to their respective costs.

(3) Property held by corporation the stock of which is replacement property

(A) In general

If the basis of stock in a corporation is decreased under paragraph (2), an amount equal to such decrease shall also be applied to reduce the basis of property held by the corporation at the time the taxpayer acquired control (as defined in subsection (a)(2)(E)) of such corporation.

(B) Limitation

Subparagraph (A) shall not apply to the extent that it would (but for this subparagraph) require a reduction in the aggregate adjusted bases of the property of the corporation below the taxpayer's adjusted basis of the stock in the corporation (determined immediately after such basis is decreased under paragraph (2)).

(C) Allocation of basis reduction

The decrease required under subparagraph (A) shall be allocated—

(i) first to property which is similar or related in service or use to the converted property,

(ii) second to depreciable property (as defined in section 1017(b)(3)(B)) not described in clause (i), and

(iii) then to other property.

(D) Special rules

(i) Reduction not to exceed adjusted basis of property

No reduction in the basis of any property under this paragraph shall exceed the adjusted basis of such property (determined without regard to such reduction).

(ii) Allocation of reduction among properties

If more than 1 property is described in a clause of subparagraph (C), the reduction under this paragraph shall be allocated among such property in proportion to the adjusted bases of such property (as so determined).

(c) Property sold pursuant to reclamation laws

For purposes of this subtitle, if property lying within an irrigation project is sold or otherwise disposed of in order to conform to the acreage limitation provisions of Federal reclamation laws, such sale or disposition shall be treated as an involuntary conversion to which this section applies.

(d) Livestock destroyed by disease

For purposes of this subtitle, if livestock are destroyed by or on account of disease, or are sold or exchanged because of disease, such destruction or such sale or exchange shall be treated as an involuntary conversion to which this section applies.

(e) Livestock sold on account of drought, flood, or other weather-related conditions

(1) In general

For purposes of this subtitle, the sale or exchange of livestock (other than poultry) held by a taxpayer for draft, breeding, or dairy purposes in excess of the number the taxpayer would sell if he followed his usual business practices shall be treated as an involuntary conversion to which this section applies if such livestock are sold or exchanged by the taxpayer solely on account of drought, flood, or other weather-related conditions.

(2) Extension of replacement period

(A) In general

In the case of drought, flood, or other weather-related conditions described in paragraph (1) which result in the area being designated as eligible for assistance by the Federal Government, subsection (a)(2)(B) shall be applied with respect to any converted property by substituting ''4 years'' for ''2 years''.

(B) Further extension by Secretary

The Secretary may extend on a regional basis the period for replacement under this section (after the application of subparagraph (A)) for such additional time as the Secretary determines appropriate if the weather-related conditions which resulted in such application continue for more than 3 years.

(f) Replacement of livestock with other farm property in certain cases

For purposes of subsection (a), if, because of drought, flood, or other weather-related conditions, or soil contamination or other environmental contamination, it is not feasible for the taxpayer to reinvest the proceeds from compulsorily or involuntarily converted livestock in property similar or related in use to the livestock so converted, other property (including real property in the case of soil contamination or other environmental contamination) used for farming purposes shall be treated as property similar or related in service or use to the livestock so converted.

(g) Condemnation of real property held for productive use in trade or business or for investment

(1) Special rule

For purposes of subsection (a), if real property (not including stock in trade or other property held primarily for sale) held for productive use in trade or business or for investment is (as the result of its seizure, requisition, or condemnation, or threat or imminence thereof) compulsorily or involuntarily converted, property of a like kind to be held either for productive use in trade or business or for investment shall be treated as property similar or related in service or use to the property so converted.

(2) Limitations

Paragraph (1) shall not apply to the purchase of stock in the acquisition of control of a corporation described in subsection (a)(2)(A).

(3) Election to treat outdoor advertising displays as real property

(A) In general

A taxpayer may elect, at such time and in such manner as the Secretary may prescribe, to treat property which constitutes an outdoor advertising display as real property for purposes of this chapter. The election provided by this subparagraph may not be made with respect to any property with respect to which an election under section 179(a) (relating to election to expense certain depreciable business assets) is in effect.

(B) Election

An election made under subparagraph (A) may not be revoked without the consent of the Secretary.

(C) Outdoor advertising display

For purposes of this paragraph, the term ''outdoor advertising display'' means a rigidly assembled sign, display, or device permanently affixed to the ground or permanently attached to a building or other inherently permanent structure constituting, or used for the display of, a commercial or other advertisement to the public.

(D) Character of replacement property

For purposes of this subsection, an interest in real property purchased as replacement property for a compulsorily or involuntarily converted outdoor advertising display defined in subparagraph (C) (and treated by the taxpayer as real property) shall be considered property of a like kind as the property converted without regard to whether the taxpayer's interest in the replacement property is the same kind of interest the taxpayer held in the converted property.

(4) Special rule

In the case of a compulsory or involuntary conversion described in paragraph (1), subsection (a)(2)(B)(i) shall be applied by substituting ''3 years'' for ''2 years''.

(h) Special rules for property damaged by federally declared disasters

(1) Principal residences

If the taxpayer's principal residence or any of its contents is located in a disaster area and is compulsorily or involuntarily converted as a result of a federally declared disaster—

(A) Treatment of insurance proceeds

(i) Exclusion for unscheduled personal property

No gain shall be recognized by reason of the receipt of any insurance proceeds for personal property which was part of such contents and which was not scheduled property for purposes of such insurance.

(ii) Other proceeds treated as common fund

In the case of any insurance proceeds (not described in clause (i)) for such residence or contents—

(I) such proceeds shall be treated as received for the conversion of a single item of property, and

(II) any property which is similar or related in service or use to the residence so converted (or contents thereof) shall be treated for purposes of subsection (a)(2) as property similar or related in service or use to such single item of property.

(B) Extension of replacement period

Subsection (a)(2)(B) shall be applied with respect to any property so converted by substituting ''4 years'' for ''2 years''.

(2) Trade or business and investment property

If a taxpayer's property held for productive use in a trade or business or for investment[1] located in a disaster area and is compulsorily or involuntarily converted as a result of a federally declared disaster, tangible property of a type held for productive use in a trade or business shall be treated for purposes of subsection (a) as property similar or related in service or use to the property so converted.

(3) Federally declared disaster; disaster area

The terms ''federally declared disaster'' and ''disaster area'' shall have the respective meaning given such terms by section 165(i)(5).

(4) Principal residence

For purposes of this subsection, the term ''principal residence'' has the same meaning as when used in section 121, except that such term shall include a residence not treated as a principal residence solely because the taxpayer does not own the residence.

(i) Replacement property must be acquired from unrelated person in certain cases

(1) In general

If the property which is involuntarily converted is held by a taxpayer to which this subsection applies, subsection (a) shall not apply if the replacement property or stock is acquired from a related person. The preceding sentence shall not apply to the extent that the related person acquired the replacement property or stock from an unrelated person during the period applicable under subsection (a)(2)(B).

(2) Taxpayers to which subsection applies

This subsection shall apply to—

(A) a C corporation,

(B) a partnership in which 1 or more C corporations own, directly or indirectly (determined in accordance with section 707(b)(3)), more than 50 percent of the capital interest, or profits interest, in such partnership at the time of the involuntary conversion, and

(C) any other taxpayer if, with respect to property which is involuntarily converted during the taxable year, the aggregate of the amount of realized gain on such property on which there is realized gain exceeds $100,000.

In the case of a partnership, subparagraph (C) shall apply with respect to the partnership and with respect to each partner. A similar rule shall apply in the case of an S corporation and its shareholders.

(3) Related person

For purposes of this subsection, a person is related to another person if the person bears a relationship to the other person described in section 267(b) or 707(b)(1).

(j) Sales or exchanges under certain hazard mitigation programs

For purposes of this subtitle, if property is sold or otherwise transferred to the Federal Government, a State or local government, or an Indian tribal government to implement hazard mitigation under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (as in effect on the date of the enactment of this subsection) or the National Flood Insurance Act (as in effect on such date), such sale or transfer

[1] So in original. Probably should be followed by ''is''.

shall be treated as an involuntary conversion to which this section applies.

(k) Cross references

(1) For determination of the period for which the taxpayer has held property involuntarily converted, see section 1223.

(2) For treatment of gains from involuntary conversions as capital gains in certain cases, see section 1231(a).

(3) For exclusion from gross income of gain from involuntary conversion of principal residence, see section 121.

(Aug. 16, 1954, ch. 736, 68A Stat. 303; June 29, 1956, ch. 464, § 5(a), 70 Stat. 407; Pub. L. 85–866, title I, §§ 45, 46(a), Sept. 2, 1958, 72 Stat. 1641; Pub. L. 88–272, title II, § 206(b)(3), Feb. 26, 1964, 78 Stat. 40; Pub. L. 91–172, title IX, § 915(a), Dec. 30, 1969, 83 Stat. 723; Pub. L. 94–455, title XIX, §§ 1901(a)(128), 1906(b)(13)(A), title XXI, §§ 2127(a), 2140(a), Oct. 4, 1976, 90 Stat. 1785, 1834, 1920, 1932; Pub. L. 95–600, title IV, § 404(c)(4), title V, § 542(a), title VII, § 703(j)(5), Nov. 6, 1978, 92 Stat. 2870, 2888, 2941; Pub. L. 97–34, title II, § 202(d)(2), Aug. 13, 1981, 95 Stat. 221; Pub. L. 98–369, div. A, title IV, § 474(r)(24), July 18, 1984, 98 Stat. 844; Pub. L. 101–508, title XI, § 11813(b)(20), Nov. 5, 1990, 104 Stat. 1388–555; Pub. L. 103–66, title XIII, § 13431(a), Aug. 10, 1993, 107 Stat. 567; Pub. L. 104–7, § 3(a)(1), (b)(1), Apr. 11, 1995, 109 Stat. 94, 95; Pub. L. 104–188, title I, §§ 1119(a), (b), 1610(a), Aug. 20, 1996, 110 Stat. 1765, 1844; Pub. L. 105–34, title III, § 312(d)(1), (7), title IX, § 913(b), title X, § 1087(a), Aug. 5, 1997, 111 Stat. 839, 840, 878, 959; Pub. L. 108–311, title IV, § 408(a)(7)(C), Oct. 4, 2004, 118 Stat. 1191; Pub. L. 108–357, title III, § 311(a), (b), Oct. 22, 2004, 118 Stat. 1466, 1467; Pub. L. 109–7, § 1(b), Apr. 15, 2005, 119 Stat. 22; Pub. L. 110–343, div. C, title VII, § 706(a)(2)(D)(i)–(iii), Oct. 3, 2008, 122 Stat. 3922; Pub. L. 113–295, div. A, title II, §§ 211(c)(1)(A), 221(a)(27)(D), (77), Dec. 19, 2014, 128 Stat. 4033, 4041, 4049.)

REFERENCES IN TEXT

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (j), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, which is classified principally to chapter 68 (§ 5121 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 5121 of Title 42 and Tables.

The date of the enactment of this subsection, referred to in subsec. (j), is the date of enactment of Pub. L. 109–7, which was approved Apr. 15, 2005.

The National Flood Insurance Act, referred to in subsec. (j), probably means the National Flood Insurance Act of 1968, title XIII of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, which is classified principally to chapter 50 (§ 4001 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 4001 of Title 42 and Tables.

AMENDMENTS

2014—Subsec. (h)(2). Pub. L. 113–295, § 211(c)(1)(A), inserted ''is'' before ''compulsorily''.

Subsec. (h)(3). Pub. L. 113–295, § 221(a)(27)(D), substituted ''section 165(i)(5)'' for ''section 165(h)(3)(C)''.

Subsecs. (j) to (*l*). Pub. L. 113–295, § 221(a)(77), redesignated subsecs. (k) and (*l*) as (j) and (k), respectively, and struck out former subsec. (j) which related to sales or exchanges to implement microwave relocation policy.

2008—Subsec. (h). Pub. L. 110–343, § 706(a)(2)(D)(i), amended heading generally. Prior to amendment, heading read as follows: ''Special rules for property damaged by Presidentially declared disasters''.

Subsec. (h)(1). Pub. L. 110–343, § 706(a)(2)(D)(i), reenacted heading without change and amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: ''If the taxpayer's principal residence or any of its contents is compulsorily or involuntarily converted as a result of a Presidentially declared disaster—''.

Subsec. (h)(2). Pub. L. 110–343, § 706(a)(2)(D)(ii), substituted ''investment located in a disaster area and compulsorily or involuntarily converted as a result of a federally declared disaster'' for ''investment is compulsorily or involuntarily converted as a result of a Presidentially declared disaster''.

Subsec. (h)(3). Pub. L. 110–343, § 706(a)(2)(D)(iii), amended par. (3) generally. Prior to amendment, par. (3) defined ''Presidentially declared disaster'' for purposes of subsec. (h).

2005—Subsecs. (k), (*l*). Pub. L. 109–7 added subsec. (k) and redesignated former subsec. (k) as (*l*).

2004—Subsec. (e). Pub. L. 108–357, § 311(b), designated existing provisions as par. (1), inserted heading, and added par. (2).

Subsec. (f). Pub. L. 108–357, § 311(a), in heading, substituted ''in certain cases'' for ''where there has been environmental contamination'' and, in text, inserted ''drought, flood, or other weather-related conditions, or'' after ''because of'' and ''in the case of soil contamination or other environmental contamination'' after ''including real property''.

Subsec. (h)(3). Pub. L. 108–311 inserted ''Robert T. Stafford'' before ''Disaster Relief and Emergency Assistance Act''.

1997—Subsec. (e). Pub. L. 105–34, § 913(b), inserted '', flood, or other weather-related conditions'' after ''drought'' in heading and '', flood, or other weather-related conditions'' before period at end of text.

Subsec. (h)(4). Pub. L. 105–34, § 312(d)(1), substituted ''section 121'' for ''section 1034''.

Subsec. (i). Pub. L. 105–34, § 1087(a), amended heading and text of subsec. (i) generally. Prior to amendment, text read as follows:

''(1) IN GENERAL.—In the case of—

''(A) a C corporation, or

''(B) a partnership in which 1 or more C corporations own, directly or indirectly (determined in accordance with section 707(b)(3)), more than 50 percent of the capital interest, or profits interest, in such partnership at the time of the involuntary conversion,

subsection (a) shall not apply if the replacement property or stock is acquired from a related person. The preceding sentence shall not apply to the extent that the related person acquired the replacement property or stock from an unrelated person during the period described in subsection (a)(2)(B).

''(2) RELATED PERSON.—For purposes of this subsection, a person is related to another person if the person bears a relationship to the other person described in section 267(b) or 707(b)(1).''

Subsec. (k)(3). Pub. L. 105–34, § 312(d)(7), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''For one-time exclusion from gross income of gain from involuntary conversion of principal residence by individual who has attained age 55, see section 121.''

1996—Subsec. (b). Pub. L. 104–188, § 1610(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''If the property was acquired, after February 28, 1913, as the result of a compulsory or involuntary conversion described in subsection (a)(1) or section 112(f)(2) of the Internal Revenue Code of 1939, the basis shall be the same as in the case of the property so converted, decreased in the amount of any money received by the taxpayer which was not expended in accordance with the provisions of law (applicable to the year in which such conversion was made) determining the taxable status of the gain or loss upon such conversion, and increased in the amount of gain or decreased in the amount of loss to

the taxpayer recognized upon such conversion under the law applicable to the year in which such conversion was made. This subsection shall not apply in respect of property acquired as a result of a compulsory or involuntary conversion of property used by the taxpayer as his principal residence if the destruction, theft, seizure, requisition, or condemnation of such residence, or the sale or exchange of such residence under threat or imminence thereof, occurred after December 31, 1950, and before January 1, 1954. In the case of property purchased by the taxpayer in a transaction described in subsection (a)(3) which resulted in the nonrecognition of any part of the gain realized as the result of a compulsory or involuntary conversion, the basis shall be the cost of such property decreased in the amount of the gain not so recognized; and if the property purchased consists of more than one piece of property, the basis determined under this sentence shall be allocated to the purchased properties in proportion to their respective costs.''

Subsec. (h). Pub. L. 104–188, §1119(b)(2), substituted ''property'' for ''principal residences'' in heading.

Subsec. (h)(1). Pub. L. 104–188, §1119(b)(3), substituted ''Principal residences'' for ''In general'' in heading.

Subsec. (h)(2). Pub. L. 104–188, §1119(a), added par. (2). Former par. (2) redesignated (3).

Subsec. (h)(3). Pub. L. 104–188, §1119(a), (b)(1), redesignated par. (2) as (3) and substituted ''property'' for ''residence'' before ''is located''. Former par. (3) redesignated (4).

Subsec. (h)(4). Pub. L. 104–188, §1119(a), redesignated par. (3) as (4).

1995—Subsec. (i). Pub. L. 104–7, §3(a)(1), added subsec. (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 104–7, §3(b)(1), added subsec. (j). Former subsec. (j) redesignated (k).

Pub. L. 104–7, §3(a)(1), redesignated subsec. (i) as (j).

Subsec. (k). Pub. L. 104–7, §3(b)(1), redesignated subsec. (j) as (k).

1993—Subsecs. (h), (i). Pub. L. 103–66 added subsec. (h) and redesignated former subsec. (h) as (i).

1990—Subsec. (g)(3)(A). Pub. L. 101–508 struck out ''with respect to which the investment credit determined under section 46(a) is or has been claimed or'' after ''to any property''.

1984—Subsec. (g)(3)(A). Pub. L. 98–369 substituted ''the investment credit determined under section 46(a)'' for ''the credit allowed by section 38 (relating to investment in certain depreciable property)''.

1981—Subsec. (g)(3)(A). Pub. L. 97–34 substituted ''(relating to election to expense certain depreciable business assets)'' for ''(relating to additional first-year depreciation allowance for small business)''.

1978—Subsec. (a)(2)(A)(ii). Pub. L. 95–600, §703(j)(5), substituted ''subsection (b)'' for ''subsection (c)''.

Subsecs. (f), (g). Pub. L. 95–600, §542(a), added subsec. (f) and redesignated former subsecs. (f) and (g) as (g) and (h), respectively.

Subsec. (h). Pub. L. 95–600, §§404(c)(4), 542(a), redesignated subsec. (g) as (h) and substituted in par. (3) ''one-time exclusion'' for ''exclusion'' and ''age 55'' for ''age 65''.

1976—Subsec. (a)(2), (3). Pub. L. 94–455, §§1901(a)(128)(A), (B), 1906(b)(13)(A), redesignated par. (3) as (2), struck out in heading ''where disposition occurred after 1950'' after ''Conversion into money'', in provisions preceding subpar. (A) ''and the disposition of the converted property (as defined in paragraph (2)) occurred after December 31, 1950,'' after ''use to the converted property,'' and in subpar. (B)(ii) ''or his delegate'' after ''Secretary'' wherever appearing, and added subpar. (E). Former par. (2), which related to involuntary conversions into money where dispositions occurred prior to 1951, was struck out.

Subsec. (b). Pub. L. 94–455, §1901(a)(128)(C), (D), redesignated subsec. (c) as (b) and substituted ''or section 112(f)(2) of the Internal Revenue Code of 1939'' for ''or (2)''. Former subsec. (b), which related to application of subsec. (a) in the case of property used by taxpayer as his principal residence, if the destruction, theft, etc., occurred after 1950 and before 1954, was struck out.

Subsecs. (c) to (e). Pub. L. 94–455, §1901(a)(128)(C), redesignated subsecs. (d) to (f) as (c) to (e), respectively. Former subsec. (c) redesignated (b).

Subsec. (f). Pub. L. 94–455, §§1901(a)(128)(C), (E), (F), 2127(a), 2140(a), redesignated subsec. (g) as (f), in par. (2) struck out provisions relating to conversion of real property before Jan. 1, 1958, and substituted reference to subsection (a)(2)(A) for reference to subsection (a)(3)(A), and added pars. (3) and (4). Former subsec. (f) redesignated (e).

Subsecs. (g), (h). Pub. L. 94–455, §1901(a)(128)(C), redesignated subsec. (h) as (g). Former subsec. (g) redesignated (f).

1969—Subsec. (a)(3)(B). Pub. L. 91–172 substituted ''2 years'' for ''one year''.

1964—Subsec. (h)(3). Pub. L. 88–272 added par. (3).

1958—Subsec. (a)(2). Pub. L. 85–866, §45, inserted provision defining ''control''.

Subsecs. (g), (h). Pub. L. 85–866, §46(a), added subsec. (g) and redesignated former subsec. (g) as (h).

1956—Subsecs. (f), (g). Act June 29, 1956, added subsec. (f) and redesignated former subsec. (f) as (g).

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by section 211(c)(1)(A) of Pub. L. 113–295 effective as if included in the provisions of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008, Pub. L. 110–343, div. C, to which such amendment relates, see section 211(d) of Pub. L. 113–295, set out as a note under section 143 of this title.

Amendment by section 221(a)(27)(D), (77) 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 2008 AMENDMENT

Amendment by Pub. L. 110–343 applicable to disasters declared in taxable years beginning after Dec. 31, 2007, see section 706(d)(1) of Pub. L. 110–343, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–7, §1(c)(2), Apr. 15, 2005, 119 Stat. 22, provided that: ''The amendments made by subsection (b) [amending this section] shall apply to sales or other dispositions before, on, or after the date of the enactment of this Act [Apr. 15, 2005].''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to any taxable year with respect to which the due date (without regard to extensions) for the return is after Dec. 31, 2002, see section 311(d) of Pub. L. 108–357, set out as a note under section 451 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 312(d)(1), (7) of Pub. L. 105–34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105–34, set out as a note under section 121 of this title.

Amendment by section 913(b) of Pub. L. 105–34 applicable to sales and exchanges after Dec. 31, 1996, see section 913(c) of Pub. L. 105–34, set out as a note under section 451 of this title.

Pub. L. 105–34, title X, §1087(b), Aug. 5, 1997, 111 Stat. 959, provided that: ''The amendment made by this section [amending this section] shall apply to involuntary conversions occurring after June 8, 1997.''

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1119(d)(1), Aug. 20, 1996, 110 Stat. 1765, provided that: ''The amendments made by this section [amending this section] shall apply to disasters declared after December 31, 1994, in taxable years ending after such date.''

Pub. L. 104–188, title I, §1610(b), Aug. 20, 1996, 110 Stat. 1845, provided that: ''The amendment made by this section [amending this section] shall apply to involuntary

conversions occurring after the date of the enactment of this Act [Aug. 20, 1996].''

EFFECTIVE DATE OF 1995 AMENDMENT

Pub. L. 104–7, § 3(a)(2), Apr. 11, 1995, 109 Stat. 95, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to involuntary conversions occurring on or after February 6, 1995.''

Pub. L. 104–7, § 3(b)(2), Apr. 11, 1995, 109 Stat. 95, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to sales or exchanges after March 14, 1995.''

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, § 13431(b), Aug. 10, 1993, 107 Stat. 567, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to property compulsorily or involuntarily converted as a result of disasters for which the determination referred to in section 1033(h)(2) of the Internal Revenue Code of 1986 (as added by this section) is made on or after September 1, 1991, and to taxable years ending on or after such date.''

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 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 property placed in service after Dec. 31, 1980, in taxable years ending after that date, see section 209(a) of Pub. L. 97–34, set out as an Effective Date note under section 168 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 404(c)(4) of Pub. L. 95–600 applicable to sales or exchanges after July 26, 1978, in taxable years ending after such date, see section 404(d)(1) of Pub. L. 95–600, set out as a note under section 121 of this title.

Pub. L. 95–600, title V, § 542(b), Nov. 6, 1978, 92 Stat. 2888, provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1974.''

Amendment by section 703(j)(5) 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.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(128) 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, § 2127(b), Oct. 4, 1976, 90 Stat. 1921, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1970.''

Pub. L. 94–455, title XXI, § 2140(b), Oct. 4, 1976, 90 Stat. 1932, 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 with respect to any disposition of converted property (within the meaning of section 1033(a)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) after December 31, 1974, unless a condemnation proceeding with respect to such property began before the date of the enactment of this Act [Oct. 4, 1976].''

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title IX, § 915(b), Dec. 30, 1969, 83 Stat. 723, 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 only if the disposition of the converted property (within the meaning of section 1033(a)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) occurs after the date of the enactment of this Act [Dec. 30, 1969].''

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 206(c) of Pub. L. 88–272, set out as an Effective Date note under section 121 of this title.

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.

EFFECTIVE DATE OF 1956 AMENDMENT

Act June 29, 1956, ch. 464, § 5(b), 70 Stat. 407, provided that: ''The amendment made by this section [amending this section] shall apply with respect to taxable years ending after December 31, 1955, but only in the case of sales and exchanges of livestock after December 31, 1955.''

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.

[§ 1034. Repealed. Pub. L. 105–34, title III, § 312(b), Aug. 5, 1997, 111 Stat. 839]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 306; Sept. 2, 1958, Pub. L. 85–866, title I, § 46(b), 72 Stat. 1642; Feb. 26, 1964, Pub. L. 88–272, title II, § 206(b)(4), 78 Stat. 40; Jan. 2, 1975, Pub. L. 93–597, § 6(a), 88 Stat. 1953; Mar. 29, 1975, Pub. L. 94–12, title II, § 207, 89 Stat. 32; Oct. 4, 1976, Pub. L. 94–455, title XIX, §§ 1901(a)(129), 1906(b)(13)(A), 90 Stat. 1785, 1834; May 23, 1977, Pub. L. 95–30, title I, § 102(b)(13), 91 Stat. 138; Nov. 6, 1978, Pub. L. 95–600, title IV, §§ 404(c)(5), 405(a)–(c)(1), 92 Stat. 2870, 2871; Nov. 8, 1978, Pub. L. 95–615, title II, § 206, 92 Stat. 3107; Aug. 13, 1981, Pub. L. 97–34, title I, §§ 112(b)(4), 122(a), (b), 95 Stat. 195, 197; July 18, 1984, Pub. L. 98–369, div. A, title X, § 1053(a), 98 Stat. 1045; Oct. 22, 1986, Pub. L. 99–514, title XVIII, § 1878(g), 100 Stat. 2904; Nov. 10, 1988, Pub. L. 100–647, title VI, § 6002(a), 102 Stat. 3684, related to rollover of gain on sale of principal residence.

EFFECTIVE DATE OF REPEAL

Repeal applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105–34, set out as an Effective Date of 1997 Amendment note under section 121 of this title.

§ 1035. Certain exchanges of insurance policies

(a) General rules

No gain or loss shall be recognized on the exchange of—

(1) a contract of life insurance for another contract of life insurance or for an endowment

or annuity contract or for a qualified long-term care insurance contract; or[1]

(2) a contract of endowment insurance (A) for another contract of endowment insurance which provides for regular payments beginning at a date not later than the date payments would have begun under the contract exchanged, or (B) for an annuity contract, or (C) for a qualified long-term care insurance contract;

(3) an annuity contract for an annuity contract or for a qualified long-term care insurance contract; or

(4) a qualified long-term care insurance contract for a qualified long-term care insurance contract.

(b) Definitions

For the purpose of this section—

(1) Endowment contract

A contract of endowment insurance is a contract with an insurance company which depends in part on the life expectancy of the insured, but which may be payable in full in a single payment during his life.

(2) Annuity contract

An annuity contract is a contract to which paragraph (1) applies but which may be payable during the life of the annuitant only in installments. For purposes of the preceding sentence, a contract shall not fail to be treated as an annuity contract solely because a qualified long-term care insurance contract is a part of or a rider on such contract.

(3) Life insurance contract

A contract of life insurance is a contract to which paragraph (1) applies but which is not ordinarily payable in full during the life of the insured. For purposes of the preceding sentence, a contract shall not fail to be treated as a life insurance contract solely because a qualified long-term care insurance contract is a part of or a rider on such contract.

(c) Exchanges involving foreign persons

To the extent provided in regulations, subsection (a) shall not apply to any exchange having the effect of transferring property to any person other than a United States person.

(d) Cross references

(1) For rules relating to recognition of gain or loss where an exchange is not solely in kind, see subsections (b) and (c) of section 1031.

(2) For rules relating to the basis of property acquired in an exchange described in subsection (a), see subsection (d) of section 1031.

(Aug. 16, 1954, ch. 736, 68A Stat. 309; Pub. L. 98–369, div. A, title II, §§211(b)(15), 224(a), July 18, 1984, 98 Stat. 756, 776; Pub. L. 99–514, title XVIII, §1828, Oct. 22, 1986, 100 Stat. 2851; Pub. L. 105–34, title XI, §1131(b)(1), Aug. 5, 1997, 111 Stat. 979; Pub. L. 109–280, title VIII, §844(b), Aug. 17, 2006, 120 Stat. 1010.)

CODIFICATION

Another section 1131(b) of Pub. L. 105–34 enacted section 684 of this title.

[1] So in original. The word ''or'' probably should not appear.

AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109–280, §844(b)(3)(A), which directed amendment by inserting ''or for a qualified long-term care insurance contract'' before semicolon ''at the end'', was executed by making the insertion before ''; or'' to reflect the probable intent of Congress.

Subsec. (a)(2). Pub. L. 109–280, §844(b)(3)(B), which directed amendment by inserting '', or (C) for a qualified long-term care insurance contract'' before semicolon ''at the end'', was executed by making the insertion before ''; or'' to reflect the probable intent of Congress.

Subsec. (a)(3). Pub. L. 109–280, §844(b)(3)(C), inserted ''or for a qualified long-term care insurance contract'' after ''annuity contract''.

Subsec. (a)(4). Pub. L. 109–280, §844(b)(4), added par. (4).

Subsec. (b)(2). Pub. L. 109–280, §844(b)(1), inserted at end ''For purposes of the preceding sentence, a contract shall not fail to be treated as an annuity contract solely because a qualified long-term care insurance contract is a part of or a rider on such contract.''

Subsec. (b)(3). Pub. L. 109–280, §844(b)(2), inserted at end ''For purposes of the preceding sentence, a contract shall not fail to be treated as a life insurance contract solely because a qualified long-term care insurance contract is a part of or a rider on such contract.''

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

1986—Subsec. (b)(1). Pub. L. 99–514 struck out ''subject to tax under subchapter L'' after ''with an insurance company''.

1984—Subsec. (b)(1). Pub. L. 98–369, §224(a), which directed the substitution of ''an insurance company subject to tax under subchapter L'' for ''a life insurance company as defined in section 801'', was executed by making such substitution for ''a life insurance company as defined in section 816'' to reflect the probable intent of Congress and the earlier amendment by Pub. L. 98–369, §211(b)(15), which substituted ''as defined in section 816'' for ''as defined in section 801''.

Pub. L. 98–369, §211(b)(15), substituted ''section 816'' for ''section 801''.

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 exchanges occurring after Dec. 31, 2009, see section 844(g)(1), (2) of Pub. L. 109–280, set out as a note under section 72 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 1984 AMENDMENT

Amendment by section 211(b)(5) of 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.

Pub. L. 98–369, div. A, title II, §224(b), July 18, 1984, 98 Stat. 776, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to all exchanges whether before, on, or after the date of the enactment of this Act [July 18, 1984].''

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.

§ 1036. Stock for stock of same corporation

(a) General rule

No gain or loss shall be recognized if common stock in a corporation is exchanged solely for common stock in the same corporation, or if preferred stock in a corporation is exchanged solely for preferred stock in the same corporation.

(b) Nonqualified preferred stock not treated as stock

For purposes of this section, nonqualified preferred stock (as defined in section 351(g)(2)) shall be treated as property other than stock.

(c) Cross references

(1) For rules relating to recognition of gain or loss where an exchange is not solely in kind, see subsections (b) and (c) of section 1031.

(2) For rules relating to the basis of property acquired in an exchange described in subsection (a), see subsection (d) of section 1031.

(Aug. 16, 1954, ch. 736, 68A Stat. 309; Pub. L. 105–34, title X, § 1014(e)(3), Aug. 5, 1997, 111 Stat. 921.)

AMENDMENTS

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

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable, with certain exceptions, to transactions after June 8, 1997, see section 1014(f) of Pub. L. 105–34, set out as a note under section 351 of this title.

§ 1037. Certain exchanges of United States obligations

(a) General rule

When so provided by regulations promulgated by the Secretary in connection with the issue of obligations of the United States, no gain or loss shall be recognized on the surrender to the United States of obligations of the United States issued under chapter 31 of title 31 in exchange solely for other obligations issued under such chapter.

(b) Application of original issue discount rules

(1) Exchanges involving obligations issued at a discount

In any case in which gain has been realized but not recognized because of the provisions of subsection (a) (or so much of section 1031(b) as relates to subsection (a) of this section), to the extent such gain is later recognized by reason of a disposition or redemption of an obligation received in an exchange subject to such provisions, the first sentence of section 1271(c)(2) shall apply to such gain as though the obligation disposed of or redeemed were the obligation surrendered to the Government in the exchange rather than the obligation actually disposed of or redeemed. For purposes of this paragraph and subpart A of part V of subchapter P, if the obligation surrendered in the exchange is a nontransferable obligation described in subsection (a) or (c) of section 454—

(A) the aggregate amount considered, with respect to the obligation surrendered, as ordinary income shall not exceed the difference between the issue price and the stated redemption price which applies at the time of the exchange, and

(B) the issue price of the obligation received in the exchange shall be considered to be the stated redemption price of the obligation surrendered in the exchange, increased by the amount of other consideration (if any) paid to the United States as a part of the exchange.

(2) Exchanges of transferable obligations issued at not less than par

In any case in which subsection (a) (or so much of section 1031(b) or (c) as relates to subsection (a) of this section) has applied to the exchange of a transferable obligation which was issued at not less than par for another transferable obligation, the issue price of the obligation received from the Government in the exchange shall be considered for purposes of applying subpart A of part V of subchapter P to be the same as the issue price of the obligation surrendered to the Government in the exchange, increased by the amount of other consideration (if any) paid to the United States as a part of the exchange.

(c) Cross references

(1) For rules relating to the recognition of gain or loss in a case where subsection (a) would apply except for the fact that the exchange was not made solely for other obligations of the United States, see subsections (b) and (c) of section 1031.

(2) For rules relating to the basis of obligations of the United States acquired in an exchange for other obligations described in subsection (a), see subsection (d) of section 1031.

(Added Pub. L. 86–346, title II, § 201(a), Sept. 22, 1959, 73 Stat. 622; amended Pub. L. 94–455, title XIX, § 1901(a)(130), (b)(3)(I), Oct. 4, 1976, 90 Stat. 1786, 1793; Pub. L. 97–452, § 2(c)(3), Jan. 12, 1983, 96 Stat. 2478; Pub. L. 98–369, div. A, title I, § 42(a)(11), July 18, 1984, 98 Stat. 557.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–369, § 42(a)(11)(C), substituted ''original issue discount rules'' for ''section 1232'' in heading.

Subsec. (b)(1). Pub. L. 98–369, § 42(a)(11)(A), (B), substituted ''section 1271(c)(2)'' for ''section 1232(a)(2)(B)'', and ''subpart A of part V of subchapter P'' for ''section 1232''.

Subsec. (b)(2). Pub. L. 98–369, § 42(a)(11)(B), substituted ''subpart A of part V of subchapter P'' for ''section 1232''.

1983—Subsec. (a). Pub. L. 97–452 substituted ''chapter 31 of title 31'' and ''chapter'' for ''the Second Liberty Bond Act'' and ''Act'', respectively.

1976—Subsec. (b)(1). Pub. L. 94–455 substituted in introductory provisions ''section 1232(a)(2)(B)'' for ''section 1232(a)(2)(A)'' and in subpar. (A) ''ordinary income'' for ''gain from the sale or exchange of property which is not a capital asset''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by 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 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

Pub. L. 86–346, title II, § 203, Sept. 22, 1959, 73 Stat. 624, provided that: ''The amendments made by this title [enacting this section and amending section 1031 of this title and section 742a of former Title 31, Money and Finance] shall be effective for taxable years ending after the date of enactment of this Act [Sept. 22, 1959].''

§ 1038. Certain reacquisitions of real property

(a) General rule

If—

(1) a sale of real property gives rise to indebtedness to the seller which is secured by the real property sold, and

(2) the seller of such property reacquires such property in partial or full satisfaction of such indebtedness,

then, except as provided in subsections (b) and (d), no gain or loss shall result to the seller from such reacquisition, and no debt shall become worthless or partially worthless as a result of such reacquisition.

(b) Amount of gain resulting

(1) In general

In the case of a reacquisition of real property to which subsection (a) applies, gain shall result from such reacquisition to the extent that—

(A) the amount of money and the fair market value of other property (other than obligations of the purchaser) received, prior to such reacquisition, with respect to the sale of such property, exceeds

(B) the amount of the gain on the sale of such property returned as income for periods prior to such reacquisition.

(2) Limitation

The amount of gain determined under paragraph (1) resulting from a reacquisition during any taxable year beginning after the date of the enactment of this section shall not exceed the amount by which the price at which the real property was sold exceeded its adjusted basis, reduced by the sum of—

(A) the amount of the gain on the sale of such property returned as income for periods prior to the reacquisition of such property, and

(B) the amount of money and the fair market value of other property (other than obligations of the purchaser received with respect to the sale of such property) paid or transferred by the seller in connection with the reacquisition of such property.

For purposes of this paragraph, the price at which real property is sold is the gross sales price reduced by the selling commissions, legal fees, and other expenses incident to the sale of such property which are properly taken into account in determining gain or loss on such sale.

(3) Gain recognized

Except as provided in this section, the gain determined under this subsection resulting from a reacquisition to which subsection (a) applies shall be recognized, notwithstanding any other provision of this subtitle.

(c) Basis of reacquired real property

If subsection (a) applies to the reacquisition of any real property, the basis of such property upon such reacquisition shall be the adjusted basis of the indebtedness to the seller secured by such property (determined as of the date of reacquisition), increased by the sum of—

(1) the amount of the gain determined under subsection (b) resulting from such reacquisition, and

(2) the amount described in subsection (b)(2)(B).

If any indebtedness to the seller secured by such property is not discharged upon the reacquisition of such property, the basis of such indebtedness shall be zero.

(d) Indebtedness treated as worthless prior to reacquisition

If, prior to a reacquisition of real property to which subsection (a) applies, the seller has treated indebtedness secured by such property as having become worthless or partially worthless—

(1) such seller shall be considered as receiving, upon the reacquisition of such property, an amount equal to the amount of such indebtedness treated by him as having become worthless, and

(2) the adjusted basis of such indebtedness shall be increased (as of the date of reacquisition) by an amount equal to the amount so considered as received by such seller.

(e) Principal residences

If—

(1) subsection (a) applies to a reacquisition of real property with respect to the sale of which gain was not recognized under section 121 (relating to gain on sale of principal residence); and

(2) within 1 year after the date of the reacquisition of such property by the seller, such property is resold by him,

then, under regulations prescribed by the Secretary, subsections (b), (c), and (d) of this section shall not apply to the reacquisition of such property and, for purposes of applying section 121, the resale of such property shall be treated as a part of the transaction constituting the original sale of such property.

[(f) Repealed. Pub. L. 104–188, title I, § 1616(b)(12), Aug. 20, 1996, 110 Stat. 1857]

(g) Acquisition by estate, etc., of seller

Under regulations prescribed by the Secretary, if an installment obligation is indebtedness to the seller which is described in subsection (a), and if such obligation is, in the hands of the taxpayer, an obligation with respect to which section 691(a)(4)(B) applies, then—

(1) for purposes of subsection (a), acquisition of real property by the taxpayer shall be treated as reacquisition by the seller, and

(2) the basis of the real property acquired by the taxpayer shall be increased by an amount equal to the deduction under section 691(c) which would (but for this subsection) have

been allowable to the taxpayer with respect to the gain on the exchange of the obligation for the real property.

(Added Pub. L. 88–570, § 2(a), Sept. 2, 1964, 78 Stat. 854; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–600, title IV, §§ 404(c)(6), 405(c)(3), Nov. 6, 1978, 92 Stat. 2870, 2871; Pub. L. 96–471, § 4, Oct. 19, 1980, 94 Stat. 2255; Pub. L. 104–188, title I, § 1616(b)(12), Aug. 20, 1996, 110 Stat. 1857; Pub. L. 105–34, title III, § 312(d)(8), Aug. 5, 1997, 111 Stat. 840.)

AMENDMENTS

1997—Subsec. (e). Pub. L. 105–34 amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows: ''If—

''(1) subsection (a) applies to a reacquisition of real property with respect to the sale of which—

''(A) an election under section 121 (relating to one-time exclusion of gain from sale of principal residence by individual who has attained age 55) is in effect, or

''(B) gain was not recognized under section 1034 (relating to rollover of gain on sale of principal residence); and

''(2) within one year after the date of the reacquisition of such property by the seller, such property is resold by him,

then, under regulations prescribed by the Secretary, subsections (b), (c), and (d) of this section shall not apply to the reacquisition of such property and, for purposes of applying sections 121 and 1034, the resale of such property shall be treated as a part of the transaction constituting the original sale of such property.''

1996—Subsec. (f). Pub. L. 104–188 struck out subsec. (f) which read as follows:

''(f) REACQUISITIONS BY DOMESTIC BUILDING AND LOAN ASSOCIATIONS.—This section shall not apply to a reacquisition of real property by an organization described in section 593(a) (relating to domestic building and loan associations, etc.).''

1980—Subsec. (g). Pub. L. 96–471 added subsec. (g).

1978—Subsec. (e)(1)(A). Pub. L. 95–600, § 404(c)(6), substituted ''relating to one-time exclusion of gain from sale of principal residence by individual who has attained age 55'' for ''relating to gain from sale or exchange of residence of an individual who has attained age 65''.

Subsec. (e)(1)(B). Pub. L. 95–600, § 405(c)(3), which directed the amendment of section 1083(e)(1)(B) of this title by substituting ''(relating to rollover of gain on sale of principal residence)'' for ''(relating to sale or exchange of residence)'', was executed to this section to reflect the probable intent of Congress because section 1083 does not contain a subsec. (e)(1)(B).

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

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105–34, set out as a note under section 121 of this title.

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 1980 AMENDMENT

Pub. L. 96–471, § 6(c), Oct. 19, 1980, 94 Stat. 2256, provided: ''The amendment made by section 4 [amending this section] shall apply to acquisitions of real property by the taxpayer after the date of the enactment of this Act [Oct. 19, 1980].''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 404(c)(6) of Pub. L. 95–600 applicable to sales or exchanges after July 26, 1978, in taxable years ending after such date, see section 404(d)(1) of Pub. L. 95–600, set out as a note under section 121 of this title.

Pub. L. 95–600, title IV, § 405(d), Nov. 6, 1978, 92 Stat. 2871, provided that: ''The amendments made by this section [amending this section and sections 1034, 1250, 6212, and 6504 of this title] shall apply to sales and exchanges of residences after July 26, 1978, in taxable years ending after such date.''

EFFECTIVE DATE; ELECTION TO APPLY TO TAXABLE YEARS BEGINNING AFTER DEC. 31, 1957

Pub. L. 88–570, § 2(c), Sept. 2, 1964, 78 Stat. 856, provided that:

''(1) The amendments made by this section [enacting this section] shall apply to taxable years beginning after the date of the enactment of this Act [Sept. 2, 1964].

''(2) If the taxpayer makes an election under this paragraph, the amendments made by this section [enacting this section] shall also apply to taxable years beginning after December 31, 1957, except that such amendments shall not apply with respect to any reacquisition of real property in a taxable year for which the assessment of a deficiency, or the credit or refund of an overpayment, is prevented on the date of the enactment of this Act [Sept. 2, 1964] by the operation of any law or rule of law. An election under this paragraph shall be made within one year after the date of the enactment of this Act and shall be made in such form and manner as the Secretary of the Treasury or his delegate shall prescribe by regulations.

''(3) If an election is made by the taxpayer under paragraph (2), and if the assessment of a deficiency, or the credit or refund of an overpayment, for any taxable year to which such election applies is not prevented on the date of the enactment of this Act [Sept. 2, 1964] by the operation of any law or rule of law—

''(A) the period within which a deficiency for such taxable year may be assessed (to the extent such deficiency is attributable to the application of the amendments made by this section) shall not expire prior to one year after the date of such election; and

''(B) the period within which a claim for credit or refund of an overpayment for such taxable year may be filed (to the extent such overpayment is attributable to the application of such amendments) shall not expire prior to one year after the date of such election.

No interest shall be payable with respect to any deficiency attributable to the application of such amendments, and no interest shall be allowed with respect to any credit or refund of any overpayment attributable to the application of such amendments, for any period prior to the date of the enactment of this Act. An election by a taxpayer under paragraph (2) shall be deemed a consent to the application of this paragraph.''

[§ 1039. Repealed. Pub. L. 101–508, title XI, § 11801(a)(33), Nov. 5, 1990, 104 Stat. 1388–521]

Section, added Pub. L. 91–172, title IX, § 910(a), Dec. 30, 1969, 83 Stat. 718; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, related to the recognition of gain on certain sales of low-income housing projects.

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.

§ 1040. Transfer of certain farm, etc., real property

(a) General rule

If the executor of the estate of any decedent transfers to a qualified heir (within the meaning of section 2032A(e)(1)) any property with respect to which an election was made under section 2032A, then gain on such transfer shall be recognized to the estate only to the extent that, on the date of such transfer, the fair market value of such property exceeds the value of such property for purposes of chapter 11 (determined without regard to section 2032A).

(b) Similar rule for certain trusts

To the extent provided in regulations prescribed by the Secretary, a rule similar to the rule provided in subsection (a) shall apply where the trustee of a trust (any portion of which is included in the gross estate of the decedent) transfers property with respect to which an election was made under section 2032A.

(c) Basis of property acquired in transfer described in subsection (a) or (b)

The basis of property acquired in a transfer with respect to which gain realized is not recognized by reason of subsection (a) or (b) shall be the basis of such property immediately before the transfer increased by the amount of the gain recognized to the estate or trust on the transfer.

(Added Pub. L. 94–455, title XX, § 2005(b), Oct. 4, 1976, 90 Stat. 1877; amended Pub. L. 95–600, title VII, § 702(d)(3), Nov. 6, 1978, 92 Stat. 2929; Pub. L. 96–222, title I, § 105(a)(5)(A), Apr. 1, 1980, 94 Stat. 219; Pub. L. 96–223, title IV, § 401(c)(2)(A), Apr. 2, 1980, 94 Stat. 300; Pub. L. 97–34, title IV, § 421(j)(2)(B), Aug. 13, 1981, 95 Stat. 312; Pub. L. 97–448, title I, § 104(b)(3)(A), (B), Jan. 12, 1983, 96 Stat. 2381; Pub. L. 107–16, title V, § 542(d)(1), June 7, 2001, 115 Stat. 84; Pub. L. 111–312, title III, § 301(a), Dec. 17, 2010, 124 Stat. 3300.)

AMENDMENTS

2010—Pub. L. 111–312 amended section to read as if amendment by Pub. L. 107–16, § 542(d)(1), had never been enacted. See 2001 Amendment note below.

2001—Pub. L. 107–16, § 542(d)(1), amended section generally. Prior to amendment, text read as follows:

''(a) GENERAL RULE.—If the executor of the estate of any decedent transfers to a qualified heir (within the meaning of section 2032A(e)(1)) any property with respect to which an election was made under section 2032A, then gain on such transfer shall be recognized to the estate only to the extent that, on the date of such transfer, the fair market value of such property exceeds the value of such property for purposes of chapter 11 (determined without regard to section 2032A).

''(b) SIMILAR RULE FOR CERTAIN TRUSTS.—To the extent provided in regulations prescribed by the Secretary, a rule similar to the rule provided in subsection (a) shall apply where the trustee of a trust (any portion of which is included in the gross estate of the decedent) transfers property with respect to which an election was made under section 2032A.

''(c) BASIS OF PROPERTY ACQUIRED IN TRANSFER DESCRIBED IN SUBSECTION (a) OR (b).—The basis of property acquired in a transfer with respect to which gain realized is not recognized by reason of subsection (a) or (b) shall be the basis of such property immediately before the transfer increased by the amount of the gain recognized to the estate or trust on the transfer.''

1983—Subsec. (a). Pub. L. 97–448, § 104(b)(3)(A), substituted ''on the date of such transfer'' for ''on the date of such exchange''.

Subsec. (c). Pub. L. 97–448, § 104(b)(3)(B), substituted references to ''transfer'', ''a transfer'', and ''the transfer'' for references to ''exchange'', ''an exchange'', and ''the exchange'', respectively, wherever appearing in heading and text.

1981—Pub. L. 97–34 substituted ''Transfer of certain farm, etc., real property'' for ''Use of farm, etc., real property to satisfy pecuniary bequest'' in section catchline.

Subsec. (a). Pub. L. 97–34 revised subsec. (a) generally, substituting ''transfers to a qualified heir (within the meaning of section 2032A(e)(1)) any property'' for ''satisfies the right of a qualified heir (within the meaning of section 2032A(e)(1)) to receive a pecuniary bequest with property'' and ''such transfer'' for ''such exchange'' before ''shall be recognized''.

Subsec. (b). Pub. L. 97–34 substituted ''shall apply where the trustee of a trust (any portion of which is included in the gross estate of the decedent) transfers property with respect to which an election was made under section 2032A'' for ''shall apply where—

''(1) by reason of the death of the decedent, a qualified heir has a right to receive from a trust a specific dollar amount which is the equivalent of a pecuniary bequest, and

''(2) the trustee of the trust satisfies such right with property with respect to which an election was made under section 2032A''.

1980—Pub. L. 96–223 substituted ''Use of farm, etc., property to satisfy pecuniary bequest'' for ''Use of certain appreciated carryover basis property to satisfy pecuniary request'' in section catchline, generally revised subsecs. (a) and (b) to reflect the repeal elsewhere in the Code of carryover basis provisions, and struck out subsec. (d) which had provided that, for purposes of this section, references to carryover basis property should be treated as including a reference to property the valuation of which is determined under section 2032A. Pub. L. 96–222 added subsec. (d).

1978—Subsec. (a). Pub. L. 95–600 substituted ''chapter 11 (determined without regard to section 2032A)'' for ''chapter 11''.

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 estates of decedents dying after Dec. 31, 2009, see section 542(f)(1) of Pub. L. 107–16, set out as a note under section 121 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 Pub. L. 97–34 applicable with respect to the estates of decedents dying after Dec. 31, 1976, upon compliance with certain conditions relating to timely election requirement, reinstatement of elections, and statute of limitations, see section 421(k)(5) of Pub. L. 97–34, set out as a note under section 2032A of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–223 applicable in respect of decedents dying after Dec. 31, 1976, see section 401(e) of Pub. L. 96–223, set out as a note under section 1023 of this title.

Pub. L. 96–222, title I, § 105(a)(5)(B), Apr. 1, 1980, 94 Stat. 219, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Notwithstanding section 515 of the Revenue Act of 1978 [section 515 of Pub. L. 95–600 which deferred carryover basis rules until Dec. 31, 1979], section 1040 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by subparagraph (A) [amending this section]) shall apply with respect to the estates of decedents dying after December 31, 1976.''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable to estates of decedents dying after Dec. 31, 1976, see section 702(d)(6) of Pub. L. 95–600, set out as a note under section 2032A of this title.

EFFECTIVE DATE

Section applicable in respect of decedents dying after Dec. 31, 1976, see section 2005(f)(1) of Pub. L. 94–455, set out as a note under section 1015 of this title.

§ 1041. Transfers of property between spouses or incident to divorce

(a) General rule

No gain or loss shall be recognized on a transfer of property from an individual to (or in trust for the benefit of)—

(1) a spouse, or

(2) a former spouse, but only if the transfer is incident to the divorce.

(b) Transfer treated as gift; transferee has transferor's basis

In the case of any transfer of property described in subsection (a)—

(1) for purposes of this subtitle, the property shall be treated as acquired by the transferee by gift, and

(2) the basis of the transferee in the property shall be the adjusted basis of the transferor.

(c) Incident to divorce

For purposes of subsection (a)(2), a transfer of property is incident to the divorce if such transfer—

(1) occurs within 1 year after the date on which the marriage ceases, or

(2) is related to the cessation of the marriage.

(d) Special rule where spouse is nonresident alien

Subsection (a) shall not apply if the spouse (or former spouse) of the individual making the transfer is a nonresident alien.

(e) Transfers in trust where liability exceeds basis

Subsection (a) shall not apply to the transfer of property in trust to the extent that—

(1) the sum of the amount of the liabilities assumed, plus the amount of the liabilities to which the property is subject, exceeds

(2) the total of the adjusted basis of the property transferred.

Proper adjustment shall be made under subsection (b) in the basis of the transferee in such property to take into account gain recognized by reason of the preceding sentence.

(Added Pub. L. 98–369, div. A, title IV, § 421(a), July 18, 1984, 98 Stat. 793; amended Pub. L. 99–514, title XVIII, § 1842(b), Oct. 22, 1986, 100 Stat. 2853; Pub. L. 100–647, title I, § 1018(*l*)(3), Nov. 10, 1988, 102 Stat. 3584.)

AMENDMENTS

1988—Subsec. (d). Pub. L. 100–647 substituted ''Subsection (a)'' for ''Paragraph (1) of subsection (a)'' and ''the spouse (or former spouse)'' for ''the spouse''.

1986—Subsec. (e). Pub. L. 99–514 added subsec. (e).

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, § 1018(*l*)(3), Nov. 10, 1988, 102 Stat. 3584, provided that the amendment made by that section is effective with respect to transfers after June 21, 1988.

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

Pub. L. 98–369, div. A, title IV, § 421(d), July 18, 1984, 98 Stat. 795, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting this section and amending sections 47, 72, 101, 453, 453B, 1001, 1015, and 1239 of this title] shall apply to transfers after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.

''(2) ELECTION TO HAVE AMENDMENTS APPLY TO TRANSFERS AFTER 1983.—If both spouses or former spouses make an election under this paragraph, the amendments made by this section shall apply to all transfers made by such spouses (or former spouses) after December 31, 1983.

''(3) EXCEPTION FOR TRANSFERS PURSUANT TO EXISTING DECREES.—Except in the case of an election under paragraph (2), the amendments made by this section shall not apply to transfers under any instrument in effect on or before the date of the enactment of this Act unless both spouses (or former spouses) elect to have such amendments apply to transfers under such instrument.

''(4) ELECTION.—Any election under paragraph (2) or (3) shall be made in such manner, at such time, and subject to such conditions, as the Secretary of the Treasury or his delegate may by regulations prescribe.''

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.

§ 1042. Sales of stock to employee stock ownership plans or certain cooperatives

(a) Nonrecognition of gain

If—

(1) the taxpayer or executor elects in such form as the Secretary may prescribe the application of this section with respect to any sale of qualified securities,

(2) the taxpayer purchases qualified replacement property within the replacement period, and

(3) the requirements of subsection (b) are met with respect to such sale,

then the gain (if any) on such sale which would be recognized as long-term capital gain shall be recognized only to the extent that the amount realized on such sale exceeds the cost to the taxpayer of such qualified replacement property.

(b) Requirements to qualify for nonrecognition

A sale of qualified securities meets the requirements of this subsection if—

(1) Sale to employee organizations

The qualified securities are sold to—

(A) an employee stock ownership plan (as defined in section 4975(e)(7)), or

(B) an eligible worker-owned cooperative.

(2) Plan must hold 30 percent of stock after sale

The plan or cooperative referred to in paragraph (1) owns (after application of section 318(a)(4)), immediately after the sale, at least 30 percent of—

(A) each class of outstanding stock of the corporation (other than stock described in section 1504(a)(4)) which issued the qualified securities, or

(B) the total value of all outstanding stock of the corporation (other than stock described in section 1504(a)(4)).

(3) Written statement required

(A) In general

The taxpayer files with the Secretary the written statement described in subparagraph (B).

(B) Statement

A statement is described in this subparagraph if it is a verified written statement of—

(i) the employer whose employees are covered by the plan described in paragraph (1), or

(ii) any authorized officer of the cooperative described in paragraph (*l*),[1]

consenting to the application of sections 4978 and 4979A with respect to such employer or cooperative.

(4) 3-year holding period

The taxpayer's holding period with respect to the qualified securities is at least 3 years (determined as of the time of the sale).

(c) Definitions; special rules

For purposes of this section—

(1) Qualified securities

The term ''qualified securities'' means employer securities (as defined in section 409(*l*)) which—

(A) are issued by a domestic C corporation that has no stock outstanding that is readily tradable on an established securities market, and

(B) were not received by the taxpayer in—

(i) a distribution from a plan described in section 401(a), or

(ii) a transfer pursuant to an option or other right to acquire stock to which section 83, 422, or 423 applied (or to which section 422 or 424 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) applied).

(2) Eligible worker-owned cooperative

The term ''eligible worker-owned cooperative'' means any organization—

(A) to which part I of subchapter T applies,

(B) a majority of the membership of which is composed of employees of such organization,

(C) a majority of the voting stock of which is owned by members,

(D) a majority of the board of directors of which is elected by the members on the basis of 1 person 1 vote, and

(E) a majority of the allocated earnings and losses of which are allocated to members on the basis of—

(i) patronage,

(ii) capital contributions, or

(iii) some combination of clauses (i) and (ii).

(3) Replacement period

The term ''replacement period'' means the period which begins 3 months before the date on which the sale of qualified securities occurs and which ends 12 months after the date of such sale.

(4) Qualified replacement property

(A) In general

The term ''qualified replacement property'' means any security issued by a domestic operating corporation which—

(i) did not, for the taxable year preceding the taxable year in which such security was purchased, have passive investment income (as defined in section 1362(d)(3)(C)) in excess of 25 percent of the gross receipts of such corporation for such preceding taxable year, and

(ii) is not the corporation which issued the qualified securities which such security is replacing or a member of the same controlled group of corporations (within the meaning of section 1563(a)(1)) as such corporation.

For purposes of clause (i), income which is described in section 954(c)(3) (as in effect immediately before the Tax Reform Act of 1986) shall not be treated as passive investment income.

(B) Operating corporation

For purposes of this paragraph—

(i) In general

The term ''operating corporation'' means a corporation more than 50 percent of the assets of which were, at the time the security was purchased or before the close of the replacement period, used in the active conduct of the trade or business.

(ii) Financial institutions and insurance companies

The term ''operating corporation'' shall include—

(I) any financial institution described in section 581, and

(II) an insurance company subject to tax under subchapter L.

(C) Controlling and controlled corporations treated as 1 corporation

(i) In general

For purposes of applying this paragraph, if—

[1] So in original. Probably should be ''paragraph (1),''.

(I) the corporation issuing the security owns stock representing control of 1 or more other corporations,

(II) 1 or more other corporations own stock representing control of the corporation issuing the security, or

(III) both,

then all such corporations shall be treated as 1 corporation.

(ii) Control

For purposes of clause (i), the term ''control'' has the meaning given such term by section 304(c). In determining control, there shall be disregarded any qualified replacement property of the taxpayer with respect to the section 1042 sale being tested.

(D) Security defined

For purposes of this paragraph, the term ''security'' has the meaning given such term by section 165(g)(2), except that such term shall not include any security issued by a government or political subdivision thereof.

(5) Securities sold by underwriter

No sale of securities by an underwriter to an employee stock ownership plan or eligible worker-owned cooperative in the ordinary course of his trade or business as an underwriter, whether or not guaranteed, shall be treated as a sale for purposes of subsection (a).

(6) Time for filing election

An election under subsection (a) shall be filed not later than the last day prescribed by law (including extensions thereof) for filing the return of tax imposed by this chapter for the taxable year in which the sale occurs.

(7) Section not to apply to gain of C corporation

Subsection (a) shall not apply to any gain on the sale of any qualified securities which is includible in the gross income of any C corporation.

(d) Basis of qualified replacement property

The basis of the taxpayer in qualified replacement property purchased by the taxpayer during the replacement period shall be reduced by the amount of gain not recognized by reason of such purchase and the application of subsection (a). If more than one item of qualified replacement property is purchased, the basis of each of such items shall be reduced by an amount determined by multiplying the total gain not recognized by reason of such purchase and the application of subsection (a) by a fraction—

(1) the numerator of which is the cost of such item of property, and

(2) the denominator of which is the total cost of all such items of property.

Any reduction in basis under this subsection shall not be taken into account for purposes of section 1278(a)(2)(A)(ii) (relating to definition of market discount).

(e) Recapture of gain on disposition of qualified replacement property

(1) In general

If a taxpayer disposes of any qualified replacement property, then, notwithstanding any other provision of this title, gain (if any) shall be recognized to the extent of the gain which was not recognized under subsection (a) by reason of the acquisition by such taxpayer of such qualified replacement property.

(2) Special rule for corporations controlled by the taxpayer

If—

(A) a corporation issuing qualified replacement property disposes of a substantial portion of its assets other than in the ordinary course of its trade or business, and

(B) any taxpayer owning stock representing control (within the meaning of section 304(c)) of such corporation at the time of such disposition holds any qualified replacement property of such corporation at such time,

then the taxpayer shall be treated as having disposed of such qualified replacement property at such time.

(3) Recapture not to apply in certain cases

Paragraph (1) shall not apply to any transfer of qualified replacement property—

(A) in any reorganization (within the meaning of section 368) unless the person making the election under subsection (a)(1) owns stock representing control in the acquiring or acquired corporation and such property is substituted basis property in the hands of the transferee,

(B) by reason of the death of the person making such election,

(C) by gift, or

(D) in any transaction to which section 1042(a) applies.

(f) Statute of limitations

If any gain is realized by the taxpayer on the sale or exchange of any qualified securities and there is in effect an election under subsection (a) with respect to such gain, then—

(1) the statutory period for the assessment of any deficiency with respect to such gain shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may by regulations prescribe) of—

(A) the taxpayer's cost of purchasing qualified replacement property which the taxpayer claims results in nonrecognition of any part of such gain,

(B) the taxpayer's intention not to purchase qualified replacement property within the replacement period, or

(C) a failure to make such purchase within the replacement period, and

(2) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

(g) Application of section to sales of stock in agricultural refiners and processors to eligible farm cooperatives

(1) In general

This section shall apply to the sale of stock of a qualified refiner or processor to an eligible farmers' cooperative.

(2) Qualified refiner or processor

For purposes of this subsection, the term ''qualified refiner or processor'' means a domestic corporation—

(A) substantially all of the activities of which consist of the active conduct of the trade or business of refining or processing agricultural or horticultural products, and

(B) which, during the 1-year period ending on the date of the sale, purchases more than one-half of such products to be refined or processed from—

(i) farmers who make up the eligible farmers' cooperative which is purchasing stock in the corporation in a transaction to which this subsection is to apply, or

(ii) such cooperative.

(3) Eligible farmers' cooperative

For purposes of this section, the term ''eligible farmers' cooperative'' means an organization to which part I of subchapter T applies and which is engaged in the marketing of agricultural or horticultural products.

(4) Special rules

In applying this section to a sale to which paragraph (1) applies—

(A) the eligible farmers' cooperative shall be treated in the same manner as a cooperative described in subsection (b)(1)(B),

(B) subsection (b)(2) shall be applied by substituting ''100 percent'' for ''30 percent'' each place it appears,

(C) the determination as to whether any stock in the domestic corporation is a qualified security shall be made without regard to whether the stock is an employer security or to subsection (c)(1)(A), and

(D) paragraphs (2)(D) and (7) of subsection (c) shall not apply.

(Added Pub. L. 98–369, div. A, title V, §541(a), July 18, 1984, 98 Stat. 887; amended Pub. L. 99–514, title XVIII, §§1854(a)(1), (2)(A), (3)(B), (4), (5)(A), (6)(A), (7), (8)(A), (9)(B), (10), (11), (f)(3)(B), 1899A(26), Oct. 22, 1986, 100 Stat. 2872–2878, 2882, 2959; Pub. L. 100–647, title I, §1018(t)(4)(D)–(F), Nov. 10, 1988, 102 Stat. 3588; Pub. L. 101–239, title VII, §7303(a), Dec. 19, 1989, 103 Stat. 2352; Pub. L. 101–508, title XI, §11801(c)(9)(H), Nov. 5, 1990, 104 Stat. 1388–526; Pub. L. 104–188, title I, §§1311(b)(3), 1316(d)(3), 1616(b)(13), 1704(t)(50), Aug. 20, 1996, 110 Stat. 1784, 1786, 1857, 1890; Pub. L. 105–34, title IX, §968(a), Aug. 5, 1997, 111 Stat. 895.)

REFERENCES IN TEXT

The date of the enactment of the Revenue Reconciliation Act of 1990, referred to in subsec. (c)(1)(B)(ii), is the date of enactment of Pub. L. 101–508, which was approved Nov. 5, 1990.

The Tax Reform Act of 1986, referred to in subsec. (c)(4)(A), is Pub. L. 99–514, which was approved Oct. 22, 1986.

AMENDMENTS

1997—Subsec. (g). Pub. L. 105–34 added subsec. (g).

1996—Subsec. (c)(1)(A). Pub. L. 104–188, §1316(d)(3), substituted ''domestic C corporation'' for ''domestic corporation''.

Subsec. (c)(1)(B)(ii). Pub. L. 104–188, §1704(t)(50), provided that section 11801(c)(9)(H) of Pub. L. 101–508 shall be applied as if ''section 1042(c)(1)(B)'' appeared instead of ''section 1042(c)(2)(B)''. See 1990 Amendment note below.

Subsec. (c)(4)(A)(i). Pub. L. 104–188, §1311(b)(3), substituted ''section 1362(d)(3)(C)'' for ''section 1362(d)(3)(D)''.

Subsec. (c)(4)(B)(ii)(I). Pub. L. 104–188, §1616(b)(13), struck out ''or 593'' after ''section 581''.

1990—Subsec. (c)(1)(B)(ii). Pub. L. 101–508, which directed the amendment of subsec. (c)(2)(B)(ii) by substituting ''section 83, 422, or 423 applied (or to which section 422 or 424 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) applied)'' for ''section 83, 422, 422A, 423, or 424 applies'', was executed to subsec. (c)(1)(B)(ii). See 1996 Amendment note above.

1989—Subsec. (b)(4). Pub. L. 101–239 added par. (4).

1988—Subsec. (b)(3), (4). Pub. L. 100–647, §1018(t)(4)(F), made technical correction to Pub. L. 99–514, §1854(a)(3)(B), see 1986 Amendment notes below.

Subsec. (c)(4)(A). Pub. L. 100–647, §1018(t)(4)(D), inserted ''(as in effect immediately before the Tax Reform Act of 1986)'' after ''section 954(c)(3)'' in last sentence.

Subsec. (c)(4)(B)(i). Pub. L. 100–647, §1018(t)(4)(E), substituted ''replacement period'' for ''placement period''.

1986—Pub. L. 99–514, §1854(a)(11), which directed that ''employee'' be inserted before ''stock'' in section catchline was executed by making the insertion before ''stock'' the second time that term appears as the probable intent of Congress.

Subsec. (a). Pub. L. 99–514, §1854(a)(1), substituted ''the taxpayer or executor elects in such form as the Secretary may prescribe'' for ''the taxpayer elects'' in par. (1) and inserted ''which would be recognized as long-term capital gain'' in concluding provisions.

Subsec. (b)(2). Pub. L. 99–514, §1854(a)(2)(A), substituted ''Plan must hold'' for ''Employees must own'' in heading and amended text generally. Prior to amendment, par. (2) read as follows: ''The plan or cooperative referred to in paragraph (1) owns, immediately after the sale, at least 30 percent of the total value of the employer securities (within the meaning of section 409(*l*)) outstanding as of such time.''

Subsec. (b)(3). Pub. L. 99–514, §1854(a)(3)(B), as amended by Pub. L. 100–647, §1018(t)(4)(F), redesignated par. (4) as (3) and struck out former par. (3) which related to plans maintained for benefit of employees.

Subsec. (b)(3)(B). Pub. L. 99–514, §1854(f)(3)(B), amended subpar. (B) similar to amendment by section 1854(a)(9)(B) of Pub. L. 99–514, inserting reference to section 4979A.

Pub. L. 99–514, §1854(a)(9)(B), substituted ''sections 4978 and 4979A'' for ''section 4978(a)''.

Subsec. (b)(4). Pub. L. 99–514, §1854(a)(3)(B), as amended by Pub. L. 100–647, §1018(t)(4)(F), redesignated par. (4) as (3).

Subsec. (c). Pub. L. 99–514, §1899A(26), substituted ''this section—'' for ''this section.—'' in introductory provision.

Subsec. (c)(1). Pub. L. 99–514, §1854(a)(4), substituted ''stock outstanding that is'' for ''securities outstanding that are'' in subpar. (A), redesignated subpar. (C) as (B), and struck out former subpar. (B) which read as follows: ''at the time of the sale described in subsection (a)(1), have been held by the taxpayer for more than 1 year, and''.

Subsec. (c)(4). Pub. L. 99–514, §1854(a)(5)(A), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''The term 'qualified replacement property' means any securities (as defined in section 165(g)(2)) issued by a domestic corporation which does not, for the taxable year in which such stock is issued, have passive investment income (as defined in section 1362(d)(3)(D)) that exceeds 25 percent of the gross receipts of such corporation for such taxable year.''

Subsec. (c)(5). Pub. L. 99–514, §1854(a)(10), substituted ''sold'' for ''acquired'' in heading, and in text substituted ''sale of securities'' for ''acquisition of securities'' and inserted ''to an employee stock ownership plan or eligible worker-owned cooperative''.

Subsec. (c)(7). Pub. L. 99–514, § 1854(a)(6)(A), added par. (7).

Subsec. (d). Pub. L. 99–514, § 1854(a)(7), inserted last sentence.

Subsecs. (e), (f). Pub. L. 99–514, § 1854(a)(8)(A), added subsec. (e) and redesignated former subsec. (e) as (f).

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title IX, § 968(b), Aug. 5, 1997, 111 Stat. 896, provided that: ''The amendment made by this section [amending this section] shall apply to sales after December 31, 1997.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1316(d)(3) 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.

Amendment by section 1311(b)(3) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1317(a) of Pub. L. 104–188, set out as a note under section 641 of this title.

Amendment by section 1616(b)(13) of 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 1989 AMENDMENT

Pub. L. 101–239, title VII, § 7303(b), Dec. 19, 1989, 103 Stat. 2352, provided that: ''The amendment made by this section [amending this section] shall apply to sales after July 10, 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

Amendment by section 1854(a)(1), (2)(A), (4), (5)(A), (7), (10), (11) 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.

Amendment by section 1854(a)(3)(B) of Pub. L. 99–514 applicable to sales of securities after Oct. 22, 1986, except that a taxpayer or executor may elect to have section 1042(b)(3) of the Internal Revenue Code of 1954 (as in effect before the amendment by section 1854(a)(3)(B) of Pub. L. 99–514) apply to sales before Oct. 22, 1986, as if section 1042(b)(3) included the last sentence of section 409(n)(1) of this title (as added by section 1854(a)(3)(A) of Pub. L. 99–514), see section 1854(a)(3)(C) of Pub. L. 99–514, as amended, set out as a note under section 409 of this title.

Pub. L. 99–514, title XVIII, § 1854(a)(6)(B)–(D), Oct. 22, 1986, 100 Stat. 2876, provided that:

''(B) The amendment made by subparagraph (A) [amending this section] shall apply to sales after March 28, 1985, except that such amendment shall not apply to sales made before July 1, 1985, if made pursuant to a binding contract in effect on March 28, 1985, and at all times thereafter.

''(C) The amendment made by subparagraph (A) shall not apply to any sale occurring on December 20, 1985, with respect to which—

''(i) a commitment letter was issued by a bank on October 31, 1984, and

''(ii) a final purchase agreement was entered into on November 5, 1985.

''(D) In the case of a sale on September 27, 1985, with respect to which a preliminary commitment letter was issued by a bank on April 10, 1985, and with respect to which a commitment letter was issued by a bank on June 28, 1985, the amendment made by subparagraph (A) shall apply but such sale shall be treated as having occurred on September 27, 1986.''

Pub. L. 99–514, title XVIII, § 1854(a)(8)(B), Oct. 22, 1986, 100 Stat. 2877, provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to dispositions after the date of the enactment of this Act [Oct. 22, 1986], in taxable years ending after such date.''

Amendment by section 1854(a)(9)(B) of Pub. L. 99–514 applicable to sales of securities after Oct. 22, 1986, see section 1854(a)(9)(D) of Pub. L. 99–514, set out as an Effective Date note under section 4979A of this title.

Amendment by section 1854(f)(3)(B) of Pub. L. 99–514 effective Oct. 22, 1986, see section 1854(f)(4)(A) of Pub. L. 99–514, set out as a note under section 409 of this title.

EFFECTIVE DATE

Pub. L. 98–369, div. A, title V, § 541(c), July 18, 1984, 98 Stat. 890, provided that: ''The amendments made by this section [enacting this section and amending sections 1016 and 1223 of this title] shall apply to sales of securities in taxable years beginning after the date of enactment of this Act [July 18, 1984].''

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.

LINE ITEM VETO

Pub. L. 105–34, title IX, § 968, Aug. 5, 1997, 111 Stat. 895, amending this section and enacting provisions set out as a note above, was subject to line item veto by the President, Cancellation No. 97–2, signed Aug. 11, 1997, 62 F.R. 43267, Aug. 12, 1997. For decision holding line item veto unconstitutional, see *Clinton v. City of New York*, 524 U.S. 417, 118 S.Ct. 2091, 141 L.Ed.2d 393 (1998).

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.

OWNERSHIP OF STOCK OPTIONS AS OWNERSHIP OF STOCK; EMPLOYEE OWNERSHIP OF STOCK AFTER SALE

Pub. L. 99–514, title XVIII, § 1854(a)(2)(B), Oct. 22, 1986, 100 Stat. 2873, provided that:

''(i) The requirement that section 1042(b) of the Internal Revenue Code of 1954 [now 1986] shall be applied with regard to section 318(a)(4) of such Code shall apply to sales after May 6, 1986.

''(ii) In the case of sales after July 18, 1984, and before the date of the enactment of this Act [Oct. 22, 1986], paragraph (2) of section 1042(b) of such Code shall apply as if it read as follows:

'' '(2) EMPLOYEES MUST OWN 30 PERCENT OF STOCK AFTER SALE.—The plan or cooperative referred to in paragraph (1) owns, immediately after the sale, at least 30 percent of the employer securities or 30 percent of the value of employer securities (within the meaning of section 409(1)) outstanding at the time of sale.' ''

REPLACEMENT PERIOD FOR CERTAIN SECURITIES

Pub. L. 99–514, title XVIII, § 1854(a)(5)(B), Oct. 22, 1986, 100 Stat. 2875, provided that: ''If—

''(i) before January 1, 1987, the taxpayer acquired any security (as defined in section 165(g)(2) of the Internal Revenue Code of 1954 [now 1986]) issued by a domestic corporation or by any State or political subdivision thereof,

''(ii) the taxpayer treated such security as qualified replacement property for purposes of section 1042 of such Code, and

''(iii) such property does not meet the requirements of section 1042(c)(4) of such Code (as amended by subparagraph (A)),

then, with respect to so much of any gain which the taxpayer treated as not recognized under section 1042(a) by reason of the acquisition of such property, the replacement period for purposes of such section shall not expire before January 1, 1987.''

§ 1043. Sale of property to comply with conflict-of-interest requirements

(a) Nonrecognition of gain

If an eligible person sells any property pursuant to a certificate of divestiture, at the election of the taxpayer, gain from such sale shall be recognized only to the extent that the amount realized on such sale exceeds the cost (to the extent not previously taken into account under this subsection) of any permitted property purchased by the taxpayer during the 60-day period beginning on the date of such sale.

(b) Definitions

For purposes of this section—

(1) Eligible person

The term ''eligible person'' means—

(A) an officer or employee of the executive branch, or a judicial officer, of the Federal Government, but does not mean a special Government employee as defined in section 202 of title 18, United States Code, and

(B) any spouse or minor or dependent child whose ownership of any property is attributable under any statute, regulation, rule, judicial canon, or executive order referred to in paragraph (2) to a person referred to in subparagraph (A).

(2) Certificate of divestiture

The term ''certificate of divestiture'' means any written determination—

(A) that states that divestiture of specific property is reasonably necessary to comply with any Federal conflict of interest statute, regulation, rule, judicial canon, or executive order (including section 208 of title 18, United States Code), or requested by a congressional committee as a condition of confirmation,

(B) that has been issued by the President or the Director of the Office of Government Ethics, in the case of executive branch officers or employees, or by the Judicial Conference of the United States (or its designee), in the case of judicial officers, and

(C) that identifies the specific property to be divested.

(3) Permitted property

The term ''permitted property'' means any obligation of the United States or any diversified investment fund approved by regulations issued by the Office of Government Ethics.

(4) Purchase

The taxpayer shall be considered to have purchased any permitted property if, but for subsection (c), the unadjusted basis of such property would be its cost within the meaning of section 1012.

(5) Special rule for trusts

For purposes of this section, the trustee of a trust shall be treated as an eligible person with respect to property which is held in the trust if—

(A) any person referred to in paragraph (1)(A) has a beneficial interest in the principal or income of the trust, or

(B) any person referred to in paragraph (1)(B) has a beneficial interest in the principal or income of the trust and such interest is attributable under any statute, regulation, rule, judicial canon, or executive order referred to in paragraph (2) to a person referred to in paragraph (1)(A).

(6) Judicial officer

The term ''judicial officer'' means the Chief Justice of the United States, the Associate Justices of the Supreme Court, and the judges of the United States courts of appeals, United States district courts, including the district courts in Guam, the Northern Mariana Islands, and the Virgin Islands, Court of Appeals for the Federal Circuit, Court of International Trade, Tax Court, Court of Federal Claims, Court of Appeals for Veterans Claims, United States Court of Appeals for the Armed Forces, and any court created by Act of Congress, the judges of which are entitled to hold office during good behavior.

(c) Basis adjustments

If gain from the sale of any property is not recognized by reason of subsection (a), such gain shall be applied to reduce (in the order acquired) the basis for determining gain or loss of any permitted property which is purchased by the taxpayer during the 60-day period described in subsection (a).

(Added Pub. L. 101–194, title V, §502(a), Nov. 30, 1989, 103 Stat. 1754; amended Pub. L. 101–280, §6(a)(1), May 4, 1990, 104 Stat. 160; Pub. L. 101–508, title XI, §11703(a)(1), Nov. 5, 1990, 104 Stat. 1388–516; Pub. L. 109–432, div. A, title IV, §418(a), (b), Dec. 20, 2006, 120 Stat. 2966.)

AMENDMENTS

2006—Subsec. (b)(1)(A). Pub. L. 109–432, §418(a)(1)(A), inserted '', or a judicial officer,'' after ''executive branch''.

Subsec. (b)(1)(B), (2)(A). Pub. L. 109–432, §418(a)(1)(B), (2)(A), inserted ''judicial canon,'' after ''rule,''.

Subsec. (b)(2)(B). Pub. L. 109–432, §418(a)(2)(B), inserted ''in the case of executive branch officers or employees, or by the Judicial Conference of the United States (or its designee), in the case of judicial officers,'' after ''Ethics,''.

Subsec. (b)(5)(B). Pub. L. 109–432, §418(a)(3), inserted ''judicial canon,'' after ''rule,''.

Subsec. (b)(6). Pub. L. 109–432, §418(b), added par. (6).

1990—Subsec. (a). Pub. L. 101–508 substituted ''to the extent not previously taken into account under this subsection'' for ''reduced by any basis adjustment under subsection (c) attributable to a prior sale''.

Subsec. (b)(5). Pub. L. 101–280 added par. (5).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title IV, §418(c), Dec. 20, 2006, 120 Stat. 2967, provided that: ''The amendments made by this section [amending this section] shall apply to sales after the date of enactment of this Act [Dec. 20, 2006].''

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, § 11703(a)(2), Nov. 5, 1990, 104 Stat. 1388–517, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to sales after November 30, 1989.''

Pub. L. 101–280, § 6(a)(3), May 4, 1990, 104 Stat. 160, provided that: ''The amendment made by paragraph (1) [amending this section] and the provisions of paragraph (2) [set out below] shall apply to sales after November 30, 1989.''

EFFECTIVE DATE

Section applicable to sales after Nov. 30, 1989, see section 502(c) of Pub. L. 101–194, set out as an Effective Date of 1989 Amendment note under section 1016 of this title.

PROPERTY SOLD BEFORE JUNE 19, 1990

Pub. L. 101–280, § 6(a)(2), May 4, 1990, 104 Stat. 160, provided that:

''(A) For purposes of section 1043 of such Code—

''(i) any property sold before June 19, 1990, shall be treated as sold pursuant to a certificate of divestiture (as defined in subsection (b)(2) thereof) if such a certificate is issued with respect to such sale before such date, and

''(ii) in any such case, the 60-day period referred to in subsection (a) thereof shall not expire before the end of the 60-day period beginning on the date on which the certificate of divestiture was issued.

''(B) Notwithstanding subparagraph (A), section 1043 of such Code shall not apply to any sale before April 19, 1990, unless—

''(i) the sale was made in order to comply with an ethics agreement or pursuant to specific direction from the appropriate agency or confirming committee, and

''(ii) the justification for the sale meets the criteria set forth in subsection (b)(2)(A) thereof as implemented by the interim regulations implementing such section 1043, published on April 18, 1990.''

[§ 1044. Repealed. Pub. L. 115–97, title I, § 13313(a), Dec. 22, 2017, 131 Stat. 2133]

Section, added Pub. L. 103–66, title XIII, § 13114(a), Aug. 10, 1993, 107 Stat. 430; amended Pub. L. 104–188, title I, § 1703(a), Aug. 20, 1996, 110 Stat. 1875, related to rollover of publicly traded securities gain into specialized small business investment companies.

EFFECTIVE DATE OF REPEAL

Repeal applicable to sales after Dec. 31, 2017, see section 13313(c) of Pub. L. 115–97, set out as an Effective Date of 2017 Amendment note under section 1016 of this title.

§ 1045. Rollover of gain from qualified small business stock to another qualified small business stock

(a) Nonrecognition of gain

In the case of any sale of qualified small business stock held by a taxpayer other than a corporation for more than 6 months and with respect to which such taxpayer elects the application of this section, gain from such sale shall be recognized only to the extent that the amount realized on such sale exceeds—

(1) the cost of any qualified small business stock purchased by the taxpayer during the 60-day period beginning on the date of such sale, reduced by

(2) any portion of such cost previously taken into account under this section.

This section shall not apply to any gain which is treated as ordinary income for purposes of this title.

(b) Definitions and special rules

For purposes of this section—

(1) Qualified small business stock

The term ''qualified small business stock'' has the meaning given such term by section 1202(c).

(2) Purchase

A taxpayer shall be treated as having purchased any property if, but for paragraph (3), the unadjusted basis of such property in the hands of the taxpayer would be its cost (within the meaning of section 1012).

(3) Basis adjustments

If gain from any sale is not recognized by reason of subsection (a), such gain shall be applied to reduce (in the order acquired) the basis for determining gain or loss of any qualified small business stock which is purchased by the taxpayer during the 60-day period described in subsection (a).

(4) Holding period

For purposes of determining whether the nonrecognition of gain under subsection (a) applies to stock which is sold—

(A) the taxpayer's holding period for such stock and the stock referred to in subsection (a)(1) shall be determined without regard to section 1223, and

(B) only the first 6 months of the taxpayer's holding period for the stock referred to in subsection (a)(1) shall be taken into account for purposes of applying section 1202(c)(2).

(5) Certain rules to apply

Rules similar to the rules of subsections (f), (g), (h), (i), (j), and (k) of section 1202 shall apply.

(Added Pub. L. 105–34, title III, § 313(a), Aug. 5, 1997, 111 Stat. 841; amended Pub. L. 105–206, title VI, § 6005(f), July 22, 1998, 112 Stat. 806.)

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–206, § 6005(f)(1), in introductory provisions, substituted ''a taxpayer other than a corporation'' for ''an individual'' and ''such taxpayer'' for ''such individual''.

Subsec. (b)(5). Pub. L. 105–206, § 6005(f)(2), added par. (5).

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 sales after Aug. 5, 1997, see section 313(c) of Pub. L. 105–34, set out as an Effective Date of 1997 Amendment note under section 1016 of this title.

PART IV—SPECIAL RULES

AMENDMENTS

2017—Pub. L. 115–97, title I, §13309(b), Dec. 22, 2017, 131 Stat. 2131, added items 1061 and 1062 and struck out former item 1061 ''Cross references''.

2014—Pub. L. 113–295, div. A, title II, §221(a)(78), Dec. 19, 2014, 128 Stat. 4049, struck out item 1051 ''Property acquired during affiliation''.

2004—Pub. L. 108–357, title VIII, §886(b)(1)(B), Oct. 22, 2004, 118 Stat. 1641, struck out item 1056 ''Basis limitation for player contracts transferred in connection with the the sale of a franchise''.

1997—Pub. L. 105–34, title XI, §1131(c)(5), Aug. 5, 1997, 111 Stat. 980, struck out item 1057 ''Election to treat transfer to foreign trust, etc., as taxable exchange''.

1986—Pub. L. 99–514, title VI, §641(b), title XII, §1248(b), Oct. 22, 1986, 100 Stat. 2283, 2584, added items 1059A and 1060 and renumbered former item 1060 as 1061.

1984—Pub. L. 98–369, div. A, title I, §53(d), July 18, 1984, 98 Stat. 568, added item 1059 and renumbered former item 1059 as 1060.

1978—Pub. L. 95–345, §2(d)(2), Aug. 15, 1978, 92 Stat. 483, added item 1058 and renumbered former item 1058 as 1059.

1976—Pub. L. 94–455, title II, §212(a)(2), title X, 1015(c), Oct. 4, 1976, 90 Stat. 1546, 1618, added items 1056 and 1057 and renumbered former item 1056 as 1058.

1963—Pub. L. 88–9, §1(d), Apr. 10, 1963, 77 Stat. 8, added item 1055 and renumbered former item 1055 as 1056.

1960—Pub. L. 86–779, §8(c), Sept. 14, 1960, 74 Stat. 1003, renumbered former item 1054 as 1055 and added new item 1054.

[§ 1051. Repealed. Pub. L. 113–295, div. A, title II, § 221(a)(78), Dec. 19, 2014, 128 Stat. 4049]

Section, Aug. 16, 1954, ch. 736, 68A Stat. 310; Pub. L. 94–455, title XIX, §§1901(a)(131), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1786, 1834, related to property acquired by a corporation during affiliation.

EFFECTIVE DATE OF REPEAL

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

§ 1052. Basis established by the Revenue Act of 1932 or 1934 or by the Internal Revenue Code of 1939

(a) Revenue Act of 1932

If the property was acquired, after February 28, 1913, in any taxable year beginning before January 1, 1934, and the basis thereof, for purposes of the Revenue Act of 1932 was prescribed by section 113(a)(6), (7), or (9) of such Act (47 Stat. 199), then for purposes of this subtitle the basis shall be the same as the basis therein prescribed in the Revenue Act of 1932.

(b) Revenue Act of 1934

If the property was acquired, after February 28, 1913, in any taxable year beginning before January 1, 1936, and the basis thereof, for purposes of the Revenue Act of 1934, was prescribed by section 113(a)(6), (7), or (8) of such Act (48 Stat. 706), then for purposes of this subtitle the basis shall be the same as the basis therein prescribed in the Revenue Act of 1934.

(c) Internal Revenue Code of 1939

If the property was acquired, after February 28, 1913, in a transaction to which the Internal Revenue Code of 1939 applied, and the basis thereof, for purposes of the Internal Revenue Code of 1939, was prescribed by section 113(a)(6), (7), (8), (13), (15), (18), (19), or (23) of such code, then for purposes of this subtitle the basis shall be the same as the basis therein prescribed in the Internal Revenue Code of 1939.

(Aug. 16, 1954, ch. 736, 68A Stat. 310.)

REFERENCES IN TEXT

Revenue Act of 1932, referred to in section catchline and subsec. (a), is act June 6, 1932, ch. 209, 47 Stat. 169. For complete classification of the Act to the Code, see Tables.

Revenue Act of 1934, referred to in section catchline and subsec. (b), is act May 10, 1934, ch. 277, 48 Stat. 680. For complete classification of this Act to the Code, see Tables.

The Internal Revenue Code of 1939, referred to in section catchline and subsec. (c), is act Feb. 10, 1939, ch. 2, 53 Stat. 1, as amended. Prior to the enactment of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the 1939 Code was classified to former Title 26, Internal Revenue Code. For Table comparisons of the 1939 Code to the 1986 Code, see table I preceding section 1 of this title.

Section 113 of the Internal Revenue Code of 1939, referred to in subsec. (c), was classified to section 113 of former Title 26, Internal Revenue Code. Section 113 was 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.

§ 1053. Property acquired before March 1, 1913

In the case of property acquired before March 1, 1913, if the basis otherwise determined under this subtitle, adjusted (for the period before March 1, 1913) as provided in section 1016, is less than the fair market value of the property as of March 1, 1913, then the basis for determining gain shall be such fair market value. In determining the fair market value of stock in a corporation as of March 1, 1913, due regard shall be given to the fair market value of the assets of the corporation as of that date.

(Aug. 16, 1954, ch. 736, 68A Stat. 311; Pub. L. 85–866, title I, §47, Sept. 2, 1958, 72 Stat. 1642.)

AMENDMENTS

1958—Pub. L. 85–866 substituted ''subtitle'' for ''part''.

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.

§ 1054. Certain stock of Federal National Mortgage Association

In the case of a share of stock issued pursuant to section 303(c) of the Federal National Mort-

gage Association Charter Act (12 U.S.C., sec. 1718), the basis of such share in the hands of the initial holder shall be an amount equal to the capital contributions evidenced by such share reduced by the amount (if any) required by section 162(d) to be treated (with respect to such share) as ordinary and necessary expenses paid or incurred in carrying on a trade or business.

(Added Pub. L. 86–779, § 8(b), Sept. 14, 1960, 74 Stat. 1003.)

PRIOR PROVISIONS

A prior section 1054 was renumbered section 1062 of this title.

EFFECTIVE DATE

Section applicable with respect to taxable years beginning after Dec. 31, 1959, see section 8(d) of Pub. L. 86–779, set out as an Effective Date of 1960 Amendment note under section 162 of this title.

§ 1055. Redeemable ground rents

(a) Character

For purposes of this subtitle—

(1) a redeemable ground rent shall be treated as being in the nature of a mortgage, and

(2) real property held subject to liabilities under a redeemable ground rent shall be treated as held subject to liabilities under a mortgage.

(b) Application of subsection (a)

(1) In general

Subsection (a) shall take effect on the day after the date of the enactment of this section and shall apply with respect to taxable years ending after such date of enactment.

(2) Basis of holder

In determining the basis of real property held subject to liabilities under a redeemable ground rent, subsection (a) shall apply whether such real property was acquired before or after the enactment of this section.

(3) Basis of reserved redeemable ground rent

In the case of a redeemable ground rent reserved or created on or before the date of the enactment of this section in connection with a transfer of the right to hold real property subject to liabilities under such ground rent, the basis of such ground rent after such date in the hands of the person who reserved or created the ground rent shall be the amount taken into account in respect of such ground rent for Federal income tax purposes as consideration for the disposition of such real property. If no such amount was taken into account, such basis shall be determined as if this section had not been enacted.

(c) Redeemable ground rent defined

For purposes of this subtitle, the term ''redeemable ground rent'' means only a ground rent with respect to which—

(1) there is a lease of land which is assignable by the lessee without the consent of the lessor and which (together with periods for which the lease may be renewed at the option of the lessee) is for a term in excess of 15 years,

(2) the leaseholder has a present or future right to terminate, and to acquire the entire interest of the lessor in the land, by payment of a determined or determinable amount, which right exists by virtue of State or local law and not because of any private agreement or privately created condition, and

(3) the lessor's interest in the land is primarily a security interest to protect the rental payments to which the lessor is entitled under the lease.

(d) Cross reference

For treatment of rentals under redeemable ground rents as interest, see section 163(c).

(Added Pub. L. 88–9, § 1(b), Apr. 10, 1963, 77 Stat. 7.)

REFERENCES IN TEXT

Date of the enactment of this section, referred to in subsec. (b)(1), (3), means Apr. 10, 1963, the date of approval of Pub. L. 88–9.

PRIOR PROVISIONS

A prior section 1055 was renumbered section 1062 of this title.

EFFECTIVE DATE

Pub. L. 88–9, § 2, Apr. 10, 1963, 77 Stat. 8, provided that: ''The amendments made by subsection (a) of the first section of this Act [amending section 163 of this title] shall take effect as of January 1, 1962, and shall apply with respect to taxable years ending on or after such date. The amendments made by subsection (b) of the first section of this Act [enacting this section] shall take effect on the day after the date of the enactment of this Act [Apr. 10, 1963] and shall apply with respect to taxable years ending after such date of enactment.''

[§ 1056. Repealed. Pub. L. 108–357, title VIII, § 886(b)(1)(A), Oct. 22, 2004, 118 Stat. 1641]

Section, added Pub. L. 94–455, title II, § 212(a)(1), Oct. 4, 1976, 90 Stat. 1545; amended Pub. L. 99–514, title VI, § 631(e)(13), Oct. 22, 1986, 100 Stat. 2275, related to basis limitation for player contracts transferred in connection with the sale of a franchise.

A prior section 1056 was renumbered section 1062 of this title.

EFFECTIVE DATE OF REPEAL

Repeal applicable to property acquired after Oct. 22, 2004, see section 886(c)(1) of Pub. L. 108–357, set out as an Effective Date of 2004 Amendment note under section 197 of this title.

[§ 1057. Repealed. Pub. L. 105–34, title XI, § 1131(c)(2), Aug. 5, 1997, 111 Stat. 980]

Section, added Pub. L. 94–455, title X, § 1015(c), Oct. 4, 1976, 90 Stat. 1618, related to election to treat transfer to foreign trust, etc., as taxable exchange.

A prior section 1057 was renumbered section 1062 of this title.

§ 1058. Transfers of securities under certain agreements

(a) General rule

In the case of a taxpayer who transfers securities (as defined in section 1236(c)) pursuant to an agreement which meets the requirements of subsection (b), no gain or loss shall be recognized on the exchange of such securities by the taxpayer for an obligation under such agreement, or on the exchange of rights under such agreement by that taxpayer for securities identical to the securities transferred by that taxpayer.

(b) Agreement requirements

In order to meet the requirements of this subsection, an agreement shall—

(1) provide for the return to the transferor of securities identical to the securities transferred;

(2) require that payments shall be made to the transferor of amounts equivalent to all interest, dividends, and other distributions which the owner of the securities is entitled to receive during the period beginning with the transfer of the securities by the transferor and ending with the transfer of identical securities back to the transferor;

(3) not reduce the risk of loss or opportunity for gain of the transferor of the securities in the securities transferred; and

(4) meet such other requirements as the Secretary may by regulation prescribe.

(c) Basis

Property acquired by a taxpayer described in subsection (a), in a transaction described in that subsection, shall have the same basis as the property transferred by that taxpayer.

(Added Pub. L. 95–345, §2(d)(1), Aug. 15, 1978, 92 Stat. 482.)

PRIOR PROVISIONS

A prior section 1058 was renumbered section 1062 of this title.

EFFECTIVE DATE

Section 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 this section, occurring after such date, see section 2(e) of Pub. L. 95–345, set out as an Effective Date of 1978 Amendment note under section 509 of this title.

§ 1059. Corporate shareholder's basis in stock reduced by nontaxed portion of extraordinary dividends

(a) General rule

If any corporation receives any extraordinary dividend with respect to any share of stock and such corporation has not held such stock for more than 2 years before the dividend announcement date—

(1) Reduction in basis

The basis of such corporation in such stock shall be reduced (but not below zero) by the nontaxed portion of such dividends.

(2) Amounts in excess of basis

If the nontaxed portion of such dividends exceeds such basis, such excess shall be treated as gain from the sale or exchange of such stock for the taxable year in which the extraordinary dividend is received.

(b) Nontaxed portion

For purposes of this section—

(1) In general

The nontaxed portion of any dividend is the excess (if any) of—

(A) the amount of such dividend, over

(B) the taxable portion of such dividend.

(2) Taxable portion

The taxable portion of any dividend is—

(A) the portion of such dividend includible in gross income, reduced by

(B) the amount of any deduction allowable with respect to such dividend under section 243[1] 245, or 245A.

(c) Extraordinary dividend defined

For purposes of this section—

(1) In general

The term ''extraordinary dividend'' means any dividend with respect to a share of stock if the amount of such dividend equals or exceeds the threshold percentage of the taxpayer's adjusted basis in such share of stock.

(2) Threshold percentage

The term ''threshold percentage'' means—

(A) 5 percent in the case of stock which is preferred as to dividends, and

(B) 10 percent in the case of any other stock.

(3) Aggregation of dividends

(A) Aggregation within 85-day period

All dividends—

(i) which are received by the taxpayer (or a person described in subparagraph (C)) with respect to any share of stock, and

(ii) which have ex-dividend dates within the same period of 85 consecutive days,

shall be treated as 1 dividend.

(B) Aggregation within 1 year where dividends exceed 20 percent of adjusted basis

All dividends—

(i) which are received by the taxpayer (or a person described in subparagraph (C)) with respect to any share of stock, and

(ii) which have ex-dividend dates during the same period of 365 consecutive days,

shall be treated as extraordinary dividends if the aggregate of such dividends exceeds 20 percent of the taxpayer's adjusted basis in such stock (determined without regard to this section).

(C) Substituted basis transactions

In the case of any stock, a person is described in this subparagraph if—

(i) the basis of such stock in the hands of such person is determined in whole or in part by reference to the basis of such stock in the hands of the taxpayer, or

(ii) the basis of such stock in the hands of the taxpayer is determined in whole or in part by reference to the basis of such stock in the hands of such person.

(4) Fair market value determination

If the taxpayer establishes to the satisfaction of the Secretary the fair market value of any share of stock as of the day before the ex-dividend date, the taxpayer may elect to apply paragraphs (1) and (3) by substituting such value for the taxpayer's adjusted basis.

(d) Special rules

For purposes of this section—

[1] So in original. Probably should be followed by a comma.

(1) Time for reduction

Any reduction in basis under subsection (a)(1) shall be treated as occurring at the beginning of the ex-dividend date of the extraordinary dividend to which the reduction relates.

(2) Distributions in kind

To the extent any dividend consists of property other than cash, the amount of such dividend shall be treated as the fair market value of such property (as of the date of the distribution) reduced as provided in section 301(b)(2).

(3) Determination of holding period

For purposes of determining the holding period of stock under subsection (a), rules similar to the rules of paragraphs (3) and (4) of section 246(c) shall apply; except that ''2 years'' shall be substituted for the number of days specified in subparagraph (B)[2] of section 246(c)(3).

(4) Ex-dividend date

The term ''ex-dividend date'' means the date on which the share of stock becomes ex-dividend.

(5) Dividend announcement date

The term ''dividend announcement date'' means, with respect to any dividend, the date on which the corporation declares, announces, or agrees to the amount or payment of such dividend, whichever is the earliest.

(6) Exception where stock held during entire existence of corporation

(A) In general

Subsection (a) shall not apply to any extraordinary dividend with respect to any share of stock of a corporation if—

(i) such stock was held by the taxpayer during the entire period such corporation was in existence, and

(ii) except as provided in regulations, no earnings and profits of such corporation were attributable to transfers of property from (or earnings and profits of) a corporation which is not a qualified corporation.

(B) Qualified corporation

For purposes of subparagraph (A), the term ''qualified corporation'' means any corporation (including a predecessor corporation)—

(i) with respect to which the taxpayer holds directly or indirectly during the entire period of such corporation's existence at least the same ownership interest as the taxpayer holds in the corporation distributing the extraordinary dividend, and

(ii) which has no earnings and profits—

(I) which were earned by, or

(II) which are attributable to gain on property which accrued during a period the corporation holding the property was,

a corporation not described in clause (i).

(C) Application of paragraph

This paragraph shall not apply to any extraordinary dividend to the extent such application is inconsistent with the purposes of this section.

(e) Special rules for certain distributions

(1) Treatment of partial liquidations and certain redemptions

Except as otherwise provided in regulations—

(A) Redemptions

In the case of any redemption of stock—

(i) which is part of a partial liquidation (within the meaning of section 302(e)) of the redeeming corporation,

(ii) which is not pro rata as to all shareholders, or

(iii) which would not have been treated (in whole or in part) as a dividend if—

(I) any options had not been taken into account under section 318(a)(4), or

(II) section 304(a) had not applied,

any amount treated as a dividend with respect to such redemption shall be treated as an extraordinary dividend to which paragraphs (1) and (2) of subsection (a) apply without regard to the period the taxpayer held such stock. In the case of a redemption described in clause (iii), only the basis in the stock redeemed shall be taken into account under subsection (a).

(B) Reorganizations, etc.

An exchange described in section 356 which is treated as a dividend shall be treated as a redemption of stock for purposes of applying subparagraph (A).

(2) Qualifying dividends

(A) In general

Except as provided in regulations, the term ''extraordinary dividend'' does not include any qualifying dividend (within the meaning of section 243).

(B) Exception

Subparagraph (A) shall not apply to any portion of a dividend which is attributable to earnings and profits which—

(i) were earned by a corporation during a period it was not a member of the affiliated group, or

(ii) are attributable to gain on property which accrued during a period the corporation holding the property was not a member of the affiliated group.

(3) Qualified preferred dividends

(A) In general

In the case of 1 or more qualified preferred dividends with respect to any share of stock—

(i) this section shall not apply to such dividends if the taxpayer holds such stock for more than 5 years, and

(ii) if the taxpayer disposes of such stock before it has been held for more than 5 years, the aggregate reduction under subsection (a)(1) with respect to such dividends shall not be greater than the excess (if any) of—

(I) the qualified preferred dividends paid with respect to such stock during

[2] See References in Text note below.

the period the taxpayer held such stock, over

(II) the qualified preferred dividends which would have been paid during such period on the basis of the stated rate of return.

(B) Rate of return

For purposes of this paragraph—

(i) Actual rate of return

The actual rate of return shall be the rate of return for the period for which the taxpayer held the stock, determined—

(I) by only taking into account dividends during such period, and

(II) by using the lesser of the adjusted basis of the taxpayer in such stock or the liquidation preference of such stock.

(ii) Stated rate of return

The stated rate of return shall be the annual rate of the qualified preferred dividend payable with respect to any share of stock (expressed as a percentage of the amount described in clause (i)(II)).

(C) Definitions and special rules

For purposes of this paragraph—

(i) Qualified preferred dividend

The term ''qualified preferred dividend'' means any fixed dividend payable with respect to any share of stock which—

(I) provides for fixed preferred dividends payable not less frequently than annually, and

(II) is not in arrears as to dividends at the time the taxpayer acquires the stock.

Such term shall not include any dividend payable with respect to any share of stock if the actual rate of return on such stock exceeds 15 percent.

(ii) Holding period

In determining the holding period for purposes of subparagraph (A)(ii), subsection (d)(3) shall be applied by substituting ''5 years'' for ''2 years''.

(f) Treatment of dividends on certain preferred stock

(1) In general

Any dividend with respect to disqualified preferred stock shall be treated as an extraordinary dividend to which paragraphs (1) and (2) of subsection (a) apply without regard to the period the taxpayer held the stock.

(2) Disqualified preferred stock

For purposes of this subsection, the term ''disqualified preferred stock'' means any stock which is preferred as to dividends if—

(A) when issued, such stock has a dividend rate which declines (or can reasonably be expected to decline) in the future,

(B) the issue price of such stock exceeds its liquidation rights or its stated redemption price, or

(C) such stock is otherwise structured—

(i) to avoid the other provisions of this section, and

(ii) to enable corporate shareholders to reduce tax through a combination of dividend received deductions and loss on the disposition of the stock.

(g) Regulations

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

(1) providing for the application of this section in the case of stock dividends, stock splits, reorganizations, and other similar transactions, in the case of stock held by pass-thru entities, and in the case of consolidated groups, and

(2) providing that the rules of subsection (f) shall apply in the case of stock which is not preferred as to dividends in cases where stock is structured to avoid the purposes of this section.

(Added Pub. L. 98–369, div. A, title I, §53(a), July 18, 1984, 98 Stat. 565; amended Pub. L. 99–514, title VI, §614(a)–(e), Oct. 22, 1986, 100 Stat. 2251–2253; Pub. L. 100–647, title I, §1006(c), Nov. 10, 1988, 102 Stat. 3393; Pub. L. 101–239, title VII, §7206(a), Dec. 19, 1989, 103 Stat. 2336; Pub. L. 105–34, title X, §§1011(a)–(c), 1013(b), title XVI, §1604(d)(1), Aug. 5, 1997, 111 Stat. 912, 913, 918, 1098; Pub. L. 105–206, title VI, §6010(b), July 22, 1998, 112 Stat. 813; Pub. L. 113–295, div. A, title II, §221(a)(41)(G), Dec. 19, 2014, 128 Stat. 4044; Pub. L. 115–97, title I, §14101(c)(2), Dec. 22, 2017, 131 Stat. 2191.)

REFERENCES IN TEXT

Section 246(c)(3) of this title, referred to in subsec. (d)(3), was amended by Pub. L. 105–34, title X, §1015(b)(2), Aug. 5, 1997, 111 Stat. 922, by striking out subpar. (B) and redesignating subpar. (C) as (B).

PRIOR PROVISIONS

A prior section 1059 was renumbered section 1062 of this title.

AMENDMENTS

2017—Subsec. (b)(2)(B). Pub. L. 115–97 substituted ''245, or 245A'' for ''or 245''.

2014—Subsec. (b)(2)(B). Pub. L. 113–295 struck out '', 244,'' after ''243''.

1998—Subsec. (g)(1). Pub. L. 105–206 substituted '', in the case of stock held by pass-thru entities, and in the case of consolidated groups'' for ''and in the case of stock held by pass-thru entities''.

1997—Subsec. (a)(2). Pub. L. 105–34, §1011(a), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''In addition to any gain recognized under this chapter, there shall be treated as gain from the sale or exchange of any stock for the taxable year in which the sale or disposition of such stock occurs an amount equal to the aggregate nontaxed portions of any extraordinary dividends with respect to such stock which did not reduce the basis of such stock by reason of the limitation on reducing basis below zero.''

Subsec. (d)(1). Pub. L. 105–34, §1011(c), amended heading and text of par. (1) generally. Prior to amendment, text read as follows:

''(A) IN GENERAL.—Except as provided in subparagraph (B), any reduction in basis under subsection (a)(1) shall occur immediately before any sale or disposition of the stock.

''(B) SPECIAL RULE FOR COMPUTING EXTRAORDINARY DIVIDEND.—In determining a taxpayer's adjusted basis for purposes of subsection (c)(1), any reduction in basis under subsection (a)(1) by reason of a prior distribution

which was an extraordinary dividend shall be treated as occurring at the beginning of the ex-dividend date for such distribution.''

Subsec. (d)(3). Pub. L. 105–34, §1604(d)(1), substituted ''subsection (a)'' for ''subsection (a)(2)''.

Subsec. (e)(1). Pub. L. 105–34, §1011(b), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: ''Except as otherwise provided in regulations, in the case of any redemption of stock which is—

''(A) part of a partial liquidation (within the meaning of section 302(e)) of the redeeming corporation, or

''(B) not pro rata as to all shareholders,

any amount treated as a dividend under section 301 with respect to such redemption shall be treated as an extraordinary dividend to which paragraphs (1) and (2) of subsection (a) apply without regard to the period the taxpayer held such stock.''

Subsec. (e)(1)(A)(iii). Pub. L. 105–34, §1013(b), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''which would not have been treated (in whole or in part) as a dividend if any options had not been taken into account under section 318(a)(4).''

1989—Subsecs. (f), (g). Pub. L. 101–239 added subsecs. (f) and (g) and struck out former subsec. (f) which read as follows: ''REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this section, including regulations providing for the application of this section in the case of stock dividends, stock splits, reorganizations, and other similar transactions and in the case of stock held by pass-thru entities.''

1988—Subsec. (d)(5). Pub. L. 100–647, §1006(c)(2), inserted ''amount or'' after ''agrees to the''.

Pub. L. 100–647, §1006(c)(1), redesignated par. (6) as (5) and struck out former par. (5) which related to extension to certain property distributions.

Subsec. (d)(6). Pub. L. 100–647, §1006(c)(3), amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''Subsection (a) shall not apply to any extraordinary dividend with respect to any share of stock of a corporation if—

''(A) such stock was held by the taxpayer during the entire period such corporation (and any precedessor [sic] corporation) was in existence,

''(B) except as provided in regulations, the only earnings and profits of such corporation were earnings and profits accumulated by such corporation (or any predecessor corporation) during such period, and

''(C) the application of this paragraph to such dividend is not inconsistent with the purposes of this section.''

Pub. L. 100–647, §1006(c)(1), redesignated par. (7) as (6). Former par. (6) redesignated (5).

Subsec. (d)(7). Pub. L. 100–647, §1006(c)(1), redesignated par. (7) as (6).

Subsec. (e)(1). Pub. L. 100–647, §1006(c)(4), substituted ''to which paragraphs (1) and (2) of subsection (a) apply without regard to the period the taxpayer held such stock'' for ''for purposes of this section (without regard to the holding period of the stock)''.

Subsec. (e)(2). Pub. L. 100–647, §1006(c)(5), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Except as provided in regulations, the term 'extraordinary dividend' shall not include any qualifying dividend (within the meaning of section 243(b)(1)).''

Subsec. (e)(3)(A). Pub. L. 100–647, §1006(c)(6), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''A qualified preferred dividend shall be treated as an extraordinary dividend—

''(i) only if the actual rate of return of the taxpayer on the stock with respect to which such dividend was paid exceeds 15 percent, or

''(ii) if clause (i) does not apply, and the taxpayer disposes of such stock before the taxpayer has held such stock for more than 5 years, only to the extent the actual rate of return exceeds the stated rate of return.''

Subsec. (e)(3)(B). Pub. L. 100–647, §1006(c)(8)(A), which directed the amendment of subpar. (B) ''by striking out 'subparagraph (A)' and the material preceding clause (i) and inserting in lieu thereof 'this paragraph' '', was executed by striking out ''subparagraph (A)'' in the material preceding clause (i) and inserting in lieu thereof ''this paragraph'', to reflect the probable intent of Congress.

Subsec. (e)(3)(B)(ii). Pub. L. 100–647, §1006(c)(8)(B), substituted ''clause (i)(II)'' for ''subparagraph (B)(i)(II)''.

Subsec. (e)(3)(C)(i). Pub. L. 100–647, §1006(c)(7), inserted ''fixed'' before ''dividend payable'' in introductory provisions and inserted at end ''Such term shall not include any dividend payable with respect to any share of stock if the actual rate of return on such stock exceeds 15 percent.''

Subsec. (f). Pub. L. 100–647, §1006(c)(9), inserted ''and in the case of stock held by pass-thru entities'' after ''other similar transactions''.

1986—Subsec. (a). Pub. L. 99–514, §614(a)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''If any corporation—

''(1) receives an extraordinary dividend with respect to any share of stock, and

''(2) sells or otherwise disposes of such stock before such stock has been held for more than 1 year,

the basis of such corporation in such stock shall be reduced by the nontaxed portion of such dividend. If the nontaxed portion of such dividend exceeds such basis, such excess shall be treated as gain from the sale or exchange of such stock.''

Subsec. (c)(1). Pub. L. 99–514, §614(c)(2), struck out ''(determined without regard to this section)'' after ''such share of stock''.

Subsec. (c)(4). Pub. L. 99–514, §614(b), added par. (4).

Subsec. (d)(1). Pub. L. 99–514, §614(c)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Any reduction in basis under subsection (a) by reason of any distribution which is an extraordinary dividend shall occur at the beginning of the ex-dividend date for such distribution.''

Subsec. (d)(3). Pub. L. 99–514, §614(a)(3), substituted ''2 years'' for ''1 year''.

Subsec. (d)(6). Pub. L. 99–514, §614(a)(2), added par. (6).

Subsec. (d)(7). Pub. L. 99–514, §614(d), added par. (7).

Subsecs. (e), (f). Pub. L. 99–514, §614(e), added subsec. (e) and redesignated former subsec. (e) as (f).

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–97 applicable to distributions made after Dec. 31, 2017, see section 14101(f) of Pub. L. 115–97, set out as an Effective Date note under section 245A 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 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, §1011(d), Aug. 5, 1997, 111 Stat. 913, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to distributions after May 3, 1995.

''(2) TRANSITION RULE.—The amendments made by this section shall not apply to any distribution made pursuant to the terms of—

''(A) a written binding contract in effect on May 3, 1995, and at all times thereafter before such distribution, or

''(B) a tender offer outstanding on May 3, 1995.

''(3) CERTAIN DIVIDENDS NOT PURSUANT TO CERTAIN REDEMPTIONS.—In determining whether the amendment made by subsection (a) applies to any extraordinary dividend other than a dividend treated as an extraordinary dividend under section 1059(e)(1) of the Internal Revenue Code of 1986 (as amended by this Act), paragraphs (1) and (2) shall be applied by substituting 'September 13, 1995' for 'May 3, 1995'.''

Amendment by section 1013(b) of Pub. L. 105–34 applicable to distributions and acquisitions after June 8, 1997, with certain exceptions, see section 1013(d) of Pub. L. 105–34, set out as a note under section 304 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7206(b), Dec. 19, 1989, 103 Stat. 2337, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to stock issued after July 10, 1989, in taxable years ending after such date.

''(2) BINDING CONTRACT.—The amendment made by subsection (a) shall not apply to any stock issued pursuant to a written binding contract in effect on July 10, 1989, and at all times thereafter before the stock is issued.''

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 VI, §614(f), Oct. 22, 1986, 100 Stat. 2254, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section] shall apply to dividends declared after July 18, 1986, in taxable years ending after such date.

''(2) AGGREGATION.—For purposes of section 1059(c)(3) of the Internal Revenue Code of 1986, dividends declared after July 18, 1986, shall not be aggregated with dividends declared on or before July 18, 1986.

''(3) REDEMPTIONS.—Section 1059(e)(1) of the Internal Revenue Code of 1986 (as added by subsection (e)) shall apply to dividends declared after the date of the enactment of this Act [Oct. 22, 1986], in taxable years ending after such date.''

EFFECTIVE DATE

Pub. L. 98–369, div. A, title I, §53(e), July 18, 1984, 98 Stat. 568, as amended by Pub. L. 99–514, §2, title XVIII, §1804(b)(2), Oct. 22, 1986, 100 Stat. 2095, 2798, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [enacting this section and amending sections 246, 1016, and 7701 of this title] shall apply to distributions after March 1, 1984, in taxable years ending after such date.

''(2) SUBSECTION (b).—The amendments made by subsection (b) [amending section 246 of this title] shall apply to stock acquired after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.

''(3) RELATED PERSON PROVISIONS.—

''(A) IN GENERAL.—Except as otherwise provided in subparagraph (B), the amendment made by subsection (c) [amending section 7701 of this title] shall take effect on July 18, 1984.

''(B) SPECIAL RULE FOR PURPOSES OF SECTION 265(2).—The amendment made by subsection (c) insofar as it relates to section 265(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall apply to—

''(i) term loans made after July 18, 1984, and

''(ii) demand loans outstanding after July 18, 1984 (other than any loan outstanding on July 18, 1984, and repaid before September 18, 1984).

''(C) TREATMENT OF RENEGOTIATIONS, ETC.—For purposes of this paragraph, any loan renegotiated, extended, or revised after July 18, 1984, shall be treated as a loan made after such date.

''(D) DEFINITION OF TERM AND DEMAND LOANS.—For purposes of this paragraph, the terms 'demand loan' and 'term loan' have the respective meanings given such terms by paragraphs (5) and (6) of section 7872(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], except that the second sentence of such paragraph (5) shall not apply.''

§ 1059A. Limitation on taxpayer's basis or inventory cost in property imported from related persons

(a) In general

If any property is imported into the United States in a transaction (directly or indirectly) between related persons (within the meaning of section 482), the amount of any costs—

(1) which are taken into account in computing the basis or inventory cost of such property by the purchaser, and

(2) which are also taken into account in computing the customs value of such property,

shall not, for purposes of computing such basis or inventory cost for purposes of this chapter, be greater than the amount of such costs taken into account in computing such customs value.

(b) Customs value; import

For purposes of this section—

(1) Customs value

The term ''customs value'' means the value taken into account for purposes of determining the amount of any customs duties or any other duties which may be imposed on the importation of any property.

(2) Import

Except as provided in regulations, the term ''import'' means the entering, or withdrawal from warehouse, for consumption.

(Added Pub. L. 99–514, title XII, §1248(a), Oct. 22, 1986, 100 Stat. 2584.)

EFFECTIVE DATE

Pub. L. 99–514, title XII, §1248(c), Oct. 22, 1986, 100 Stat. 2584, provided that: ''The amendments made by this section [enacting this section] shall apply to transactions entered into after March 18, 1986.''

§ 1060. Special allocation rules for certain asset acquisitions

(a) General rule

In the case of any applicable asset acquisition, for purposes of determining both—

(1) the transferee's basis in such assets, and

(2) the gain or loss of the transferor with respect to such acquisition,

the consideration received for such assets shall be allocated among such assets acquired in such acquisition in the same manner as amounts are allocated to assets under section 338(b)(5). If in

connection with an applicable asset acquisition, the transferee and transferor agree in writing as to the allocation of any consideration, or as to the fair market value of any of the assets, such agreement shall be binding on both the transferee and transferor unless the Secretary determines that such allocation (or fair market value) is not appropriate.

(b) Information required to be furnished to Secretary

Under regulations, the transferor and transferee in an applicable asset acquisition shall, at such times and in such manner as may be provided in such regulations, furnish to the Secretary the following information:

(1) The amount of the consideration received for the assets which is allocated to section 197 intangibles.

(2) Any modification of the amount described in paragraph (1).

(3) Any other information with respect to other assets transferred in such acquisition as the Secretary deems necessary to carry out the provisions of this section.

(c) Applicable asset acquisition

For purposes of this section, the term ''applicable asset acquisition'' means any transfer (whether directly or indirectly)—

(1) of assets which constitute a trade or business, and

(2) with respect to which the transferee's basis in such assets is determined wholly by reference to the consideration paid for such assets.

A transfer shall not be treated as failing to be an applicable asset acquisition merely because section 1031 applies to a portion of the assets transferred.

(d) Treatment of certain partnership transactions

In the case of a distribution of partnership property or a transfer of an interest in a partnership—

(1) the rules of subsection (a) shall apply but only for purposes of determining the value of section 197 intangibles for purposes of applying section 755, and

(2) if section 755 applies, such distribution or transfer (as the case may be) shall be treated as an applicable asset acquisition for purposes of subsection (b).

(e) Information required in case of certain transfers of interests in entities

(1) In general

If—

(A) a person who is a 10-percent owner with respect to any entity transfers an interest in such entity, and

(B) in connection with such transfer, such owner (or a related person) enters into an employment contract, covenant not to compete, royalty or lease agreement, or other agreement with the transferee,

such owner and the transferee shall, at such time and in such manner as the Secretary may prescribe, furnish such information as the Secretary may require.

(2) 10-percent owner

For purposes of this subsection—

(A) In general

The term ''10-percent owner'' means, with respect to any entity, any person who holds 10 percent or more (by value) of the interests in such entity immediately before the transfer.

(B) Constructive ownership

Section 318 shall apply in determining ownership of stock in a corporation. Similar principles shall apply in determining the ownership of interests in any other entity.

(3) Related person

For purposes of this subsection, the term ''related person'' means any person who is related (within the meaning of section 267(b) or 707(b)(1)) to the 10-percent owner.

(f) Cross reference

For provisions relating to penalties for failure to file a return required by this section, see section 6721.

(Added Pub. L. 99–514, title VI, § 641(a), Oct. 22, 1986, 100 Stat. 2282; amended Pub. L. 100–647, title I, § 1006(h)(1), (2), (3)(B), Nov. 10, 1988, 102 Stat. 3410; Pub. L. 101–508, title XI, § 11323(a), (b)(1), Nov. 5, 1990, 104 Stat. 1388–464; Pub. L. 103–66, title XIII, § 13261(e), Aug. 10, 1993, 107 Stat. 539.)

PRIOR PROVISIONS

A prior section 1060 was renumbered section 1062 of this title.

AMENDMENTS

1993—Subsec. (b)(1). Pub. L. 103–66, § 13261(e)(1), substituted ''section 197 intangibles'' for ''goodwill or going concern value''.

Subsec. (d)(1). Pub. L. 103–66, § 13261(e)(2), substituted ''section 197 intangibles'' for ''goodwill or going concern value (or similar items)''.

1990—Subsec. (a). Pub. L. 101–508, § 11323(a), inserted at end ''If in connection with an applicable asset acquisition, the transferee and transferor agree in writing as to the allocation of any consideration, or as to the fair market value of any of the assets, such agreement shall be binding on both the transferee and transferor unless the Secretary determines that such allocation (or fair market value) is not appropriate.''

Subsecs. (e), (f). Pub. L. 101–508, § 11323(b)(1), added subsec. (e) and redesignated former subsec. (e) as (f).

1988—Subsec. (b)(3). Pub. L. 100–647, § 1006(h)(1), substituted ''deems'' for ''may find''.

Subsec. (d). Pub. L. 100–647, § 1006(h)(2), added subsec. (d).

Subsec. (e). Pub. L. 100–647, § 1006(h)(3)(B), added subsec. (e).

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 OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to acquisitions after Oct. 9, 1990, but not applicable to any acquisition pursuant to a written binding contract in effect on Oct. 9, 1990, and at all times thereafter before such acquisition, see section 11323(d) of Pub. L. 101–508, set out as a note under section 338 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 VI, § 641(c), Oct. 22, 1986, 100 Stat. 2283, provided that: ''The amendments made by this section [enacting this section and renumbering former section 1060 as 1061] shall apply to any acquisition of assets after May 6, 1986, unless such acquisition is pursuant to a binding contract which was in effect on May 6, 1986, and at all times thereafter.''

§ 1061. Partnership interests held in connection with performance of services

(a) In general

If one or more applicable partnership interests are held by a taxpayer at any time during the taxable year, the excess (if any) of—

(1) the taxpayer's net long-term capital gain with respect to such interests for such taxable year, over

(2) the taxpayer's net long-term capital gain with respect to such interests for such taxable year computed by applying paragraphs (3) and (4) of sections[1] 1222 by substituting ''3 years'' for ''1 year'',

shall be treated as short-term capital gain, notwithstanding section 83 or any election in effect under section 83(b).

(b) Special rule

To the extent provided by the Secretary, subsection (a) shall not apply to income or gain attributable to any asset not held for portfolio investment on behalf of third party investors.

(c) Applicable partnership interest

For purposes of this section—

(1) In general

Except as provided in this paragraph or paragraph (4), the term ''applicable partnership interest'' means any interest in a partnership which, directly or indirectly, is transferred to (or is held by) the taxpayer in connection with the performance of substantial services by the taxpayer, or any other related person, in any applicable trade or business. The previous sentence shall not apply to an interest held by a person who is employed by another entity that is conducting a trade or business (other than an applicable trade or business) and only provides services to such other entity.

(2) Applicable trade or business

The term ''applicable trade or business'' means any activity conducted on a regular, continuous, and substantial basis which, regardless of whether the activity is conducted in one or more entities, consists, in whole or in part, of—

(A) raising or returning capital, and

(B) either—

(i) investing in (or disposing of) specified assets (or identifying specified assets for such investing or disposition), or

(ii) developing specified assets.

(3) Specified asset

The term ''specified asset'' means securities (as defined in section 475(c)(2) without regard to the last sentence thereof), commodities (as defined in section 475(e)(2)), real estate held for rental or investment, cash or cash equivalents, options or derivative contracts with respect to any of the foregoing, and an interest in a partnership to the extent of the partnership's proportionate interest in any of the foregoing.

(4) Exceptions

The term ''applicable partnership interest'' shall not include—

(A) any interest in a partnership directly or indirectly held by a corporation, or

(B) any capital interest in the partnership which provides the taxpayer with a right to share in partnership capital commensurate with—

(i) the amount of capital contributed (determined at the time of receipt of such partnership interest), or

(ii) the value of such interest subject to tax under section 83 upon the receipt or vesting of such interest.

(5) Third party investor

The term ''third party investor'' means a person who—

(A) holds an interest in the partnership which does not constitute property held in connection with an applicable trade or business; and

(B) is not (and has not been) actively engaged, and is (and was) not related to a person so engaged, in (directly or indirectly) providing substantial services described in paragraph (1) for such partnership or any applicable trade or business.

(d) Transfer of applicable partnership interest to related person

(1) In general

If a taxpayer transfers any applicable partnership interest, directly or indirectly, to a person related to the taxpayer, the taxpayer shall include in gross income (as short term capital gain) the excess (if any) of—

(A) so much of the taxpayer's long-term capital gains with respect to such interest for such taxable year attributable to the sale or exchange of any asset held for not more than 3 years as is allocable to such interest, over

(B) any amount treated as short term capital gain under subsection (a) with respect to the transfer of such interest.

(2) Related person

For purposes of this paragraph, a person is related to the taxpayer if—

(A) the person is a member of the taxpayer's family within the meaning of section 318(a)(1), or

(B) the person performed a service within the current calendar year or the preceding three calendar years in any applicable trade or business in which or for which the taxpayer performed a service.

(e) Reporting

The Secretary shall require such reporting (at the time and in the manner prescribed by the

[1] So in original. Probably should be ''section''.

Secretary) as is necessary to carry out the purposes of this section.

(f) Regulations

The Secretary shall issue such regulations or other guidance as is necessary or appropriate to carry out the purposes of this section[2]

(Added Pub. L. 115–97, title I, §13309(a)(2), Dec. 22, 2017, 131 Stat. 2130.)

PRIOR PROVISIONS

A prior section 1061 was renumbered section 1062 of this title.

EFFECTIVE DATE

Pub. L. 115–97, title I, §13309(c), Dec. 22, 2017, 131 Stat. 2131, provided that: ''The amendments made by this section [enacting this section and renumbering former section 1061 as 1062] shall apply to taxable years beginning after December 31, 2017.''

§ 1062. Cross references

(1) For nonrecognition of gain in connection with the transfer of obsolete vessels to the Maritime Administration under chapter 573 of title 46, United States Code, see section 57307 of title 46.

(2) For recognition of gain or loss in connection with the construction of new vessels, see chapter 533 of title 46, United States Code.

(Aug. 16, 1954, ch. 736, 68A Stat. 311, §1054; renumbered §1055, Pub. L. 86–779, §8(b), Sept. 14, 1960, 74 Stat. 1003; renumbered §1056, Pub. L. 88–9, §1(b), Apr. 10, 1963, 77 Stat. 7; renumbered §1057, Pub. L. 94–455, title II, §212(a)(1), Oct. 4, 1976, 90 Stat. 1545; renumbered §1058, Pub. L. 94–455, title X, §1015(c), Oct. 4, 1976, 90 Stat. 1618; renumbered §1059, Pub. L. 95–345, §2(d)(1), Aug. 15, 1978, 92 Stat. 482; renumbered §1060, Pub. L. 98–369, div. A, title I, §53(a), July 18, 1984, 98 Stat. 565; renumbered §1061 and amended, Pub. L. 99–514, title VI, §641(a), title XVIII, §1899A(27), Oct. 22, 1986, 100 Stat. 2282, 2960; Pub. L. 109–304, §17(e)(5), Oct. 6, 2006, 120 Stat. 1708; renumbered §1062, Pub. L. 115–97, title I, §13309(a)(1), Dec. 22, 2017, 131 Stat. 2130.)

AMENDMENTS

2017—Pub. L. 115–97 renumbered section 1061 of this title as this section.

2006—Par. (1). Pub. L. 109–304, §17(e)(5)(A), substituted ''chapter 573 of title 46, United States Code, see section 57307 of title 46'' for ''section 510 of the Merchant Marine Act, 1936, see subsection (e) of that section, as amended August 4, 1939 (46 U.S.C. App. 1160)''.

Par. (2). Pub. L. 109–304, §17(e)(5)(B), substituted ''chapter 533 of title 46, United States Code'' for ''section 511 of such Act, as amended (46 U.S.C. App. 1161)''.

Par. (3). Pub. L. 109–304, §17(e)(5)(C), struck out par. (3), which read as follows: ''For nonrecognition of gain in connection with vessels exchanged with the Maritime Administration under section 8 of the Merchant Ship Sales Act of 1946, see subsection (a) of that section (50 U.S.C. App. 1741).''

1986—Pub. L. 99–514, §641(a), renumbered section 1060 of this title as this section.

Pars. (1), (2). Pub. L. 99–514, §1899A(27), which directed the amendment of pars. (1) and (2) of section 1060 by substituting ''46 U.S.C. App.'' for ''46 U.S.C.'' was executed to section 1061 to reflect the probable intent of Congress in view of the renumbering of section 1060 as 1061 by section 641(a) of Pub. L. 99–514.

[2] So in original. Probably should be followed by a period.

[PART V—REPEALED]

[§ 1071. Repealed. Pub. L. 104–7, § 2(a), Apr. 11, 1995, 109 Stat. 93]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 311; Sept. 2, 1958, Pub. L. 85–866, title I, §48(a), 72 Stat. 1642; Oct. 4, 1976, Pub. L. 94–455, title XIX, §§1901(b)(31)(E), 1906(b)(13)(A), 90 Stat. 1800, 1834, provided for nonrecognition on FCC certified sales and exchanges.

EFFECTIVE DATE OF REPEAL

Pub. L. 104–7, §2(d), Apr. 11, 1995, 109 Stat. 93, provided that:

''(1) IN GENERAL.—The amendments made by this section [repealing this section and amending sections 1245 and 1250 of this title] shall apply to—

''(A) sales and exchanges on or after January 17, 1995, and

''(B) sales and exchanges before such date if the FCC tax certificate with respect to such sale or exchange is issued on or after such date.

''(2) BINDING CONTRACTS.—

''(A) IN GENERAL.—The amendments made by this section shall not apply to any sale or exchange pursuant to a written contract which was binding on January 16, 1995, and at all times thereafter before the sale or exchange, if the FCC tax certificate with respect to such sale or exchange was applied for, or issued, on or before such date.

''(B) SALES CONTINGENT ON ISSUANCE OF CERTIFICATE.—

''(i) IN GENERAL.—A contract shall be treated as not binding for purposes of subparagraph (A) if the sale or exchange pursuant to such contract, or the material terms of such contract, were contingent, at any time on January 16, 1995, on the issuance of an FCC tax certificate. The preceding sentence shall not apply if the FCC tax certificate for such sale or exchange is issued on or before January 16, 1995.

''(ii) MATERIAL TERMS.—For purposes of clause (i), the material terms of a contract shall not be treated as contingent on the issuance of an FCC tax certificate solely because such terms provide that the sales price would, if such certificate were not issued, be increased by an amount not greater than 10 percent of the sales price otherwise provided in the contract.

''(3) FCC TAX CERTIFICATE.—For purposes of this subsection, the term 'FCC tax certificate' means any certificate of the Federal Communications Commission for the effectuation of section 1071 of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act [Apr. 11, 1995]).''

[PART VI—REPEALED]

[§§ 1081 to 1083. Repealed. Pub. L. 109–135, title IV, § 402(a)(1), Dec. 21, 2005, 119 Stat. 2610]

Section 1081, acts Aug. 16, 1954, ch. 736, 68A Stat. 312; Pub. L. 94–455, title XIX, §§1901(a)(132), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1786, 1834, provided for nonrecognition of gain or loss on exchanges or distributions in obedience to orders of SEC.

Section 1082, acts Aug. 16, 1954, ch. 736, 68A Stat. 315; Pub. L. 91–172, title VII, §704(b)(3), Dec. 30, 1969, 83 Stat. 669; Pub. L. 92–178, title III, §303(c)(5), Dec. 10, 1971, 85 Stat. 522; Pub. L. 94–455, title XIX, §§1901(b)(11)(C), 1906(b)(13)(A), 1951(c)(2)(B), title XXI, §2124(a)(3)(C), Oct. 4, 1976, 90 Stat. 1795, 1834, 1840, 1917; Pub. L. 97–34, title II, §212(d)(2)(E), Aug. 13, 1981, 95 Stat. 239; Pub. L. 99–514, title II, §242(b)(1), Oct. 22, 1986, 100 Stat. 2181; Pub. L. 101–508, title XI, §11801(c)(6)(D), Nov. 5, 1990, 104 Stat. 1388–524, related to basis for determining gain or loss.

Section 1083, acts Aug. 16, 1954, ch. 736, 68A Stat. 317; Pub. L. 94–455, title XIX, §1901(a)(133), Oct. 4, 1976, 90 Stat. 1786, related to definitions for this part.

EFFECTIVE DATE OF REPEAL

Repeal effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109–58, to which it relates, but not applicable with respect to any transaction ordered in compliance with the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.) before that Act's repeal, see section 402(m) of Pub. L. 109–135, set out as an Effective and Termination Dates of 2005 Amendments note under section 23 of this title.

PART VII—WASH SALES; STRADDLES

Sec.
1091. Loss from wash sales of stock or securities.
1092. Straddles.

AMENDMENTS

1981—Pub. L. 97–34, title V, §501(d)(1), (2), Aug. 13, 1981, 95 Stat. 326, 327, substituted as part heading ''WASH SALES; STRADDLES'' for ''WASH SALES OF STOCK OR SECURITIES'' and added item 1092.

§ 1091. Loss from wash sales of stock or securities

(a) Disallowance of loss deduction

In the case of any loss claimed to have been sustained from any sale or other disposition of shares of stock or securities where it appears that, within a period beginning 30 days before the date of such sale or disposition and ending 30 days after such date, the taxpayer has acquired (by purchase or by an exchange on which the entire amount of gain or loss was recognized by law), or has entered into a contract or option so to acquire, substantially identical stock or securities, then no deduction shall be allowed under section 165 unless the taxpayer is a dealer in stock or securities and the loss is sustained in a transaction made in the ordinary course of such business. For purposes of this section, the term ''stock or securities'' shall, except as provided in regulations, include contracts or options to acquire or sell stock or securities.

(b) Stock acquired less than stock sold

If the amount of stock or securities acquired (or covered by the contract or option to acquire) is less than the amount of stock or securities sold or otherwise disposed of, then the particular shares of stock or securities the loss from the sale or other disposition of which is not deductible shall be determined under regulations prescribed by the Secretary.

(c) Stock acquired not less than stock sold

If the amount of stock or securities acquired (or covered by the contract or option to acquire) is not less than the amount of stock or securities sold or otherwise disposed of, then the particular shares of stock or securities the acquisition of which (or the contract or option to acquire which) resulted in the nondeductibility of the loss shall be determined under regulations prescribed by the Secretary.

(d) Unadjusted basis in case of wash sale of stock

If the property consists of stock or securities the acquisition of which (or the contract or option to acquire which) resulted in the nondeductibility (under this section or corresponding provisions of prior internal revenue laws) of the loss from the sale or other disposition of substantially identical stock or securities, then the basis shall be the basis of the stock or securities so sold or disposed of, increased or decreased, as the case may be, by the difference, if any, between the price at which the property was acquired and the price at which such substantially identical stock or securities were sold or otherwise disposed of.

(e) Certain short sales of stock or securities and securities futures contracts to sell

Rules similar to the rules of subsection (a) shall apply to any loss realized on the closing of a short sale of (or the sale, exchange, or termination of a securities futures contract to sell) stock or securities if, within a period beginning 30 days before the date of such closing and ending 30 days after such date—

(1) substantially identical stock or securities were sold, or

(2) another short sale of (or securities futures contracts to sell) substantially identical stock or securities was entered into.

For purposes of this subsection, the term ''securities futures contract'' has the meaning provided by section 1234B(c).

(f) Cash settlement

This section shall not fail to apply to a contract or option to acquire or sell stock or securities solely by reason of the fact that the contract or option settles in (or could be settled in) cash or property other than such stock or securities.

(Aug. 16, 1954, ch. 736, 68A Stat. 319; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title I, §106(a), (b), July 18, 1984, 98 Stat. 629; Pub. L. 100–647, title V, §5075(a), Nov. 10, 1988, 102 Stat. 3682; Pub. L. 106–554, §1(a)(7) [title IV, §401(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–649; Pub. L. 107–147, title IV, §412(d)(2), Mar. 9, 2002, 116 Stat. 53.)

AMENDMENTS

2002—Subsec. (e). Pub. L. 107–147 substituted ''securities and securities futures contracts to sell'' for ''securities'' in heading, inserted ''(or the sale, exchange, or termination of a securities futures contract to sell)'' after ''closing of a short sale of'' in introductory provisions and ''(or securities futures contracts to sell)'' after ''short sale of'' in par. (2), and inserted concluding provisions.

2000—Subsec. (f). Pub. L. 106–554 added subsec. (f).

1988—Subsec. (a). Pub. L. 100–647 inserted sentence at end defining ''stock or securities''.

1984—Subsec. (a). Pub. L. 98–369, §106(b), substituted ''no deduction shall be allowed under section 165 unless the taxpayer is a dealer in stock or securities and the loss is sustained in a transaction made in the ordinary course of such business'' for ''no deduction for the loss shall be allowed under section 165(c)(2); nor shall such deduction be allowed a corporation under section 165(a) unless it is a dealer in stocks or securities, and the loss is sustained in a transaction made in the ordinary course of business''.

Subsec. (e). Pub. L. 98–369, §106(a), added subsec. (e).

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

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 1988 AMENDMENT

Pub. L. 100–647, title V, § 5075(b), Nov. 10, 1988, 102 Stat. 3682, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to any sale after the date of enactment of this Act [Nov. 10, 1988], in taxable years ending after such date.''

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, § 106(c), July 18, 1984, 98 Stat. 629, provided that:

''(1) SUBSECTION (a).—The amendment made by subsection (a) [amending this section] shall apply to short sales of stock or securities after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.

''(2) SUBSECTION (b).—The amendment made by subsection (b) [amending this section] shall apply to sales after December 31, 1984, in taxable years ending after such date.''

§ 1092. Straddles

(a) Recognition of loss in case of straddles, etc.

(1) Limitation on recognition of loss

(A) In general

Any loss with respect to 1 or more positions shall be taken into account for any taxable year only to the extent that the amount of such loss exceeds the unrecognized gain (if any) with respect to 1 or more positions which were offsetting positions with respect to 1 or more positions from which the loss arose.

(B) Carryover of loss

Any loss which may not be taken into account under subparagraph (A) for any taxable year shall, subject to the limitations under subparagraph (A), be treated as sustained in the succeeding taxable year.

(2) Special rule for identified straddles

(A) In general

In the case of any straddle which is an identified straddle—

(i) paragraph (1) shall not apply with respect to positions comprising the identified straddle,

(ii) if there is any loss with respect to any position of the identified straddle, the basis of each of the offsetting positions in the identified straddle shall be increased by an amount which bears the same ratio to the loss as the unrecognized gain with respect to such offsetting position bears to the aggregate unrecognized gain with respect to all such offsetting positions,

(iii) if the application of clause (ii) does not result in an increase in the basis of any offsetting position in the identified straddle, the basis of each of the offsetting positions in the identified straddle shall be increased in a manner which—

(I) is reasonable, consistent with the purposes of this paragraph, and consistently applied by the taxpayer, and

(II) results in an aggregate increase in the basis of such offsetting positions which is equal to the loss described in clause (ii), and

(iv) any loss described in clause (ii) shall not otherwise be taken into account for purposes of this title.

(B) Identified straddle

The term ''identified straddle'' means any straddle—

(i) which is clearly identified on the taxpayer's records as an identified straddle before the earlier of—

(I) the close of the day on which the straddle is acquired, or

(II) such time as the Secretary may prescribe by regulations.

(ii) to the extent provided by regulations, the value of each position of which (in the hands of the taxpayer immediately before the creation of the straddle) is not less than the basis of such position in the hands of the taxpayer at the time the straddle is created, and

(iii) which is not part of a larger straddle.

A straddle shall be treated as clearly identified for purposes of clause (i) only if such identification includes an identification of the positions in the straddle which are offsetting with respect[1] other positions in the straddle.

(C) Application to liabilities and obligations

Except as otherwise provided by the Secretary, rules similar to the rules of clauses (ii) and (iii) of subparagraph (A) shall apply for purposes of this paragraph with respect to any position which is, or has been, a liability or obligation.

(D) Regulations

The Secretary shall prescribe such regulations or other guidance as may be necessary or appropriate to carry out the purposes of this paragraph. Such regulations or other guidance may specify the proper methods for clearly identifying a straddle as an identified straddle (and for identifying the positions comprising such straddle), the rules for the application of this section to a taxpayer which fails to comply with those identification requirements, the rules for the application of this section to a position which is or has been a liability or obligation, methods of loss allocation which satisfy the requirements of subparagraph (A)(iii), and the ordering rules in cases where a taxpayer disposes (or otherwise ceases to be the holder) of any part of any position which is part of an identified straddle.

(3) Unrecognized gain

For purposes of this subsection—

(A) In general

The term ''unrecognized gain'' means—

(i) in the case of any position held by the taxpayer as of the close of the taxable year, the amount of gain which would be taken into account with respect to such position if such position were sold on the last business day of such taxable year at its fair market value, and

(ii) in the case of any position with respect to which, as of the close of the tax-

[1] So in original. Probably should be followed by ''to''.

able year, gain has been realized but not recognized, the amount of gain so realized.

(B) Special rule for identified straddles

For purposes of paragraph (2)(A)(ii), the unrecognized gain with respect to any offsetting position shall be the excess of the fair market value of the position at the time of the determination over the fair market value of the position at the time the taxpayer identified the position as a position in an identified straddle.

(C) Reporting of gain

(i) In general

Each taxpayer shall disclose to the Secretary, at such time and in such manner and form as the Secretary may prescribe by regulations—

(I) each position (whether or not part of a straddle) with respect to which, as of the close of the taxable year, there is unrecognized gain, and

(II) the amount of such unrecognized gain.

(ii) Reports not required in certain cases

Clause (i) shall not apply—

(I) to any position which is part of an identified straddle,

(II) to any position which, with respect to the taxpayer, is property described in paragraph (1) or (2) of section 1221(a) or to any position which is part of a hedging transaction (as defined in section 1256(e)), or

(III) with respect to any taxable year if no loss on a position (including a regulated futures contract) has been sustained during such taxable year or if the only loss sustained on such position is a loss described in subclause (II).

(b) Regulations

(1) In general

The Secretary shall prescribe such regulations with respect to gain or loss on positions which are a part of a straddle as may be appropriate to carry out the purposes of this section and section 263(g). To the extent consistent with such purposes, such regulations shall include rules applying the principles of subsections (a) and (d) of section 1091 and of subsections (b) and (d) of section 1233.

(2) Regulations relating to mixed straddles

(A) Elective provisions in lieu of section 1233(d) principles

The regulations prescribed under paragraph (1) shall provide that—

(i) the taxpayer may offset gains and losses from positions which are part of mixed straddles—

(I) by straddle-by-straddle identification, or

(II) by the establishment (with respect to any class of activities) of a mixed straddle account for which gains and losses would be recognized (and offset) on a periodic basis,

(ii) such offsetting will occur before the application of section 1256, and section 1256(a)(3) will only apply to net gain or net loss attributable to section 1256 contracts, and

(iii) the principles of section 1233(d) shall not apply with respect to any straddle identified under clause (i)(I) or part of an account established under clause (i)(II).

(B) Limitation on net gain or net loss from mixed straddle account

In the case of any mixed straddle account referred to in subparagraph (A)(i)(II)—

(i) Not more than 50 percent of net gain may be treated as long-term capital gain

In no event shall more than 50 percent of the net gain from such account for any taxable year be treated as long-term capital gain.

(ii) Not more than 40 percent of net loss may be treated as short-term capital loss

In no event shall more than 40 percent of the net loss from such account for any taxable year be treated as short-term capital loss.

(C) Authority to treat certain positions as mixed straddles

The regulations prescribed under paragraph (1) may treat as a mixed straddle positions not described in section 1256(d)(4).

(D) Timing and character authority

The regulations prescribed under paragraph (1) shall include regulations relating to the timing and character of gains and losses in case of straddles where at least 1 position is ordinary and at least 1 position is capital.

(c) Straddle defined

For purposes of this section—

(1) In general

The term ''straddle'' means offsetting positions with respect to personal property.

(2) Offsetting positions

(A) In general

A taxpayer holds offsetting positions with respect to personal property if there is a substantial diminution of the taxpayer's risk of loss from holding any position with respect to personal property by reason of his holding 1 or more other positions with respect to personal property (whether or not of the same kind).

(B) Special rule for identified straddles

In the case of any position which is not part of an identified straddle (within the meaning of subsection (a)(2)(B)), such position shall not be treated as offsetting with respect to any position which is part of an identified straddle.

(3) Presumption

(A) In general

For purposes of paragraph (2), 2 or more positions shall be presumed to be offsetting if—

(i) the positions are in the same personal property (whether established in such property or a contract for such property),

(ii) the positions are in the same personal property, even though such property may be in a substantially altered form,

(iii) the positions are in debt instruments of a similar maturity or other debt instruments described in regulations prescribed by the Secretary,

(iv) the positions are sold or marketed as offsetting positions (whether or not such positions are called a straddle, spread, butterfly, or any similar name),

(v) the aggregate margin requirement for such positions is lower than the sum of the margin requirements for each such position (if held separately), or

(vi) there are such other factors (or satisfaction of subjective or objective tests) as the Secretary may by regulations prescribe as indicating that such positions are offsetting.

For purposes of the preceding sentence, 2 or more positions shall be treated as described in clause (i), (ii), (iii), or (vi) only if the value of 1 or more of such positions ordinarily varies inversely with the value of 1 or more other such positions.

(B) Presumption may be rebutted

Any presumption established pursuant to subparagraph (A) may be rebutted.

(4) Exception for certain straddles consisting of qualified covered call options and the optioned stock

(A) In general

If—

(i) all the offsetting positions making up any straddle consist of 1 or more qualified covered call options and the stock to be purchased from the taxpayer under such options, and

(ii) such straddle is not part of a larger straddle,

such straddle shall not be treated as a straddle for purposes of this section and section 263(g).

(B) Qualified covered call option defined

For purposes of subparagraph (A), the term ''qualified covered call option'' means any option granted by the taxpayer to purchase stock held by the taxpayer (or stock acquired by the taxpayer in connection with the granting of the option) but only if—

(i) such option is traded on a national securities exchange which is registered with the Securities and Exchange Commission or other market which the Secretary determines has rules adequate to carry out the purposes of this paragraph,

(ii) such option is granted more than 30 days before the day on which the option expires,

(iii) such option is not a deep-in-the-money option,

(iv) such option is not granted by an options dealer (within the meaning of section 1256(g)(8)) in connection with his activity of dealing in options, and

(v) gain or loss with respect to such option is not ordinary income or loss.

(C) Deep-in-the-money option

For purposes of subparagraph (B), the term ''deep-in-the-money option'' means an option having a strike price lower than the lowest qualified bench mark.

(D) Lowest qualified bench mark

(i) In general

Except as otherwise provided in this subparagraph, for purposes of subparagraph (C), the term ''lowest qualified bench mark'' means the highest available strike price which is less than the applicable stock price.

(ii) Special rule where option is for period more than 90 days and strike price exceeds $50

In the case of an option—

(I) which is granted more than 90 days before the date on which such option expires, and

(II) with respect to which the strike price is more than $50,

the lowest qualified bench mark is the second highest available strike price which is less than the applicable stock price.

(iii) 85 percent rule where applicable stock price $25 or less

If—

(I) the applicable stock price is $25 or less, and

(II) but for this clause, the lowest qualified bench mark would be less than 85 percent of the applicable stock price,

the lowest qualified bench mark shall be treated as equal to 85 percent of the applicable stock price.

(iv) Limitation where applicable stock price $150 or less

If—

(I) the applicable stock price is $150 or less, and

(II) but for this clause, the lowest qualified bench mark would be less than the applicable stock price reduced by $10,

the lowest qualified bench mark shall be treated as equal to the applicable stock price reduced by $10.

(E) Special year-end rule

Subparagraph (A) shall not apply to any straddle for purposes of section 1092(a) if—

(i) the qualified covered call options referred to in such subparagraph are closed or the stock is disposed of at a loss during any taxable year,

(ii) gain on disposition of the stock to be purchased from the taxpayer under such options or gains on such options are includible in gross income for a later taxable year, and

(iii) such stock or option was not held by the taxpayer for 30 days or more after the closing of such options or the disposition of such stock.

For purposes of the preceding sentence, the rules of paragraphs (3) (other than subparagraph (B)[2] thereof) and (4) of section 246(c) shall apply in determining the period for which the taxpayer holds the stock.

(F) Strike price

For purposes of this paragraph, the term ''strike price'' means the price at which the option is exercisable.

(G) Applicable stock price

For purposes of subparagraph (D), the term ''applicable stock price'' means, with respect to any stock for which an option has been granted—

(i) the closing price of such stock on the most recent day on which such stock was traded before the date on which such option was granted, or

(ii) the opening price of such stock on the day on which such option was granted, but only if such price is greater than 110 percent of the price determined under clause (i).

(H) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph. Such regulations may include modifications to the provisions of this paragraph which are appropriate to take account of changes in the practices of option exchanges or to prevent the use of options for tax avoidance purposes.

(d) Definitions and special rules

For purposes of this section—

(1) Personal property

The term ''personal property'' means any personal property of a type which is actively traded.

(2) Position

The term ''position'' means an interest (including a futures or forward contract or option) in personal property.

(3) Special rules for stock

For purposes of paragraph (1)—

(A) In general

In the case of stock, the term ''personal property'' includes stock only if—

(i) such stock is of a type which is actively traded and at least 1 of the positions offsetting such stock is a position with respect to such stock or substantially similar or related property, or

(ii) such stock is of a corporation formed or availed of to take positions in personal property which offset positions taken by any shareholder.

(B) Rule for application

For purposes of determining whether subsection (e) applies to any transaction with respect to stock described in subparagraph (A)(ii), all includible corporations of an affiliated group (within the meaning of section 1504(a)) shall be treated as 1 taxpayer.

(4) Positions held by related persons, etc.

(A) In general

In determining whether 2 or more positions are offsetting, the taxpayer shall be treated as holding any position held by a related person.

(B) Related person

For purposes of subparagraph (A), a person is a related person to the taxpayer if with respect to any period during which a position is held by such person, such person—

(i) is the spouse of the taxpayer, or

(ii) files a consolidated return (within the meaning of section 1501) with the taxpayer for any taxable year which includes a portion of such period.

(C) Certain flowthrough entities

If part or all of the gain or loss with respect to a position held by a partnership, trust, or other entity would properly be taken into account for purposes of this chapter by a taxpayer, then, except to the extent otherwise provided in regulations, such position shall be treated as held by the taxpayer.

(5) Special rule for section 1256 contracts

(A) General rule

In the case of a straddle at least 1 (but not all) of the positions of which are section 1256 contracts, the provisions of this section shall apply to any section 1256 contract and any other position making up such straddle.

(B) Special rule for identified straddles

For purposes of subsection (a)(2) (relating to identified straddles), subparagraph (A) and section 1256(a)(4) shall not apply to a straddle all of the offsetting positions of which consist of section 1256 contracts.

(6) Section 1256 contract

The term ''section 1256 contract'' has the meaning given such term by section 1256(b).

(7) Special rules for foreign currency

(A) Position to include interest in certain debt

For purposes of paragraph (2), an obligor's interest in a nonfunctional currency denominated debt obligation is treated as a position in the nonfunctional currency.

(B) Actively traded requirement

For purposes of paragraph (1), foreign currency for which there is an active interbank market is presumed to be actively traded.

(8) Special rules for physically settled positions

For purposes of subsection (a), if a taxpayer settles a position which is part of a straddle by delivering property to which the position relates (and such position, if terminated, would result in a realization of a loss), then such taxpayer shall be treated as if such taxpayer—

(A) terminated the position for its fair market value immediately before the settlement, and

(B) sold the property so delivered by the taxpayer at its fair market value.

(e) Exception for hedging transactions

This section shall not apply in the case of any hedging transaction (as defined in section 1256(e)).

[2] See References in Text note below.

(f) Treatment of gain or loss and suspension of holding period where taxpayer grantor of qualified covered call option

If a taxpayer holds any stock and grants a qualified covered call option to purchase such stock with a strike price less than the applicable stock price—

(1) Treatment of loss

Any loss with respect to such option shall be treated as long-term capital loss if, at the time such loss is realized, gain on the sale or exchange of such stock would be treated as long-term capital gain.

(2) Suspension of holding period

The holding period of such stock shall not include any period during which the taxpayer is the grantor of such option.

(g) Cross reference

For provision requiring capitalization of certain interest and carrying charges where there is a straddle, see section 263(g).

(Added Pub. L. 97–34, title V, § 501(a), Aug. 13, 1981, 95 Stat. 323; amended Pub. L. 97–448, title I, § 105(a)(1)(A)–(C), (2)–(4), Jan. 12, 1983, 96 Stat. 2384, 2385; Pub. L. 98–369, div. A, title I, §§ 101(a)–(d), 102(e)(2), 103(a), 107(a), July 18, 1984, 98 Stat. 616–619, 624, 627, 629; Pub. L. 99–514, title III, § 331(a), title XII, § 1261(b), title XVIII, §§ 1808(c), 1899A(66), Oct. 22, 1986, 100 Stat. 2220, 2591, 2817, 2962; Pub. L. 100–647, title VI, § 6130(c), Nov. 10, 1988, 102 Stat. 3719; Pub. L. 105–34, title XII, § 1271(b)(9), Aug. 5, 1997, 111 Stat. 1037; Pub. L. 106–170, title V, § 532(c)(1)(F), Dec. 17, 1999, 113 Stat. 1930; Pub. L. 106–554, § 1(a)(7) [title IV, § 401(e)], Dec. 21, 2000, 114 Stat. 2763, 2763A–649; Pub. L. 108–357, title VIII, § 888(a)–(c)(1), Oct. 22, 2004, 118 Stat. 1642, 1643; Pub. L. 109–135, title IV, § 403(ii), Dec. 21, 2005, 119 Stat. 2632; Pub. L. 110–172, § 7(d), Dec. 29, 2007, 121 Stat. 2482.)

REFERENCES IN TEXT

Section 246(c)(3) of this title, referred to in subsec. (c)(4)(E), was amended by Pub. L. 105–34, title X, § 1015(b)(2), Aug. 5, 1997, 111 Stat. 922, by striking out subpar. (B) and redesignating subpar. (C) as (B).

AMENDMENTS

2007—Subsec. (a)(2)(A)(i). Pub. L. 110–172, § 7(d)(2)(B)(i), substituted ''positions'' for ''identified positions''.

Subsec. (a)(2)(A)(ii). Pub. L. 110–172, § 7(d)(2)(B)(ii), (iii), substituted ''any position'' for ''any identified position'' and ''the offsetting positions'' for ''the identified offsetting positions''.

Pub. L. 110–172, § 7(d)(1), struck out ''and'' at end.

Subsec. (a)(2)(A)(iii), (iv). Pub. L. 110–172, § 7(d)(1), added cl. (iii) and redesignated former cl. (iii) as (iv).

Subsec. (a)(2)(B). Pub. L. 110–172, § 7(d)(2)(A), inserted concluding provisions.

Subsec. (a)(2)(C), (D). Pub. L. 110–172, § 7(d)(3), (4), added subpar. (C), redesignated former subpar. (C) as (D), and inserted ''the rules for the application of this section to a position which is or has been a liability or obligation, methods of loss allocation which satisfy the requirements of subparagraph (A)(iii),'' before ''and the ordering rules'' in subpar. (D).

Subsec. (a)(3)(B). Pub. L. 110–172, § 7(d)(2)(C), substituted ''offsetting position'' for ''identified offsetting position''.

2005—Subsec. (a)(2). Pub. L. 109–135 added subpar. (C) and struck out concluding provisions of subpar. (B) which read as follows: ''The Secretary shall prescribe regulations which specify the proper methods for clearly identifying a straddle as an identified straddle (and the positions comprising such straddle), which specify the rules for the application of this section for a taxpayer which fails to properly identify the positions of an identified straddle, and which specify the ordering rules in cases where a taxpayer disposes of less than an entire position which is part of an identified straddle.''

2004—Subsec. (a)(2)(A). Pub. L. 108–357, § 888(a)(1), reenacted heading without change and amended text of subpar. (A) generally. Prior to amendment, text read as follows: ''In the case of any straddle which is an identified straddle as of the close of any taxable year—

''(i) paragraph (1) shall not apply for such taxable year, and

''(ii) any loss with respect to such straddle shall be treated as sustained not earlier than the day on which all of the positions making up the straddle are disposed of.''

Subsec. (a)(2)(B). Pub. L. 108–357, § 888(a)(2)(B), inserted concluding provisions.

Subsec. (a)(2)(B)(ii). Pub. L. 108–357, § 888(a)(2)(A), added cl. (ii) and struck out former cl. (ii) which read as follows: ''all of the original positions of which (as identified by the taxpayer) are acquired on the same day and with respect to which—

''(I) all of such positions are disposed of on the same day during the taxable year, or

''(II) none of such positions has been disposed of as of the close of the taxable year, and''.

Subsec. (a)(3)(B), (C). Pub. L. 108–357, § 888(a)(3), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (c)(2)(B), (C). Pub. L. 108–357, § 888(a)(4), redesignated subpar. (C) as (B) and struck out heading and text of former subpar. (B). Text read as follows: ''If 1 or more positions offset only a portion of 1 or more other positions, the Secretary shall by regulations prescribe the method for determining the portion of such other positions which is to be taken into account for purposes of this section.''

Subsec. (d)(3). Pub. L. 108–357, § 888(c)(1), reenacted heading without change and amended text of par. (3) generally, substituting provisions directing that the term ''personal property'' includes stock only if it is of a certain type or of a certain type of corporation and setting forth rule for application of subsec. (e), for provisions directing that the term ''personal property'' includes any stock which is part of a straddle at least 1 of the offsetting positions of which is an option, a securities futures contract, or a position with respect to substantially similar or related property (other than stock), and of a certain type of corporation, and setting forth special rules relating to application of subsecs. (c), (d)(4), and (e).

Subsec. (d)(8). Pub. L. 108–357, § 888(b), added par. (8).

2000—Subsec. (d)(3)(B)(i)(II), (III). Pub. L. 106–554 added subcl. (II) and redesignated former subcl. (II) as (III).

1999—Subsec. (a)(3)(B)(ii)(II). Pub. L. 106–170 substituted ''1221(a)'' for ''1221''.

1997—Subsec. (f)(2). Pub. L. 105–34 substituted ''The'' for ''Except for purposes of section 851(b)(3), the''.

1988—Subsec. (b)(2)(D). Pub. L. 100–647 added subpar. (D).

1986—Subsec. (c)(4)(E). Pub. L. 99–514, § 331(a), in cl. (i), inserted ''or the stock is disposed of at a loss'', in cl. (ii), substituted ''or gains on such options are'' for ''is'', and in cl. (iii), inserted ''or option'' and ''or the disposition of such stock''.

Subsec. (d)(3)(A). Pub. L. 99–514, § 1808(c), inserted at end ''The preceding sentence shall not apply to any interest in stock.''

Subsec. (d)(5), (6). Pub. L. 99–514, § 1899A(66), amended directory language of section 101(b)(2) of Pub. L. 98–369 to clarify general amendment by sections 101(d) and 102(e) of Pub. L. 98–369. See 1984 Amendment notes below.

Subsec. (d)(7). Pub. L. 99–514, § 1261(b), added par. (7).

1984—Subsec. (a)(2)(B)(i). Pub. L. 98–369, § 107(a), designated existing provisions as subcl. (I) and added subcl. (II).

Subsec. (b). Pub. L. 98–369, §103(a), amended subsec. (b) generally, substituting provisions dealing with regulations for provisions dealing with character of gain or loss and wash sales.

Subsec. (c)(4). Pub. L. 98–369, §101(a)(2), added par. (4).

Subsec. (d)(1). Pub. L. 98–369, §101(b)(1), struck out ''(other than stock)'' before ''of a type''.

Subsec. (d)(2). Pub. L. 98–369, §101(a)(1), redesignated former subpar. (A) as entire par. (2), and struck out former subpar. (B) which provided that ''position'' includes any stock option which is a part of a straddle and which is an option to buy or sell stock which is actively traded, but does not include a stock option which (i) is traded on a domestic exchange or on a similar foreign exchange designated by the Secretary, and (ii) is of a type with respect to which the maximum period during which such option may be exercised is less than the minimum period for which a capital asset must be held for gain to be treated as long-term capital gain under section 1222(3).

Subsec. (d)(3), (4). Pub. L. 98–369, §101(b)(2), as amended by Pub. L. 99–514, §1899A(66), added par. (3) and redesignated former pars. (3) and (4) as (4) and (5), respectively.

Subsec. (d)(5). Pub. L. 98–369, §101(d), amended par. (4) generally, substituting provisions relating to special rules for section 1256 contracts for provisions relating to special rules for regulated futures contracts.

Pub. L. 98–369, §101(b)(2), as amended by Pub. L. 99–514, §1899A(66), redesignated former par. (4) as (5). Former par. (5) redesignated (6).

Subsec. (d)(6). Pub. L. 98–369, §102(e)(2), amended par. (5) generally, substituting references to section 1256 contracts for references to regulated futures contracts wherever appearing in heading and text.

Pub. L. 98–369, §101(b)(2), as amended by Pub. L. 99–514, §1899A(66), redesignated former par. (5) as (6).

Subsecs. (f), (g). Pub. L. 98–369, §101(c), added subsec. (f) and redesignated former subsec. (f) as (g).

1983—Subsec. (a)(1)(A). Pub. L. 97–448, §105(a)(1)(A), (2), substituted ''unrecognized gain'' for ''unrealized gain'' and ''which were offsetting positions with respect to 1 or more positions from which the loss arose'' for ''which— (i) were acquired by the taxpayer before the disposition giving rise to such loss, (ii) were offsetting positions with respect to the 1 or more positions from which the loss arose, and (iii) were not part of an identified straddle as of the close of the taxable year''.

Subsec. (a)(3). Pub. L. 97–448, §105(a)(1)(B), substituted ''Unrecognized gain'' for ''Unrealized gain'' in heading.

Subsec. (a)(3)(A). Pub. L. 97–448, §105(a)(1)(B), substituted ''unrecognized gain'' for ''unrealized gain'' as term defined, designated existing definition as cl. (i), and added cl. (ii).

Subsec. (a)(3)(B)(i)(I). Pub. L. 97–448, §105(a)(1)(C), substituted ''with respect to which, as of the close of the taxable year, there is unrecognized gain, and'' for ''which is held by such taxpayer as of the close of the taxable year and with respect to which there is unrealized gain, and''.

Subsec. (a)(3)(B)(i)(II). Pub. L. 97–448, §105(a)(1)(C), substituted ''unrecognized gain'' for ''unrealized gain''.

Subsec. (c)(2)(C). Pub. L. 97–448, §105(a)(4), substituted ''subsection (a)(2)(B)'' for ''subsection (a)(3)(B)''.

Subsec. (d)(4). Pub. L. 97–448, §105(a)(3), substituted ''a straddle at least 1 (but not all) of the positions of which are regulated futures contracts, the provisions of this section shall apply'' for ''a straddle— (A) at lease 1 (but not all) of the positions of which are regulated futures contracts, and (B) with respect to which the taxpayer has elected not to have the provisions of section 1256 apply, the provisions of this section shall apply''.

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–172, §7(e), Dec. 29, 2007, 121 Stat. 2483, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 45, 45H, 179B, 280C, 470, 1016, and 6501 of this title] shall take effect as if included in the provisions of the American Jobs Creation Act of 2004 [Pub. L. 108–357] to which they relate.

''(2) IDENTIFICATION REQUIREMENT OF AMENDMENT RELATED TO SECTION 888 OF THE AMERICAN JOBS CREATION ACT OF 2004.—The amendment made by subsection (d)(2)(A) [amending this section] shall apply to straddles acquired after the date of the enactment of this Act [Dec. 29, 2007].''

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 positions established on or after Oct. 22, 2004, see section 888(e) of Pub. L. 108–357, set out as a note under section 246 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

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

Amendment by Pub. L. 100–647 applicable with respect to forward contracts, future contracts, options, and similar instruments entered into or acquired after Oct. 21, 1988, see section 6130(d)(1) of Pub. L. 100–647, set out as a note under section 988 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title III, §331(b), Oct. 22, 1986, 100 Stat. 2221, provided that: ''The amendments made by this section [amending this section] shall apply to positions established on or after January 1, 1987.''

Amendment by section 1261(b) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1261(e) of Pub. L. 99–514, set out as an Effective Date note under section 985 of this title.

Amendment by section 1808(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, §101(e), July 18, 1984, 98 Stat. 619, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section] shall apply to positions established after December 31, 1983, in taxable years ending after such date.

''(2) SPECIAL RULE FOR OFFSETTING POSITION STOCK.—In the case of any stock of a corporation formed or availed of to take positions in personal property which offset positions taken by any shareholder, the amendments made by this section shall apply to positions established on or after May 23, 1983, in taxable years ending on or after such date.

''(3) SUBSECTION (c).—The amendment made by subsection (c) [amending this section] shall apply to positions established after June 30, 1984, in taxable years ending after such date.

''(4) SUBSECTION (d).—The amendment made by subsection (d) [amending this section] shall apply to positions established after the date of the enactment of this Act in taxable years ending after such date.''

Amendment by section 102(e)(2) of Pub. L. 98–369 applicable to positions established after July 18, 1984, in taxable years ending after that date, except as otherwise provided, see section 102(f), (g) of Pub. L. 98–369, set out as a note under section 1256 of this title.

Pub. L. 98–369, div. A, title I, § 103(b), (c), July 18, 1984, 98 Stat. 628, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(b) REQUIREMENT THAT REGULATIONS BE ISSUED WITHIN 6 MONTHS AFTER THE DATE OF ENACTMENT.—The Secretary of the Treasury or his delegate shall prescribe initial regulations under section 1092(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (including regulations relating to mixed straddles) not later than the date 6 months after the date of the enactment of this Act [July 18, 1984].

''(c) EFFECTIVE DATE OF REGULATIONS WITH RESPECT TO MIXED STRADDLES.—The regulations described in subsection (b) with respect to the application of section 1233 of the Internal Revenue Code of 1986 to mixed straddles shall not apply to mixed straddles all of the positions of which were established before January 1, 1984.''

Pub. L. 98–369, div. A, title I, § 107(e), July 18, 1984, 98 Stat. 630, provided that: ''The amendments made by this section [amending this section and sections 1236 and 1256 of this title] shall apply to positions entered into after the date of the enactment of this Act [July 18, 1984], in taxable years ending after such date.''

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

Pub. L. 97–34, title V, § 508, Aug. 13, 1981, 95 Stat. 333, 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 section, the amendments made by this title [enacting this section and sections 1234A and 1256 of this title, amending sections 263, 341, 1212, 1221, 1231, 1232, 1233, 1236, and 6653 of this title, and enacting provisions set out as a note under section 1256 of this title] shall apply to property acquired and positions established by the taxpayer after June 23, 1981, in taxable years ending after such date.

''(b) IDENTIFICATION REQUIREMENTS.—

''(1) UNDER SECTION 1236 OF CODE.—The amendments made by section 506 [amending section 1236 of this title] shall apply to property acquired by the taxpayer after the date of the enactment of this Act [Aug. 13, 1981] in taxable years ending after such date.

''(2) UNDER SECTION 1256(e)(2)(C) OF CODE.—Section 1256(e)(2)(C) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this title) shall apply to property acquired and positions established by the taxpayer after December 31, 1981, in taxable years ending after such date.

''(c) ELECTION WITH RESPECT TO PROPERTY HELD ON JUNE 23, 1981.—If the taxpayer so elects (at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe) with respect to all regulated futures contracts or positions held by the taxpayer on June 23, 1981, the amendments made by this title shall apply to all such contracts and positions, effective for periods after such date in taxable years ending after such date. For purposes of the preceding sentence, the term 'regulated futures contract' has the meaning given to such term by section 1256(b) of the Internal Revenue Code of 1986, and the term 'position' has the meaning given to such term by section 1092(d)(2) 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.

TREATMENT OF CERTAIN LOSSES ON STRADDLES ENTERED INTO BEFORE EFFECTIVE DATE OF ECONOMIC RECOVERY TAX ACT OF 1981

Pub. L. 98–369, div. A, title I, § 108, July 18, 1984, 98 Stat. 630, as amended by Pub. L. 99–514, § 2, title XVIII, § 1808(d), Oct. 22, 1986, 100 Stat. 2095, 2817, provided that:

''(a) GENERAL RULE.—For purposes of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], in the case of any disposition of 1 or more positions—

''(1) which were entered into before 1982 and form part of a straddle, and

''(2) to which the amendments made by title V of the Economic Recovery Tax Act of 1981 [Pub. L. 97–34, see Effective Date note above] do not apply,

any loss from such disposition shall be allowed for the taxable year of the disposition if such loss is incurred in a trade or business, or if such loss is incurred in a transaction entered into for profit though not connected with a trade or business.

''(b) LOSS INCURRED IN A TRADE OR BUSINESS.—For purposes of subsection (a), any loss incurred by a commodities dealer in the trading of commodities shall be treated as a loss incurred in a trade or business.

''(c) NET LOSS ALLOWED.—If any loss with respect to a position described in paragraphs (1) and (2) of subsection (a) is not allowable as a deduction (after applying subsections (a) and (b)), such loss shall be allowed in determining the gain or loss from dispositions of other positions in the straddle to the extent required to accurately reflect the taxpayer's net gain or loss from all positions in such straddle.

''(d) OTHER RULES.—Except as otherwise provided in subsections (a) and (c) and in sections 1233 and 1234 of such Code, the determination of whether there is recognized gain or loss with respect to a position, and the amount and timing of such gain or loss, and the treatment of such gain or loss as long-term or short-term shall be made without regard to whether such position constitutes part of a straddle.

''(e) STRADDLE.—For purposes of this section, the term 'straddle' has the meaning given to such term by section 1092(c) of the Internal Revenue Code of 1986 as in effect on the day after the date of the enactment of the Economic Recovery Tax Act of 1981 [Aug. 13, 1981], and shall include a straddle all the positions of which are regulated futures contracts.

''(f) COMMODITIES DEALER.—For purposes of this section, the term 'commodities dealer' means any taxpayer who—

''(1) at any time before January 1, 1982, was an individual described in section 1402(i)(2)(B) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this subtitle), or

''(2) was a member of the family (within the meaning of section 704(e)(3) [now 704(e)(2)] of such Code) of an individual described in paragraph (1) to the extent such member engaged in commodities trading through an organization the members of which consisted solely of—

''(A) 1 or more individuals described in paragraph (1), and

''(B) 1 or more members of the families (as so defined) of such individuals.

''(g) REGULATED FUTURES CONTRACTS.—For purposes of this section, the term 'regulated futures contracts'

has the meaning given to such term by section 1256(b) of the Internal Revenue Code of 1986 (as in effect before the date of enactment of this Act [July 18, 1984]).

''(h) SYNDICATES.—For purposes of this section, any loss incurred by a person (other than a commodities dealer) with respect to an interest in a syndicate (within the meaning of section 1256(e)(3)(B) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) shall not be considered to be a loss incurred in a trade or business.''

[PART VIII—REPEALED]

[§§ 1101 to 1103. Repealed. Pub. L. 101–508, title XI, § 11801(a)(34), Nov. 5, 1990, 104 Stat. 1388–521]

Section 1101, added May 9, 1956, ch. 240, § 10(a), 70 Stat. 139; amended Oct. 2, 1976, Pub. L. 94–452, § 2(a), 90 Stat. 1503; Oct. 4, 1976, Pub. L. 94–455, title XIX, § 1906(b)(13)(A), 90 Stat. 1834; Oct. 19, 1982, Pub. L. 97–354, § 5(a)(34), 96 Stat. 1695, related to distributions of property pursuant to Bank Holding Company Act.

Section 1102, added May 9, 1956, ch. 240, § 10(a), 70 Stat. 143; amended Dec. 27, 1967, Pub. L. 90–225, § 1, 81 Stat. 730; Oct. 2, 1976, Pub. L. 94–452, § 2(a), 90 Stat. 1508; Oct. 4, 1976, Pub. L. 94–455, title XIX, § 1906(b)(13)(A), 90 Stat. 1834, related to basis of property acquired in distributions, periods of limitation, allocation of earnings and profits, and itemization of property.

Section 1103, added May 9, 1956, ch. 240, § 10(a), 70 Stat. 144; amended Oct. 2, 1976, Pub. L. 94–452, § 2(a), 90 Stat. 1509; Oct. 4, 1976, Pub. L. 94–455, title XIX, § 1906(b)(13)(A), 90 Stat. 1834, related to definitions for this part.

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 IX—REPEALED]

[§ 1111. Repealed. Pub. L. 94–455, title XIX, § 1901(a)(134), Oct. 4, 1976, 90 Stat. 1786]

Section, added Pub. L. 87–403, § 1(a), Feb. 2, 1962, 76 Stat. 4, related to distribution of stock pursuant to order enforcing antitrust laws.

Subchapter P—Capital Gains and Losses

AMENDMENTS

1986—Pub. L. 99–514, title XII, § 1235(g), Oct. 22, 1986, 100 Stat. 2576, added item for part VI.

1984—Pub. L. 98–369, div. A, title I, § 42(b)(1), July 18, 1984, 98 Stat. 557, added item for part V.

PART I—TREATMENT OF CAPITAL GAINS

AMENDMENTS

2017—Pub. L. 115–97, title I, § 13001(b)(2)(A), Dec. 22, 2017, 131 Stat. 2096, struck out item 1201 ''Alternative tax for corporations''.

2000—Pub. L. 106–554, § 1(a)(7) [title I, § 117(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–604, substituted ''Partial'' for ''50-percent'' in item 1202.

1993—Pub. L. 103–66, title XIII, § 13113(d)(6), Aug. 10, 1993, 107 Stat. 430, added item 1202.

1986—Pub. L. 99–514, title III, § 301(b)(13), Oct. 22, 1986, 100 Stat. 2218, struck out item 1202 ''Deduction for capital gains''.

1978—Pub. L. 95–600, title IV, § 401(b)(6), Nov. 6, 1978, 92 Stat. 2867, substituted ''Alternative tax for corporations'' for ''Alternative tax'' in item 1201.

[§ 1201. Repealed. Pub. L. 115–97, title I, § 13001(b)(2)(A), Dec. 22, 2017, 131 Stat. 2096]

Section, Aug. 16, 1954, ch. 736, 68A Stat. 320; Mar. 13, 1956, ch. 83, § 5(7), 70 Stat. 49; Pub. L. 86–69, § 3(f)(2), June 25, 1959, 73 Stat. 140; Pub. L. 87–834, § 8(g)(3), Oct. 16, 1962, 76 Stat. 999; Pub. L. 91–172, title V, § 511(b), Dec. 30, 1969, 83 Stat. 635; Pub. L. 94–455, title XIX, § 1901(a)(135), (b)(33)(L), Oct. 4, 1976, 90 Stat. 1786, 1801; Pub. L. 95–600, title IV, §§ 401(a), 403(a), (b), Nov. 6, 1978, 92 Stat. 2866, 2868; Pub. L. 96–222, title I, § 104(a)(2)(B), (3)(A), Apr. 1, 1980, 94 Stat. 214, 215; Pub. L. 98–369, div. A, title II, § 211(b)(16), July 18, 1984, 98 Stat. 756; Pub. L. 99–514, title III, § 311(a), title X, § 1024(c)(14), Oct. 22, 1986, 100 Stat. 2219, 2408; Pub. L. 100–647, title I, § 1003(c)(1), title II, § 2004(*l*), Nov. 10, 1988, 102 Stat. 3384, 3606; Pub. L. 103–66, title XIII, § 13221(c)(2), Aug. 10, 1993, 107 Stat. 477; Pub. L. 104–188, title I, § 1703(f), Aug. 20, 1996, 110 Stat. 1876; Pub. L. 105–34, title III, § 314(a), Aug. 5, 1997, 111 Stat. 842; Pub. L. 110–234, title XV, § 15311(a), May 22, 2008, 122 Stat. 1502; Pub. L. 110–246, § 4(a), title XV, § 15311(a), June 18, 2008, 122 Stat. 1664, 2264; Pub. L. 114–113, div. Q, title III, § 334(a), Dec. 18, 2015, 129 Stat. 3108, related to alternative tax for corporations.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 2017, see section 13001(c)(1) of Pub. L. 115–97, set out as an Effective Date of 2017 Amendment note under section 11 of this title.

TRANSITIONAL RULES

Pub. L. 99–514, title III, § 311(d)(1), Oct. 22, 1986, 100 Stat. 2219, provided transitional rules for taxable years beginning in 1986 and ending in 1987.

RATE ON NET CAPITAL GAIN FOR PORTION OF 1981; 20-PERCENT MAXIMUM

Pub. L. 97–34, title I, § 102, Aug. 13, 1981, 95 Stat. 186, as amended by Pub. L. 97–448, title I, § 101(aa), Jan. 12, 1983, 96 Stat. 2366; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, established tax rates on qualified net capital gains for taxable years ending after June 9, 1981, and beginning before January 1, 1982.

§ 1202. Partial exclusion for gain from certain small business stock

(a) Exclusion

(1) In general

In the case of a taxpayer other than a corporation, gross income shall not include 50 percent of any gain from the sale or exchange of qualified small business stock held for more than 5 years.

(2) Empowerment zone businesses

(A) In general

In the case of qualified small business stock acquired after the date of the enact-

ment of this paragraph in a corporation which is a qualified business entity (as defined in section 1397C(b)) during substantially all of the taxpayer's holding period for such stock, paragraph (1) shall be applied by substituting ''60 percent'' for ''50 percent''.

(B) Certain rules to apply

Rules similar to the rules of paragraphs (5) and (7) of section 1400B(b) shall apply for purposes of this paragraph.

(C) Gain after 2018 not qualified

Subparagraph (A) shall not apply to gain attributable to periods after December 31, 2018.

(D) Treatment of DC zone

The District of Columbia Enterprise Zone shall not be treated as an empowerment zone for purposes of this paragraph.

(3) Special rules for 2009 and certain periods in 2010

In the case of qualified small business stock acquired after the date of the enactment of this paragraph and on or before the date of the enactment of the Creating Small Business Jobs Act of 2010—

(A) paragraph (1) shall be applied by substituting ''75 percent'' for ''50 percent'', and

(B) paragraph (2) shall not apply.

In the case of any stock which would be described in the preceding sentence (but for this sentence), the acquisition date for purposes of this subsection shall be the first day on which such stock was held by the taxpayer determined after the application of section 1223.

(4) 100 percent exclusion for stock acquired during certain periods in 2010 and thereafter

In the case of qualified small business stock acquired after the date of the enactment of the Creating Small Business Jobs Act of 2010—

(A) paragraph (1) shall be applied by substituting ''100 percent'' for ''50 percent'',

(B) paragraph (2) shall not apply, and

(C) paragraph (7) of section 57(a) shall not apply.

In the case of any stock which would be described in the preceding sentence (but for this sentence), the acquisition date for purposes of this subsection shall be the first day on which such stock was held by the taxpayer determined after the application of section 1223.

(b) Per-issuer limitation on taxpayer's eligible gain

(1) In general

If the taxpayer has eligible gain for the taxable year from 1 or more dispositions of stock issued by any corporation, the aggregate amount of such gain from dispositions of stock issued by such corporation which may be taken into account under subsection (a) for the taxable year shall not exceed the greater of—

(A) $10,000,000 reduced by the aggregate amount of eligible gain taken into account by the taxpayer under subsection (a) for prior taxable years and attributable to dispositions of stock issued by such corporation, or

(B) 10 times the aggregate adjusted bases of qualified small business stock issued by such corporation and disposed of by the taxpayer during the taxable year.

For purposes of subparagraph (B), the adjusted basis of any stock shall be determined without regard to any addition to basis after the date on which such stock was originally issued.

(2) Eligible gain

For purposes of this subsection, the term ''eligible gain'' means any gain from the sale or exchange of qualified small business stock held for more than 5 years.

(3) Treatment of married individuals

(A) Separate returns

In the case of a separate return by a married individual, paragraph (1)(A) shall be applied by substituting ''$5,000,000'' for ''$10,000,000''.

(B) Allocation of exclusion

In the case of any joint return, the amount of gain taken into account under subsection (a) shall be allocated equally between the spouses for purposes of applying this subsection to subsequent taxable years.

(C) Marital status

For purposes of this subsection, marital status shall be determined under section 7703.

(c) Qualified small business stock

For purposes of this section—

(1) In general

Except as otherwise provided in this section, the term ''qualified small business stock'' means any stock in a C corporation which is originally issued after the date of the enactment of the Revenue Reconciliation Act of 1993, if—

(A) as of the date of issuance, such corporation is a qualified small business, and

(B) except as provided in subsections (f) and (h), such stock is acquired by the taxpayer at its original issue (directly or through an underwriter)—

(i) in exchange for money or other property (not including stock), or

(ii) as compensation for services provided to such corporation (other than services performed as an underwriter of such stock).

(2) Active business requirement; etc.

(A) In general

Stock in a corporation shall not be treated as qualified small business stock unless, during substantially all of the taxpayer's holding period for such stock, such corporation meets the active business requirements of subsection (e) and such corporation is a C corporation.

(B) Special rule for certain small business investment companies

(i) Waiver of active business requirement

Notwithstanding any provision of subsection (e), a corporation shall be treated

as meeting the active business requirements of such subsection for any period during which such corporation qualifies as a specialized small business investment company.

(ii) Specialized small business investment company

For purposes of clause (i), the term ''specialized small business investment company'' means any eligible corporation (as defined in subsection (e)(4)) which is licensed to operate under section 301(d) of the Small Business Investment Act of 1958 (as in effect on May 13, 1993).

(3) Certain purchases by corporation of its own stock

(A) Redemptions from taxpayer or related person

Stock acquired by the taxpayer shall not be treated as qualified small business stock if, at any time during the 4-year period beginning on the date 2 years before the issuance of such stock, the corporation issuing such stock purchased (directly or indirectly) any of its stock from the taxpayer or from a person related (within the meaning of section 267(b) or 707(b)) to the taxpayer.

(B) Significant redemptions

Stock issued by a corporation shall not be treated as qualified business stock if, during the 2-year period beginning on the date 1 year before the issuance of such stock, such corporation made 1 or more purchases of its stock with an aggregate value (as of the time of the respective purchases) exceeding 5 percent of the aggregate value of all of its stock as of the beginning of such 2-year period.

(C) Treatment of certain transactions

If any transaction is treated under section 304(a) as a distribution in redemption of the stock of any corporation, for purposes of subparagraphs (A) and (B), such corporation shall be treated as purchasing an amount of its stock equal to the amount treated as such a distribution under section 304(a).

(d) Qualified small business

For purposes of this section—

(1) In general

The term ''qualified small business'' means any domestic corporation which is a C corporation if—

(A) the aggregate gross assets of such corporation (or any predecessor thereof) at all times on or after the date of the enactment of the Revenue Reconciliation Act of 1993 and before the issuance did not exceed $50,000,000,

(B) the aggregate gross assets of such corporation immediately after the issuance (determined by taking into account amounts received in the issuance) do not exceed $50,000,000, and

(C) such corporation agrees to submit such reports to the Secretary and to shareholders as the Secretary may require to carry out the purposes of this section.

(2) Aggregate gross assets

(A) In general

For purposes of paragraph (1), the term ''aggregate gross assets'' means the amount of cash and the aggregate adjusted bases of other property held by the corporation.

(B) Treatment of contributed property

For purposes of subparagraph (A), the adjusted basis of any property contributed to the corporation (or other property with a basis determined in whole or in part by reference to the adjusted basis of property so contributed) shall be determined as if the basis of the property contributed to the corporation (immediately after such contribution) were equal to its fair market value as of the time of such contribution.

(3) Aggregation rules

(A) In general

All corporations which are members of the same parent-subsidiary controlled group shall be treated as 1 corporation for purposes of this subsection.

(B) Parent-subsidiary controlled group

For purposes of subparagraph (A), the term ''parent-subsidiary controlled group'' means any controlled group of corporations as defined in section 1563(a)(1), except that—

(i) ''more than 50 percent'' shall be substituted for ''at least 80 percent'' each place it appears in section 1563(a)(1), and

(ii) section 1563(a)(4) shall not apply.

(e) Active business requirement

(1) In general

For purposes of subsection (c)(2), the requirements of this subsection are met by a corporation for any period if during such period—

(A) at least 80 percent (by value) of the assets of such corporation are used by such corporation in the active conduct of 1 or more qualified trades or businesses, and

(B) such corporation is an eligible corporation.

(2) Special rule for certain activities

For purposes of paragraph (1), if, in connection with any future qualified trade or business, a corporation is engaged in—

(A) start-up activities described in section 195(c)(1)(A),

(B) activities resulting in the payment or incurring of expenditures which may be treated as research and experimental expenditures under section 174, or

(C) activities with respect to in-house research expenses described in section 41(b)(4),

assets used in such activities shall be treated as used in the active conduct of a qualified trade or business. Any determination under this paragraph shall be made without regard to whether a corporation has any gross income from such activities at the time of the determination.

(3) Qualified trade or business

For purposes of this subsection, the term ''qualified trade or business'' means any trade or business other than—

(A) any trade or business involving the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, or any trade or business where the principal asset of such trade or business is the reputation or skill of 1 or more of its employees,

(B) any banking, insurance, financing, leasing, investing, or similar business,

(C) any farming business (including the business of raising or harvesting trees),

(D) any business involving the production or extraction of products of a character with respect to which a deduction is allowable under section 613 or 613A, and

(E) any business of operating a hotel, motel, restaurant, or similar business.

(4) Eligible corporation

For purposes of this subsection, the term ''eligible corporation'' means any domestic corporation; except that such term shall not include—

(A) a DISC or former DISC,

(B) a corporation with respect to which an election under section 936 is in effect or which has a direct or indirect subsidiary with respect to which such an election is in effect,

(C) a regulated investment company, real estate investment trust, or REMIC, and

(D) a cooperative.

(5) Stock in other corporations

(A) Look-thru in case of subsidiaries

For purposes of this subsection, stock and debt in any subsidiary corporation shall be disregarded and the parent corporation shall be deemed to own its ratable share of the subsidiary's assets, and to conduct its ratable share of the subsidiary's activities.

(B) Portfolio stock or securities

A corporation shall be treated as failing to meet the requirements of paragraph (1) for any period during which more than 10 percent of the value of its assets (in excess of liabilities) consists of stock or securities in other corporations which are not subsidiaries of such corporation (other than assets described in paragraph (6)).

(C) Subsidiary

For purposes of this paragraph, a corporation shall be considered a subsidiary if the parent owns more than 50 percent of the combined voting power of all classes of stock entitled to vote, or more than 50 percent in value of all outstanding stock, of such corporation.

(6) Working capital

For purposes of paragraph (1)(A), any assets which—

(A) are held as a part of the reasonably required working capital needs of a qualified trade or business of the corporation, or

(B) are held for investment and are reasonably expected to be used within 2 years to finance research and experimentation in a qualified trade or business or increases in working capital needs of a qualified trade or business,

shall be treated as used in the active conduct of a qualified trade or business. For periods after the corporation has been in existence for at least 2 years, in no event may more than 50 percent of the assets of the corporation qualify as used in the active conduct of a qualified trade or business by reason of this paragraph.

(7) Maximum real estate holdings

A corporation shall not be treated as meeting the requirements of paragraph (1) for any period during which more than 10 percent of the total value of its assets consists of real property which is not used in the active conduct of a qualified trade or business. For purposes of the preceding sentence, the ownership of, dealing in, or renting of real property shall not be treated as the active conduct of a qualified trade or business.

(8) Computer software royalties

For purposes of paragraph (1), rights to computer software which produces active business computer software royalties (within the meaning of section 543(d)(1)) shall be treated as an asset used in the active conduct of a trade or business.

(f) Stock acquired on conversion of other stock

If any stock in a corporation is acquired solely through the conversion of other stock in such corporation which is qualified small business stock in the hands of the taxpayer—

(1) the stock so acquired shall be treated as qualified small business stock in the hands of the taxpayer, and

(2) the stock so acquired shall be treated as having been held during the period during which the converted stock was held.

(g) Treatment of pass-thru entities

(1) In general

If any amount included in gross income by reason of holding an interest in a pass-thru entity meets the requirements of paragraph (2)—

(A) such amount shall be treated as gain described in subsection (a), and

(B) for purposes of applying subsection (b), such amount shall be treated as gain from a disposition of stock in the corporation issuing the stock disposed of by the pass-thru entity and the taxpayer's proportionate share of the adjusted basis of the pass-thru entity in such stock shall be taken into account.

(2) Requirements

An amount meets the requirements of this paragraph if—

(A) such amount is attributable to gain on the sale or exchange by the pass-thru entity of stock which is qualified small business stock in the hands of such entity (determined by treating such entity as an individual) and which was held by such entity for more than 5 years, and

(B) such amount is includible in the gross income of the taxpayer by reason of the holding of an interest in such entity which

was held by the taxpayer on the date on which such pass-thru entity acquired such stock and at all times thereafter before the disposition of such stock by such pass-thru entity.

(3) Limitation based on interest originally held by taxpayer

Paragraph (1) shall not apply to any amount to the extent such amount exceeds the amount to which paragraph (1) would have applied if such amount were determined by reference to the interest the taxpayer held in the pass-thru entity on the date the qualified small business stock was acquired.

(4) Pass-thru entity

For purposes of this subsection, the term ''pass-thru entity'' means—

(A) any partnership,

(B) any S corporation,

(C) any regulated investment company, and

(D) any common trust fund.

(h) Certain tax-free and other transfers

For purposes of this section—

(1) In general

In the case of a transfer described in paragraph (2), the transferee shall be treated as—

(A) having acquired such stock in the same manner as the transferor, and

(B) having held such stock during any continuous period immediately preceding the transfer during which it was held (or treated as held under this subsection) by the transferor.

(2) Description of transfers

A transfer is described in this subsection if such transfer is—

(A) by gift,

(B) at death, or

(C) from a partnership to a partner of stock with respect to which requirements similar to the requirements of subsection (g) are met at the time of the transfer (without regard to the 5-year holding period requirement).

(3) Certain rules made applicable

Rules similar to the rules of section 1244(d)(2) shall apply for purposes of this section.

(4) Incorporations and reorganizations involving nonqualified stock

(A) In general

In the case of a transaction described in section 351 or a reorganization described in section 368, if qualified small business stock is exchanged for other stock which would not qualify as qualified small business stock but for this subparagraph, such other stock shall be treated as qualified small business stock acquired on the date on which the exchanged stock was acquired.

(B) Limitation

This section shall apply to gain from the sale or exchange of stock treated as qualified small business stock by reason of subparagraph (A) only to the extent of the gain which would have been recognized at the time of the transfer described in subparagraph (A) if section 351 or 368 had not applied at such time. The preceding sentence shall not apply if the stock which is treated as qualified small business stock by reason of subparagraph (A) is issued by a corporation which (as of the time of the transfer described in subparagraph (A)) is a qualified small business.

(C) Successive application

For purposes of this paragraph, stock treated as qualified small business stock under subparagraph (A) shall be so treated for subsequent transactions or reorganizations, except that the limitation of subparagraph (B) shall be applied as of the time of the first transfer to which such limitation applied (determined after the application of the second sentence of subparagraph (B)).

(D) Control test

In the case of a transaction described in section 351, this paragraph shall apply only if, immediately after the transaction, the corporation issuing the stock owns directly or indirectly stock representing control (within the meaning of section 368(c)) of the corporation whose stock was exchanged.

(i) Basis rules

For purposes of this section—

(1) Stock exchanged for property

In the case where the taxpayer transfers property (other than money or stock) to a corporation in exchange for stock in such corporation—

(A) such stock shall be treated as having been acquired by the taxpayer on the date of such exchange, and

(B) the basis of such stock in the hands of the taxpayer shall in no event be less than the fair market value of the property exchanged.

(2) Treatment of contributions to capital

If the adjusted basis of any qualified small business stock is adjusted by reason of any contribution to capital after the date on which such stock was originally issued, in determining the amount of the adjustment by reason of such contribution, the basis of the contributed property shall in no event be treated as less than its fair market value on the date of the contribution.

(j) Treatment of certain short positions

(1) In general

If the taxpayer has an offsetting short position with respect to any qualified small business stock, subsection (a) shall not apply to any gain from the sale or exchange of such stock unless—

(A) such stock was held by the taxpayer for more than 5 years as of the first day on which there was such a short position, and

(B) the taxpayer elects to recognize gain as if such stock were sold on such first day for its fair market value.

(2) Offsetting short position

For purposes of paragraph (1), the taxpayer shall be treated as having an offsetting short

position with respect to any qualified small business stock if—

(A) the taxpayer has made a short sale of substantially identical property,

(B) the taxpayer has acquired an option to sell substantially identical property at a fixed price, or

(C) to the extent provided in regulations, the taxpayer has entered into any other transaction which substantially reduces the risk of loss from holding such qualified small business stock.

For purposes of the preceding sentence, any reference to the taxpayer shall be treated as including a reference to any person who is related (within the meaning of section 267(b) or 707(b)) to the taxpayer.

(k) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this section, including regulations to prevent the avoidance of the purposes of this section through split-ups, shell corporations, partnerships, or otherwise.

(Added Pub. L. 103–66, title XIII, § 13113(a), Aug. 10, 1993, 107 Stat. 422; amended Pub. L. 104–188, title I, § 1621(b)(7), Aug. 20, 1996, 110 Stat. 1867; Pub. L. 106–554, § 1(a)(7) [title I, § 117(a), (b)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–604; Pub. L. 108–357, title VIII, § 835(b)(9), Oct. 22, 2004, 118 Stat. 1594; Pub. L. 111–5, div. B, title I, § 1241(a), Feb. 17, 2009, 123 Stat. 342; Pub. L. 111–240, title II, § 2011(a), (b), Sept. 27, 2010, 124 Stat. 2554; Pub. L. 111–312, title VII, §§ 753(b), 760(a), Dec. 17, 2010, 124 Stat. 3321, 3323; Pub. L. 112–240, title III, §§ 324(a), (b), 327(b), Jan. 2, 2013, 126 Stat. 2333, 2334; Pub. L. 113–295, div. A, title I, § 136(a), Dec. 19, 2014, 128 Stat. 4019; Pub. L. 114–113, div. Q, title I, § 126(a), Dec. 18, 2015, 129 Stat. 3054.)

REFERENCES IN TEXT

The date of the enactment of this paragraph, referred to in subsec. (a)(2)(A), is the date of enactment of Pub. L. 106–554, which was approved Dec. 21, 2000.

The date of the enactment of this paragraph, referred to in subsec. (a)(3), is the date of enactment of Pub. L. 111–5, which was approved Feb. 17, 2009.

The date of the enactment of the Creating Small Business Jobs Act of 2010, referred to in subsec. (a)(3), (4), is the date of enactment of Pub. L. 111–240, which was approved Sept. 27, 2010.

The date of the enactment of the Revenue Reconciliation Act of 1993, referred to in subsecs. (c)(1) and (d)(1)(A), is the date of enactment of Pub. L. 103–66, which was approved Aug. 10, 1993.

Section 301(d) of the Small Business Investment Act of 1958, referred to in subsec. (c)(2)(B)(ii), was classified to section 681(d) of Title 15, Commerce and Trade, prior to repeal by Pub. L. 104–208, div. D, title II, § 208(b)(3)(A), Sept. 30, 1996, 110 Stat. 3009–742.

PRIOR PROVISIONS

A prior section 1202, acts Aug. 16, 1954, ch. 736, 68A Stat. 320; Oct. 4, 1976, Pub. L. 94–455, title XIX, § 1901(b)(33)(M), 90 Stat. 1802; Nov. 6, 1978, Pub. L. 95–600, title IV, § 402(a), 92 Stat. 2867; Apr. 1, 1980, Pub. L. 96–222, title I, § 104(a)(2)(A), 94 Stat. 214, authorized deduction for capital gains, prior to repeal by Pub. L. 99–514, title III, § 301(a), (c), Oct. 22, 1986, 100 Stat. 2216, 2218, applicable to taxable years beginning after Dec. 31, 1986.

AMENDMENTS

2015—Subsec. (a)(4). Pub. L. 114–113 substituted ''and thereafter'' for '', 2011, 2012, 2013, and 2014'' in heading and struck out ''and before January 1, 2015'' after ''of the Creating Small Business Jobs Act of 2010'' in introductory provisions.

2014—Subsec. (a)(4). Pub. L. 113–295 substituted ''2013, and 2014'' for ''and 2013'' in heading and ''January 1, 2015'' for ''January 1, 2014'' in introductory provisions.

2013—Subsec. (a)(2)(C). Pub. L. 112–240, § 327(b), substituted ''2018'' for ''2016'' in heading and ''December 31, 2018'' for ''December 31, 2016'' in text.

Subsec. (a)(3). Pub. L. 112–240, § 324(b)(1), inserted concluding provisions.

Subsec. (a)(4). Pub. L. 112–240, § 324(b)(2), inserted concluding provisions.

Pub. L. 112–240, § 324(a), substituted '', 2011, 2012, and 2013'' for ''and 2011'' in heading and ''January 1, 2014'' for ''January 1, 2012'' in introductory provisions.

2010—Subsec. (a)(2)(C). Pub. L. 111–312, § 753(b), substituted ''2016'' for ''2014'' in heading and ''December 31, 2016'' for ''December 31, 2014'' in text.

Subsec. (a)(3). Pub. L. 111–240, § 2011(b), inserted ''certain periods in'' before ''2010'' in heading and substituted ''on or before the date of the enactment of the Creating Small Business Jobs Act of 2010'' for ''before January 1, 2011'' in text.

Subsec. (a)(4). Pub. L. 111–312, § 760(a), inserted ''and 2011'' after ''2010'' in heading and substituted ''January 1, 2012'' for ''January 1, 2011'' in introductory provisions.

Pub. L. 111–240, § 2011(a), added par. (4).

2009—Subsec. (a)(3). Pub. L. 111–5 added par. (3).

2004—Subsec. (e)(4)(C). Pub. L. 108–357 substituted ''or REMIC'' for ''REMIC, or FASIT''.

2000—Pub. L. 106–554, § 1(a)(7) [title I, § 117(b)(2)], substituted ''Partial'' for ''50-percent'' in section catchline.

Subsec. (a). Pub. L. 106–554, § 1(a)(7) [title I, § 117(a)], amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: ''In the case of a taxpayer other than a corporation, gross income shall not include 50 percent of any gain from the sale or exchange of qualified small business stock held for more than 5 years.''

1996—Subsec. (e)(4)(C). Pub. L. 104–188 substituted ''REMIC, or FASIT'' for ''or REMIC''.

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114–113, div. Q, title I, § 126(b), Dec. 18, 2015, 129 Stat. 3054, provided that: ''The amendments made by this section [amending this section] shall apply to stock acquired after December 31, 2014.''

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113–295, div. A, title I, § 136(b), Dec. 19, 2014, 128 Stat. 4019, provided that: ''The amendments made by this section [amending this section] shall apply to stock acquired after December 31, 2013.''

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title III, § 324(c), Jan. 2, 2013, 126 Stat. 2333, provided that:

''(1) IN GENERAL.—The amendments made by subsection (a) [amending this section] shall apply to stock acquired after December 31, 2011.

''(2) SUBSECTION (B)(1).—The amendment made by subsection (b)(1) [amending this section] shall take effect as if included in section 1241(a) of division B of the American Recovery and Reinvestment Act of 2009 [Pub. L. 111–5].

''(3) SUBSECTION (B)(2).—The amendment made by subsection (b)(2) [amending this section] shall take effect as if included in section 2011(a) of the Creating Small Business Jobs Act of 2010 [title II of Pub. L. 111–240].''

Pub. L. 112–240, title III, § 327(d), Jan. 2, 2013, 126 Stat. 2334, provided that: ''The amendments made by this section [amending this section and section 1391 of this title] shall apply to periods after December 31, 2011.''

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, § 753(d), Dec. 17, 2010, 124 Stat. 3321, provided that: ''The amendments made by

this section [amending this section and section 1391 of this title] shall apply to periods after December 31, 2009.''

Pub. L. 111–312, title VII, §760(b), Dec. 17, 2010, 124 Stat. 3323, provided that: ''The amendments made by this section [amending this section] shall apply to stock acquired after December 31, 2010.''

Pub. L. 111–240, title II, §2011(c), Sept. 27, 2010, 124 Stat. 2554, provided that: ''The amendments made by this section [amending this section] shall apply to stock acquired after the date of the enactment of this Act [Sept. 27, 2010].''

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1241(b), Feb. 17, 2009, 123 Stat. 342, provided that: ''The amendment made by this section [amending this section] shall apply to stock acquired after the date of the enactment of this Act [Feb. 17, 2009].''

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 2000 AMENDMENT

Amendment by Pub. L. 106–554 applicable to stock acquired after Dec. 21, 2000, see section 1(a)(7) [title I, §117(c)] of Pub. L. 106–554, set out as a note under section 1 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

Section applicable to stock issued after Aug. 10, 1993, see section 13113(e) of Pub. L. 103–66, set out as an Effective Date of 1993 Amendment note under section 53 of this title.

SPECIAL RULE FOR PASS-THROUGH ENTITIES

Pub. L. 96–222, title I, §104(a)(2)(C), Apr. 1, 1980, 94 Stat. 215, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(i) IN GENERAL.—In applying sections [former] 1201(c)(2)(A)(ii) and 1202(c)(1)(B) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] with respect to any pass-through entity, the determination of the period for which gain or loss is properly taken into account shall be made at the entity level.

''(ii) PASS-THROUGH ENTITY DEFINED.—For purposes of clause (i), the term 'pass-through entity' means—

''(I) a regulated investment company,

''(II) a real estate investment trust,

''(III) an electing small business corporation,

''(IV) a partnership,

''(V) an estate or trust, and

''(VI) a common trust fund.''

PART II—TREATMENT OF CAPITAL LOSSES

AMENDMENTS

1969—Pub. L. 91–172, title V, §512(f)(2), Dec. 30, 1969, 83 Stat. 641, substituted ''carrybacks and carryovers'' for ''carryover'' in item 1212.

§ 1211. Limitation on capital losses

(a) Corporations

In the case of a corporation, losses from sales or exchanges of capital assets shall be allowed only to the extent of gains from such sales or exchanges.

(b) Other taxpayers

In the case of a taxpayer other than a corporation, losses from sales or exchanges of capital assets shall be allowed only to the extent of the gains from such sales or exchanges, plus (if such losses exceed such gains) the lower of—

(1) $3,000 ($1,500 in the case of a married individual filing a separate return), or

(2) the excess of such losses over such gains.

(Aug. 16, 1954, ch. 736, 68A Stat. 321; Pub. L. 91–172, title V, §513(a), Dec. 30, 1969, 83 Stat. 642; Pub. L. 94–455, title V, §501(b)(6), title XIV, §1401(a), (b), Oct. 4, 1976, 90 Stat. 1559, 1731; Pub. L. 95–30, title I, §102(b)(14), May 23, 1977, 91 Stat. 138; Pub. L. 99–514, title III, §301(b)(10), Oct. 22, 1986, 100 Stat. 2217.)

AMENDMENTS

1986—Subsec. (b). Pub. L. 99–514 amended subsec. (b) generally, substituting present provisions for provisions which had declared in: par. (1), general rule for limitation on capital losses for taxpayer other than corporation; in par. (2), meaning of term ''applicable amount''; and in par. (3), rule relating to computation of taxable income.

1977—Subsec. (b)(1)(A). Pub. L. 95–30 inserted ''reduced (but not below zero) by the zero bracket amount'' after ''taxable year''.

1976—Subsec. (b)(1)(B). Pub. L. 94–455, §1401(a), substituted ''the applicable amount'' for ''$1,000''.

Subsec. (b)(2). Pub. L. 94–455, §1401(b), substituted provision relating to ''applicable amount'' for prior provision limiting amount of capital losses for married individuals and reading ''In the case of a husband or wife who files a separate return, the amount specified in paragraph (1)(B) shall be $500 in lieu of $1,000.''

Subsec. (b)(3). Pub. L. 94–455, §501(b)(6), struck out last sentence ''If the taxpayer elects to pay the optional tax imposed by section 3, 'taxable income' as used in this subsection shall read as 'adjusted gross income'.''

1969—Subsec. (b). Pub. L. 91–172 provided for only 50 percent of an individual's long-term capital losses to be offset against his ordinary income up to the $1,000 limit although short-term capital losses continue to be fully deductible within the $1,000 limit and the deduction of capital losses against ordinary income for married persons filing separate returns to be limited to $500 for each spouse rather than the $1,000 formerly allowed.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by 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.

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 501(b)(6) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, see section 508 of Pub. L. 94–455, set out as a note under section 3 of this title.

Pub. L. 94–455, title XIV, §1401(c), Oct. 4, 1976, 90 Stat. 1731, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1976.''

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title V, §513(d), Dec. 30, 1969, 83 Stat. 643, provided that: ''The amendments made by this sec-

tion [amending this section and sections 1212 and 1222 of this title] shall apply to taxable years beginning after December 31, 1969.''

§ 1212. Capital loss carrybacks and carryovers

(a) Corporations

(1) In general

If a corporation has a net capital loss for any taxable year (hereinafter in this paragraph referred to as the ''loss year''), the amount thereof shall be—

(A) a capital loss carryback to each of the 3 taxable years preceding the loss year, but only to the extent—

(i) such loss is not attributable to a foreign expropriation capital loss, and

(ii) the carryback of such loss does not increase or produce a net operating loss (as defined in section 172(c)) for the taxable year to which it is being carried back;

(B) except as provided in subparagraph (C), a capital loss carryover to each of the 5 taxable years succeeding the loss year; and

(C) a capital loss carryover to each of the 10 taxable years succeeding the loss year, but only to the extent such loss is attributable to a foreign expropriation loss,

and shall be treated as a short-term capital loss in each such taxable year. The entire amount of the net capital loss for any taxable year shall be carried to the earliest of the taxable years to which such loss may be carried, and the portion of such loss which shall be carried to each of the other taxable years to which such loss may be carried shall be the excess, if any, of such loss over the total of the capital gain net income for each of the prior taxable years to which such loss may be carried. For purposes of the preceding sentence, the capital gain net income for any such prior taxable year shall be computed without regard to the net capital loss for the loss year or for any taxable year thereafter. In the case of any net capital loss which cannot be carried back in full to a preceding taxable year by reason of clause (ii) of subparagraph (A), the capital gain net income for such prior taxable year shall in no case be treated as greater than the amount of such loss which can be carried back to such preceding taxable year upon the application of such clause (ii).

(2) Definitions and special rules

(A) Foreign expropriation capital loss defined

For purposes of this subsection, the term ''foreign expropriation capital loss'' means, for any taxable year, the sum of the losses taken into account in computing the net capital loss for such year which are—

(i) losses sustained directly by reason of the expropriation, intervention, seizure, or similar taking of property by the government of any foreign country, any political subdivision thereof, or any agency or instrumentality of the foregoing, or

(ii) losses (treated under section 165(g)(1) as losses from the sale or exchange of capital assets) from securities which become worthless by reason of the expropriation, intervention, seizure, or similar taking of property by the government of any foreign country, any political subdivision thereof, or any agency or instrumentality of the foregoing.

(B) Portion of loss attributable to foreign expropriation capital loss

For purposes of paragraph (1), the portion of any net capital loss for any taxable year attributable to a foreign expropriation capital loss is the amount of the foreign expropriation capital loss for such year (but not in excess of the net capital loss for such year).

(C) Priority of application

For purposes of paragraph (1), if a portion of a net capital loss for any taxable year is attributable to a foreign expropriation capital loss, such portion shall be considered to be a separate net capital loss for such year to be applied after the other portion of such net capital loss.

(3) Regulated investment companies

(A) In general

If a regulated investment company has a net capital loss for any taxable year—

(i) paragraph (1) shall not apply to such loss,

(ii) the excess of the net short-term capital loss over the net long-term capital gain for such year shall be a short-term capital loss arising on the first day of the next taxable year, and

(iii) the excess of the net long-term capital loss over the net short-term capital gain for such year shall be a long-term capital loss arising on the first day of the next taxable year.

(B) Coordination with general rule

If a net capital loss to which paragraph (1) applies is carried over to a taxable year of a regulated investment company—

(i) Losses to which this paragraph applies

Clauses (ii) and (iii) of subparagraph (A) shall be applied without regard to any amount treated as a short-term capital loss under paragraph (1).

(ii) Losses to which general rule applies

Paragraph (1) shall be applied by substituting ''net capital loss for the loss year or any taxable year thereafter (other than a net capital loss to which paragraph (3)(A) applies)'' for ''net capital loss for the loss year or any taxable year thereafter''.

(4) Special rules on carrybacks

A net capital loss of a corporation shall not be carried back under paragraph (1)(A) to a taxable year—

(A) for which it is a regulated investment company (as defined in section 851), or

(B) for which it is a real estate investment trust (as defined in section 856).

(b) Other taxpayers

(1) In general

If a taxpayer other than a corporation has a net capital loss for any taxable year—

(A) the excess of the net short-term capital loss over the net long-term capital gain for such year shall be a short-term capital loss in the succeeding taxable year, and

(B) the excess of the net long-term capital loss over the net short-term capital gain for such year shall be a long-term capital loss in the succeeding taxable year.

(2) Treatment of amounts allowed under section 1211(b)(1) or (2)

(A) In general

For purposes of determining the excess referred to in subparagraph (A) or (B) of paragraph (1), there shall be treated as a short-term capital gain in the taxable year an amount equal to the lesser of—

(i) the amount allowed for the taxable year under paragraph (1) or (2) of section 1211(b), or

(ii) the adjusted taxable income for such taxable year.

(B) Adjusted taxable income

For purposes of subparagraph (A), the term ''adjusted taxable income'' means taxable income increased by the sum of—

(i) the amount allowed for the taxable year under paragraph (1) or (2) of section 1211(b), and

(ii) the deduction allowed for such year under section 151 or any deduction in lieu thereof.

For purposes of the preceding sentence, any excess of the deductions allowed for the taxable year over the gross income for such year shall be taken into account as negative taxable income.

(c) Carryback of losses from section 1256 contracts to offset prior gains from such contracts

(1) In general

If a taxpayer (other than a corporation) has a net section 1256 contracts loss for the taxable year and elects to have this subsection apply to such taxable year, the amount of such net section 1256 contracts loss—

(A) shall be a carryback to each of the 3 taxable years preceding the loss year, and

(B) to the extent that, after the application of paragraphs (2) and (3), such loss is allowed as a carryback to any such preceding taxable year—

(i) 40 percent of the amount so allowed shall be treated as a short-term capital loss from section 1256 contracts, and

(ii) 60 percent of the amount so allowed shall be treated as a long-term capital loss from section 1256 contracts.

(2) Amount carried to each taxable year

The entire amount of the net section 1256 contracts loss for any taxable year shall be carried to the earliest of the taxable years to which such loss may be carried back under paragraph (1). The portion of such loss which shall be carried to each of the 2 other taxable years to which such loss may be carried back shall be the excess (if any) of such loss over the portion of such loss which, after the application of paragraph (3), was allowed as a carryback for any prior taxable year.

(3) Amount which may be used in any prior taxable year

An amount shall be allowed as a carryback under paragraph (1) to any prior taxable year only to the extent—

(A) such amount does not exceed the net section 1256 contract gain for such year, and

(B) the allowance of such carryback does not increase or produce a net operating loss (as defined in section 172(c)) for such year.

(4) Net section 1256 contracts loss

For purposes of paragraph (1), the term ''net section 1256 contracts loss'' means the lesser of—

(A) the net capital loss for the taxable year determined by taking into account only gains and losses from section 1256 contracts, or

(B) the sum of the amounts which, but for paragraph (6)(A), would be treated as capital losses in the succeeding taxable year under subparagraphs (A) and (B) of subsection (b)(1).

(5) Net section 1256 contract gain

For purposes of paragraph (1)—

(A) In general

The term ''net section 1256 contract gain'' means the lesser of—

(i) the capital gain net income for the taxable year determined by taking into account only gains and losses from section 1256 contracts, or

(ii) the capital gain net income for the taxable year.

(B) Special rule

The net section 1256 contract gain for any taxable year before the loss year shall be computed without regard to the net section 1256 contracts loss for the loss year or for any taxable year thereafter.

(6) Coordination with carryforward provisions of subsection (b)(1)

(A) Carryforward amount reduced by amount used as carryback

For purposes of applying subsection (b)(1), if any portion of the net section 1256 contracts loss for any taxable year is allowed as a carryback under paragraph (1) to any preceding taxable year—

(i) 40 percent of the amount allowed as a carryback shall be treated as a short-term capital gain for the loss year, and

(ii) 60 percent of the amount allowed as a carryback shall be treated as a long-term capital gain for the loss year.

(B) Carryover loss retains character as attributable to section 1256 contract

Any amount carried forward as a short-term or long-term capital loss to any taxable year under subsection (b)(1) (after the application of subparagraph (A)) shall, to the extent attributable to losses from section 1256 contracts, be treated as loss from section 1256 contracts for such taxable year.

(7) Other definitions and special rules

For purposes of this subsection—

(A) Section 1256 contract

The term ''section 1256 contract'' means any section 1256 contract (as defined in section 1256(b)) to which section 1256 applies.

(B) Exclusion for estates and trusts

This subsection shall not apply to any estate or trust.

(Aug. 16, 1954, ch. 736, 68A Stat. 321; Pub. L. 88–272, title II, § 230(a), Feb. 26, 1964, 78 Stat. 99; Pub. L. 88–571, § 7(a), Sept. 2, 1964, 78 Stat. 860; Pub. L. 91–172, title V, §§ 512 (a), (b), (f)(1), 513(b), Dec. 30, 1969, 83 Stat. 638, 639, 641, 642; Pub. L. 94–455, title XIV, § 1403 (a), title XIX, § 1901(b)(33)(O), Oct. 4, 1976, 90 Stat. 1733, 1802; Pub. L. 95–600, title VII, § 703(k), Nov. 6, 1978, 92 Stat. 2942; Pub. L. 97–34, title V, § 504, Aug. 13, 1981, 95 Stat. 330; Pub. L. 97–354, § 5(a)(35), Oct. 19, 1982, 96 Stat. 1695; Pub. L. 97–448, title I, § 105(c)(7), Jan. 12, 1983, 96 Stat. 2387; Pub. L. 98–369, div. A, title I, § 102(e)(3), title X, § 1002(a), July 18, 1984, 98 Stat. 624, 1012; Pub. L. 99–514, title III, § 301(b)(11), title XVIII, § 1899A(67), Oct. 22, 1986, 100 Stat. 2218, 2962; Pub. L. 100–647, title I, § 1003(a)(3), Nov. 10, 1988, 102 Stat. 3382; Pub. L. 108–357, title IV, § 413(c)(20)(A), Oct. 22, 2004, 118 Stat. 1509; Pub. L. 111–325, title I, § 101(a), (b)(1), Dec. 22, 2010, 124 Stat. 3538.)

AMENDMENTS

2010—Subsec. (a)(1)(C). Pub. L. 111–325, § 101(b)(1), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''a capital loss carryover—

''(i) in the case of a regulated investment company (as defined in section 851) to each of the 8 taxable years succeeding the loss year, and

''(ii) to the extent such loss is attributable to a foreign expropriation capital loss, to each of the 10 taxable years succeeding the loss year.''

Subsec. (a)(3), (4). Pub. L. 111–325, § 101(a), added par. (3) and redesignated former par. (3) as (4).

2004—Subsec. (a)(3). Pub. L. 108–357 reenacted heading without change and amended text of par. (3) generally. Prior to amendment, par. (3) provided that a net capital loss of a corporation would not be carried back under par. (1)(A) to a taxable year for which it was a foreign personal holding company (as defined in section 552), for which it was a regulated investment company (as defined in section 851), for which it was a real estate investment trust (as defined in section 856), or for which an election made by it under section 1247 was applicable (relating to election by foreign investment companies to distribute income currently).

1988—Subsec. (b)(2). Pub. L. 100–647 substituted ''Treatment of amounts allowed under section 1211(b)(1) or (2)'' for ''Special rule'' as heading and amended text generally. Prior to amendment, text read as follows: ''For purposes of determining the excess referred to in subparagraph (A) or (B) of paragraph (1), an amount equal to the amount allowed for the taxable year under paragraph (1) or (2) of section 1211(b) shall be treated as a short-term capital gain in such year.''

1986—Subsec. (b)(2). Pub. L. 99–514, § 301(b)(11), amended par. (2) generally. Prior to amendment, par. (2), special rules, read as follows:

''(A) For purposes of determining the excess referred to in paragraph (1)(A), an amount equal to the amount allowed for the taxable year under section 1211(b)(1)(A), (B), or (C) shall be treated as a short-term capital gain in such year.

''(B) For purposes of determining the excess referred to in paragraph (1)(B), an amount equal to the sum of—

''(i) the amount allowed for the taxable year under section 1211(b)(1)(A), (B), or (C), and

''(ii) the excess of the amount described in clause (i) over the net short-term capital loss (determined without regard to this subsection) for such year,

shall be treated as a short-term capital gain in such year.''

Subsec. (c)(6)(B), (7)(A). Pub. L. 99–514, § 1899A(67), amended directory language of Pub. L. 98–369, § 102(e)(3)(C), resulting in amendment of subsec. (c)(6)(B). See 1984 Amendment note below.

1984—Subsec. (b)(3). Pub. L. 98–369, § 1002(a), struck out par. (3) which read as follows: ''In the case of any amount which, under paragraph (1) and section 1211(b) (as in effect for taxable years beginning before January 1, 1970), is treated as a capital loss in the first taxable year beginning after December 31, 1969, paragraph (1) and section 1211(b) (as in effect for taxable years beginning before January 1, 1970) shall apply (and paragraph (1) and section 1211(b) as in effect for taxable years beginning after December 31, 1969, shall not apply) to the extent such amount exceeds the total of any net capital gains (determined without regard to this subsection) of taxable years beginning after December 31, 1969.''

Subsec. (c). Pub. L. 98–369, § 102(e)(3)(A), (B), substituted ''net section 1256 contracts loss'' for ''net commodity futures loss'' and ''section 1256 contracts'' for ''regulated futures contracts'' wherever appearing.

Subsec. (c)(3)(A), (5). Pub. L. 98–369, § 102(e)(3)(D), substituted ''net section 1256 contract gain'' for ''net commodity futures gain'' wherever appearing.

Subsec. (c)(6)(B), (7)(A). Pub. L. 98–369, § 102(e)(3)(C), as amended by Pub. L. 99–514, § 1899A(67), substituted ''section 1256 contract'' for ''regulated futures contract'' wherever appearing.

1983—Subsec. (c)(4)(A). Pub. L. 97–448 struck out ''and positions to which section 1256 applies'' after ''losses from regulated futures contracts''.

1982—Subsec. (a)(3), (4). Pub. L. 97–354 struck out par. (3) relating to electing small business corporations, and redesignated par. (4) as (3).

1981—Subsec. (c). Pub. L. 97–34 added subsec. (c).

1978—Subsec. (a)(1)(C)(ii). Pub. L. 95–600 substituted ''succeeding the loss year'' for ''exceeding the loss year''.

1976—Subsec. (a)(1). Pub. L. 94–455, §§ 1403(a), 1901(b)(33)(O), in subpar. (B) inserted introductory text ''except as provided in subparagraph (C),'' and struck out ''(10) taxable years to the extent such loss is attributable to a foreign expropriation capital loss)'' after ''5 taxable years'' and added subpar. (C), and substituted ''capital gain net income'' for ''net capital gains'', ''net capital gain'' and ''net capital gain'' in last three sentences, respectively.

1969—Pub. L. 91–172, § 512(f)(1), substituted ''carrybacks and carryovers'' for ''carryover'' in section catchline.

Subsec. (a)(1). Pub. L. 91–172, § 512(a), provided for a 3-year capital loss carryback for corporations, not available for foreign expropriation capital losses for which a special 10-year carryforward is presently available, in addition to the 5–year capital loss carryforward presently allowed corporations, to the extent the carryback of such loss does not increase or produce a net operating loss for the taxable year to which it is being carried back.

Subsec. (a)(3), (4). Pub. L. 91–172, § 512(b), added pars. (3) and (4).

Subsec. (b). Pub. L. 91–172, § 513(b), struck out reference to Dec. 31, 1963, struck out determination of a short-term capital gain as an amount equal to the excess allowed for the taxable year under former section 1211(b) over the gains from sales or exchanges of capital assets, struck out par. (2) treating as a short-term capital loss in the first taxable year beginning after Dec. 31, 1963, any amount which is treated as a short-term capital loss in such year under this subchapter as in effect immediately before the enactment of the Revenue Act of 1964, added new par. (2) dealing with special rules for determining the excesses referred to in par. (1)(A) and par. (1)(B) and added par. (3).

1964—Subsec. (a). Pub. L. 88–571 provided that if any portion of a net capital loss is attributable to a foreign

expropriation capital loss, such portion shall be a short-term capital loss in each of the 10 succeeding taxable years, defined foreign expropriation capital loss, stated what portion of loss is attributable to foreign expropriation capital loss and the priority of application of the net capital loss, and struck out provisions that net capital losses for taxable years beginning before Oct. 20, 1951, were to be determined under the applicable law relating to the computation of capital gains and losses in effect before such date.

Pub. L. 88–272 designated existing provisions as subsec. (a), limited such subsection to corporations, and added subsec. (b).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–325, title I, §101(c), Dec. 22, 2010, 124 Stat. 3538, as amended by Pub. L. 113–295, div. A, title II, §205(a)(1), Dec. 19, 2014, 128 Stat. 4025, provided that:

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this section and section 1222 of this title] shall apply to net capital losses for taxable years beginning after the date of the enactment of this Act [Dec. 22, 2010].

''(2) COORDINATION RULES.—Subparagraph (B) of section 1212(a)(3) of the Internal Revenue Code of 1986, as added by this section, shall apply to taxable years beginning after the date of the enactment of this Act.

''(3) EXCISE TAX.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), for purposes of section 4982 of the Internal Revenue Code of 1986, paragraphs (1) and (2) shall apply by substituting 'the 1-year periods taken into account under subsection (b)(1)(B) of such section with respect to calendar years beginning after December 31, 2010' for 'taxable years beginning after the date of the enactment of this Act'.

''(B) ELECTION.—A regulated investment company may elect to apply subparagraph (A) by substituting '2011' for '2010'. Such election shall be made at such time and in such form and manner as the Secretary of the Treasury (or the Secretary's delegate) shall prescribe.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title IV, §413(c)(20)(B), Oct. 22, 2004, 118 Stat. 1509, provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to taxable years beginning after December 31, 2004.''

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 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)(11) 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.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 102(e)(3) of Pub. L. 98–369 applicable to positions established after July 18, 1984, in taxable years after that date, except as otherwise provided, see section 102(f), (g) of Pub. L. 98–369, set out as a note under section 1256 of this title.

Pub. L. 98–369, div. A, title X, §1002(b), July 18, 1984, 98 Stat. 1012, provided that: ''The repeal made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1986.''

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. 97–354 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 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to property acquired and positions established by the taxpayer after June 23, 1981, in taxable years ending after such date, and applicable when so elected with respect to property held on June 23, 1981, see section 508 of Pub. L. 97–34, set out as an Effective Date note under section 1092 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 effective Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XIV, §1403(b), Oct. 4, 1976, 90 Stat. 1733, 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 to loss years (within the meaning of section 1212(a)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) ending on or after January 1, 1970.''

Amendment by section 1901(b)(33)(O) 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 1969 AMENDMENT

Pub. L. 91–172, title V, §512(g), Dec. 30, 1969, 83 Stat. 642, provided that: ''The amendments made by this section [amending this section and sections 246, 381, 481, 535, 1314, 6411, 6501, 6511, 6601, and 6611 of this title] shall apply with respect to net capital losses sustained in taxable years beginning after December 31, 1969.''

Amendment by section 513(b) of Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 513(d) of Pub. L. 91–172, set out as a note under section 1211 of this title.

EFFECTIVE DATE OF 1964 AMENDMENTS

Pub. L. 88–571, §7(b), Sept. 2, 1964, 78 Stat. 861, 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 with respect to net capital losses (to the extent attributable to foreign expropriation capital losses, as defined in section 1212(a)(2)(A) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) sustained in taxable years ending after December 31, 1958.''

Pub. L. 88–272, title II, §230(c), Feb. 26, 1964, 78 Stat. 100, provided that: ''The amendments made by this section [amending this section and section 1222 of this title] shall apply to taxable years beginning after December 31, 1963.''

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.

ELECTION NOT TO CARRYBACK CERTAIN NET CAPITAL LOSSES

Pub. L. 91–688, §3, Jan. 12, 1971, 84 Stat. 2073, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) For purposes of applying section 1212(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by section 512 of the Tax Reform Act of 1969) in the case of a corporation which makes an election under subsection (b), any net capital loss sustained in a taxable year beginning after December 31, 1969, may not be carried back to any taxable year beginning before January 1, 1970, for which it was subject to taxation under section 802 of such Code [section 802 of this title], if the carryback of such loss would result in an increase in such corporation's income tax liability for any such taxable year.

''(b) An election to have the provisions of subsection (a) apply shall be made by a corporation—

''(1) in such form and manner as the Secretary of the Treasury or his delegate may prescribe, and

''(2) not later than the time prescribed by law for filing a claim for credit or refund of overpayment of income tax for the first taxable year beginning after December 31, 1969, in which such corporation sustains a net capital loss.

''(c) The Secretary of the Treasury or his delegate shall prescribe such regulations as he determines necessary to carry out the purposes of this section.''

PART III—GENERAL RULES FOR DETERMINING CAPITAL GAINS AND LOSSES

§ 1221. Capital asset defined

(a) In general

For purposes of this subtitle, the term ''capital asset'' means property held by the taxpayer (whether or not connected with his trade or business), but does not include—

(1) stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business;

(2) property, used in his trade or business, of a character which is subject to the allowance for depreciation provided in section 167, or real property used in his trade or business;

(3) a patent, invention, model or design (whether or not patented), a secret formula or process, a copyright, a literary, musical, or artistic composition, a letter or memorandum, or similar property, held by—

(A) a taxpayer whose personal efforts created such property,

(B) in the case of a letter, memorandum, or similar property, a taxpayer for whom such property was prepared or produced, or

(C) a taxpayer in whose hands the basis of such property is determined, for purposes of determining gain from a sale or exchange, in whole or part by reference to the basis of such property in the hands of a taxpayer described in subparagraph (A) or (B);

(4) accounts or notes receivable acquired in the ordinary course of trade or business for services rendered or from the sale of property described in paragraph (1);

(5) a publication of the United States Government (including the Congressional Record) which is received from the United States Government or any agency thereof, other than by purchase at the price at which it is offered for sale to the public, and which is held by—

(A) a taxpayer who so received such publication, or

(B) a taxpayer in whose hands the basis of such publication is determined, for purposes of determining gain from a sale or exchange, in whole or in part by reference to the basis of such publication in the hands of a taxpayer described in subparagraph (A);

(6) any commodities derivative financial instrument held by a commodities derivatives dealer, unless—

(A) it is established to the satisfaction of the Secretary that such instrument has no connection to the activities of such dealer as a dealer, and

(B) such instrument is clearly identified in such dealer's records as being described in subparagraph (A) 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);

(7) any hedging transaction which 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 by regulations prescribe); or

(8) supplies of a type regularly used or consumed by the taxpayer in the ordinary course of a trade or business of the taxpayer.

(b) Definitions and special rules

(1) Commodities derivative financial instruments

For purposes of subsection (a)(6)—

(A) Commodities derivatives dealer

The term ''commodities derivatives dealer'' means a person which[1] regularly offers to enter into, assume, offset, assign, or terminate positions in commodities derivative financial instruments with customers in the ordinary course of a trade or business.

(B) Commodities derivative financial instrument

(i) In general

The term ''commodities derivative financial instrument'' means any contract or financial instrument with respect to commodities (other than a share of stock in a corporation, a beneficial interest in a partnership or trust, a note, bond, debenture, or other evidence of indebtedness, or a section 1256 contract (as defined in section 1256(b))), the value or settlement price of which is calculated by or determined by reference to a specified index.

(ii) Specified index

The term ''specified index'' means any one or more or any combination of—

[1] So in original. Does not conform to section catchline.

[1] So in original. Probably should be ''who''.

(I) a fixed rate, price, or amount, or
(II) a variable rate, price, or amount,

which is based on any current, objectively determinable financial or economic information with respect to commodities which is not within the control of any of the parties to the contract or instrument and is not unique to any of the parties' circumstances.

(2) Hedging transaction

(A) In general

For purposes of this section, the term ''hedging transaction'' means any transaction entered into by the taxpayer in the normal course of the taxpayer's trade or business primarily—

(i) to manage risk of price changes or currency fluctuations with respect to ordinary property which is held or to be held by the taxpayer,

(ii) to manage risk of interest rate or price changes or currency fluctuations with respect to borrowings made or to be made, or ordinary obligations incurred or to be incurred, by the taxpayer, or

(iii) to manage such other risks as the Secretary may prescribe in regulations.

(B) Treatment of nonidentification or improper identification of hedging transactions

Notwithstanding subsection (a)(7), the Secretary shall prescribe regulations to properly characterize any income, gain, expense, or loss arising from a transaction—

(i) which is a hedging transaction but which was not identified as such in accordance with subsection (a)(7), or

(ii) which was so identified but is not a hedging transaction.

(3) Sale or exchange of self-created musical works

At the election of the taxpayer, paragraphs (1) and (3) of subsection (a) shall not apply to musical compositions or copyrights in musical works sold or exchanged by a taxpayer described in subsection (a)(3).

(4) Regulations

The Secretary shall prescribe such regulations as are appropriate to carry out the purposes of paragraph (6) and (7) of subsection (a) in the case of transactions involving related parties.

(Aug. 16, 1954, ch. 736, 68A Stat. 321; Pub. L. 91–172, title V, §514(a), Dec. 30, 1969, 83 Stat. 643; Pub. L. 94–455, title XIX, §1901(c)(9), title XXI, §2132(a), Oct. 4, 1976, 90 Stat. 1803, 1925; Pub. L. 97–34, title V, §505(a), Aug. 13, 1981, 95 Stat. 331; Pub. L. 106–170, title V, §532(a), Dec. 17, 1999, 113 Stat. 1928; Pub. L. 107–16, title V, §542(e)(2)(A), June 7, 2001, 115 Stat. 85; Pub. L. 107–147, title IV, §417(20), Mar. 9, 2002, 116 Stat. 57; Pub. L. 109–222, title II, §204(a), May 17, 2006, 120 Stat. 350; Pub. L. 109–432, div. A, title IV, §412(a), Dec. 20, 2006, 120 Stat. 2963; Pub. L. 111–312, title III, §301(a), Dec. 17, 2010, 124 Stat. 3300; Pub. L. 115–97, title I, §13314(a), Dec. 22, 2017, 131 Stat. 2133.)

AMENDMENTS

2017—Subsec. (a)(3). Pub. L. 115–97 inserted ''a patent, invention, model or design (whether or not patented), a secret formula or process,'' before ''a copyright'' in introductory provisions.

2010—Subsec. (a)(3)(C). Pub. L. 111–312 amended subsec. (a)(3)(C) to read as if amendment by Pub. L. 107–16, §542(e)(2)(A), had never been enacted. See 2001 Amendment note below.

2006—Subsec. (b)(3). Pub. L. 109–432 struck out ''before January 1, 2011,'' after ''exchanged''.

Pub. L. 109–222 added par. (3). Former par. (3) redesignated (4).

Subsec. (b)(4). Pub. L. 109–222 redesignated par. (3) as (4).

2002—Subsec. (b)(1)(B)(i). Pub. L. 107–147 substituted ''1256(b)))'' for ''1256(b))''.

2001—Subsec. (a)(3)(C). Pub. L. 107–16, §542(e)(2)(A), inserted ''(other than by reason of section 1022)'' after ''is determined''.

1999—Pub. L. 106–170 designated existing provisions as subsec. (a), inserted heading, and added pars. (6) to (8) and subsec. (b).

1981—Pars. (5), (6). Pub. L. 97–34 redesignated par. (6) as (5) and struck out former par. (5), which excluded from definition of ''capital asset'' an obligation of the United States or any of its possessions, or of a State or any political subdivision thereof, or of the District of Columbia, issued on or after March 1, 1941, on a discount basis and payable without interest at a fixed maturity date not exceeding one year from the date of issue, and is covered by section 1232(a)(4)(B) of this title.

1976—Par. (5). Pub. L. 94–455, §1901(c)(9), struck out ''or Territory,'' after ''State''.

Par. (6). Pub. L. 94–455, §2132(a), added par. (6).

1969—Par. (3). Pub. L. 91–172 inserted reference to a letter or memorandum, added subpar. (B) dealing with a letter or memorandum, and redesignated former subpar. (B) as (C).

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–97, title I, §13314(c), Dec. 22, 2017, 131 Stat. 2133, provided that: ''The amendments made by this section [amending this section and section 1231 of this title] shall apply to dispositions after December 31, 2017.''

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 2006 AMENDMENT

Pub. L. 109–432, div. A, title IV, §412(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 204 of the Tax Increase Prevention and Reconciliation Act of 2005 [Pub. L. 109–222].''

Amendment by Pub. L. 109–222 applicable to sales and exchanges in taxable years beginning after May 17, 2006, see section 204(c) of Pub. L. 109–222, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to estates of decedents dying after Dec. 31, 2009, see section 542(f)(1) of Pub. L. 107–16, set out as a note under section 121 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 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to property acquired and positions established by the taxpayer

after June 23, 1981, in taxable years ending after such date, and applicable when so elected with respect to property held on June 23, 1981, see section 508 of Pub. L. 97–34, set out as an Effective Date note under section 1092 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XXI, § 2132(b), Oct. 4, 1976, 90 Stat. 1925, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to sales, exchanges, and contributions made after the date of enactment of this Act [Oct. 4, 1976].''

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title V, § 514(c), Dec. 30, 1969, 83 Stat. 643, provided that: ''The amendments made by this section [amending this section and sections 341 and 1231 of this title] shall apply to sales and other dispositions occurring after July 25, 1969.''

§ 1222. Other terms relating to capital gains and losses

For purposes of this subtitle—

(1) Short-term capital gain

The term ''short-term capital gain'' means gain from the sale or exchange of a capital asset held for not more than 1 year, if and to the extent such gain is taken into account in computing gross income.

(2) Short-term capital loss

The term ''short-term capital loss'' means loss from the sale or exchange of a capital asset held for not more than 1 year, if and to the extent that such loss is taken into account in computing taxable income.

(3) Long-term capital gain

The term ''long-term capital gain'' means gain from the sale or exchange of a capital asset held for more than 1 year, if and to the extent such gain is taken into account in computing gross income.

(4) Long-term capital loss

The term ''long-term capital loss'' means loss from the sale or exchange of a capital asset held for more than 1 year, if and to the extent that such loss is taken into account in computing taxable income.

(5) Net short-term capital gain

The term ''net short-term capital gain'' means the excess of short-term capital gains for the taxable year over the short-term capital losses for such year.

(6) Net short-term capital loss

The term ''net short-term capital loss'' means the excess of short-term capital losses for the taxable year over the short-term capital gains for such year.

(7) Net long-term capital gain

The term ''net long-term capital gain'' means the excess of long-term capital gains for the taxable year over the long-term capital losses for such year.

(8) Net long-term capital loss

The term ''net long-term capital loss'' means the excess of long-term capital losses for the taxable year over the long-term capital gains for such year.

(9) Capital gain net income

The term ''capital gain net income'' means the excess of the gains from sales or exchanges of capital assets over the losses from such sales or exchanges.

(10) Net capital loss

The term ''net capital loss'' means the excess of the losses from sales or exchanges of capital assets over the sum allowed under section 1211. In the case of a corporation, for the purpose of determining losses under this paragraph, amounts which are short-term capital losses under section 1212(a)(1) shall be excluded.

(11) Net capital gain

The term ''net capital gain'' means the excess of the net long-term capital gain for the taxable year over the net short-term capital loss for such year.

(Aug. 16, 1954, ch. 736, 68A Stat. 322; Pub. L. 88–272, title II, § 230(b), Feb. 26, 1964, 78 Stat. 100; Pub. L. 91–172, title V, §§ 511(a), 513(c), Dec. 30, 1969, 83 Stat. 635, 643; Pub. L. 94–455, title XIV, § 1402(a)(1), (2), (d), title XIX, § 1901(a)(136), Oct. 4, 1976, 90 Stat. 1731, 1733, 1787; Pub. L. 98–369, div. A, title X, § 1001(a), (e), July 18, 1984, 98 Stat. 1011, 1012; Pub. L. 111–325, title I, § 101(b)(2), Dec. 22, 2010, 124 Stat. 3538; Pub. L. 113–295, div. A, title II, § 221(a)(79), Dec. 19, 2014, 128 Stat. 4049.)

AMENDMENTS

2014—Pub. L. 113–295 struck out concluding provisions which read as follows: ''For purposes of this subtitle, in the case of futures transactions in any commodity subject to the rules of a board of trade or commodity exchange, the length of the holding period taken into account under this section or under any other section amended by section 1402 of the Tax Reform Act of 1976 shall be determined without regard to the amendments made by subsections (a) and (b) of such section 1402.''

2010—Par. (10). Pub. L. 111–325 substituted ''section 1212(a)(1)'' for ''section 1212''.

1984—Pars. (1) to (4). 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—Pars. (1) to (4). Pub. L. 94–455, § 1402(a)(2), provided that ''9 months'' would be changed to ''1 year''.

Pub. L. 94–455, § 1402(a)(1), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

Par. (9). Pub. L. 94–455, § 1901(a)(136)(A), substituted ''Capital gain net income'' and ''capital gain net income'' for ''Net capital gain'' and ''net capital gain'' in heading and text.

Par. (11). Pub. L. 94–455, § 1901(a)(136)(B), substituted ''Net capital gain'' and ''net capital gain'' for ''Net section 1201 gain'' and ''net section 1201 gain'' in heading and text.

Pub. L. 94–455, § 1402(d), inserted sentence at end relating to length of holding period in case of futures transactions in commodities.

1969—Par. (9). Pub. L. 91–172, § 513(c), substituted ''The'' for ''In the case of a corporation, the''.

Par. (11). Pub. L. 91–172, § 511(a), added par. (11).

1964—Pars. (9), (10). Pub. L. 88–272 struck out provisions from par. (9) relating to taxpayers other than corporations, and inserted ''In the case of a corporation'' in par. (10).

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

Except as otherwise provided, amendment by Pub. L. 111–325 applicable to net capital losses for taxable years beginning after Dec. 22, 2010, see section 101(c) of Pub. L. 111–325, set out as a note under section 1212 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 XIV, §1402(a)(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(a)(2), Oct. 4, 1976, 90 Stat. 1731, 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)(136) 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 1969 AMENDMENT

Amendment by section 511(a) of 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.

Amendment by section 513(c) of Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 513(d) of Pub. L. 91–172, set out as a note under section 1211 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 230(c) of Pub. L. 88–272, set out as a note under section 1212 of this title.

§ 1223. Holding period of property

For purposes of this subtitle—

(1) In determining the period for which the taxpayer has held property received in an exchange, there shall be included the period for which he held the property exchanged if, under this chapter, the property has, for the purpose of determining gain or loss from a sale or exchange, the same basis in whole or in part in his hands as the property exchanged, and, in the case of such exchanges the property exchanged at the time of such exchange was a capital asset as defined in section 1221 or property described in section 1231. For purposes of this paragraph—

(A) an involuntary conversion described in section 1033 shall be considered an exchange of the property converted for the property acquired, and

(B) a distribution to which section 355 (or so much of section 356 as relates to section 355) applies shall be treated as an exchange.

(2) In determining the period for which the taxpayer has held property however acquired there shall be included the period for which such property was held by any other person, if under this chapter such property has, for the purpose of determining gain or loss from a sale or exchange, the same basis in whole or in part in his hands as it would have in the hands of such other person.

(3) In determining the period for which the taxpayer has held stock or securities the acquisition of which (or the contract or option to acquire which) resulted in the nondeductibility (under section 1091 relating to wash sales) of the loss from the sale or other disposition of substantially identical stock or securities, there shall be included the period for which he held the stock or securities the loss from the sale or other disposition of which was not deductible.

(4) In determining the period for which the taxpayer has held stock or rights to acquire stock received on a distribution, if the basis of such stock or rights is determined under section 307, there shall (under regulations prescribed by the Secretary) be included the period for which he held the stock in the distributing corporation before the receipt of such stock or rights upon such distribution.

(5) In determining the period for which the taxpayer has held stock or securities acquired from a corporation by the exercise of rights to acquire such stock or securities, there shall be included only the period beginning with the date on which the right to acquire was exercised.

[(6) Repealed. Pub. L. 113–295, div. A, title II, §221(a)(80)(C), Dec. 19, 2014, 128 Stat. 4049.]

(7) In determining the period for which the taxpayer has held a commodity acquired in satisfaction of a commodity futures contract (other than a commodity futures contract to which section 1256 applies) there shall be included the period for which he held the commodity futures contract if such commodity futures contract was a capital asset in his hands.

[(8) Repealed. Pub. L. 113–295, div. A, title II, §221(a)(80)(C), Dec. 19, 2014, 128 Stat. 4049.]

(9) In the case of a person acquiring property from a decedent or to whom property passed from a decedent (within the meaning of section 1014(b)), if—

(A) the basis of such property in the hands of such person is determined under section 1014, and

(B) such property is sold or otherwise disposed of by such person within 1 year after the decedent's death,

then such person shall be considered to have held such property for more than 1 year.

(10) If—

(A) property is acquired by any person in a transfer to which section 1040 applies,

(B) such property is sold or otherwise disposed of by such person within 1 year after the decedent's death, and

(C) such sale or disposition is to a person who is a qualified heir (as defined in section 2032A(e)(1)) with respect to the decedent,

then the person making such sale or other disposition shall be considered to have held such property for more than 1 year.

(11) In determining the period for which the taxpayer has held qualified replacement property (within the meaning of section 1042(b)) the acquisition of which resulted under section 1042 in the nonrecognition of any part of the gain realized on the sale of qualified securities (within the meaning of section 1042(b)),

there shall be included the period for which such qualified securities had been held by the taxpayer.

(12) In determining the period for which the taxpayer has held property the acquisition of which resulted under section 1043 in the nonrecognition of any part of the gain realized on the sale of other property, there shall be included the period for which such other property had been held as of the date of such sale.

(13) Except for purposes of sections 1202(a)(2), 1202(c)(2)(A), 1400B(b), and 1400F(b), in determining the period for which the taxpayer has held property the acquisition of which resulted under section 1045 or 1397B in the nonrecognition of any part of the gain realized on the sale of other property, there shall be included the period for which such other property has been held as of the date of such sale.

(14) If the security to which a securities futures contract (as defined in section 1234B) relates (other than a contract to which section 1256 applies) is acquired in satisfaction of such contract, in determining the period for which the taxpayer has held such security, there shall be included the period for which the taxpayer held such contract if such contract was a capital asset in the hands of the taxpayer.

(15) CROSS REFERENCE.—

For special holding period provision relating to certain partnership distributions, see section 735(b).

(Aug. 16, 1954, ch. 736, 68A Stat. 323; Pub. L. 87–834, §14(b)(3), Oct. 16, 1962, 76 Stat. 1041; Pub. L. 91–614, title I, §101(g), Dec. 31, 1970, 84 Stat. 1838; Pub. L. 94–455, title XIV, §1402(b)(1)(Q), (2), title XIX, §1906(b) (13)(A), Oct. 4, 1976, 90 Stat. 1732, 1834; Pub. L. 95–600, title VII, §702(c)(5), Nov. 6, 1978, 92 Stat. 2927; Pub. L. 96–223, title IV, §401(a), Apr. 2, 1980, 94 Stat. 299; Pub. L. 97–448, title I, §§104(b)(3)(C), 105(c)(4), Jan. 12, 1983, 96 Stat. 2382, 2385; Pub. L. 98–369, div. A, title I, §54(c), title V, §541(b)(1), title X, §1001(b)(14), (e), July 18, 1984, 98 Stat. 569, 890, 1011, 1012; Pub. L. 100–647, title I, §1006(e)(17), Nov. 10, 1988, 102 Stat. 3403; Pub. L. 101–194, title V, §502(b)(1), Nov. 30, 1989, 103 Stat. 1754; Pub. L. 105–34, title III, §§312(d)(9), 313(b)(2), Aug. 5, 1997, 111 Stat. 840, 842; Pub. L. 105–206, title V, §5001(a)(5), title VI, §6005(d)(4), July 22, 1998, 112 Stat. 788, 805; Pub. L. 106–554, §1(a)(7) [title I, §116(b)(2), title IV, §401(h)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–603, 2763A–650; Pub. L. 108–357, title IV, §413(c)(21), Oct. 22, 2004, 118 Stat. 1509; Pub. L. 109–135, title IV, §402(a)(2), Dec. 21, 2005, 119 Stat. 2610; Pub. L. 113–295, div. A, title II, §221(a)(80), Dec. 19, 2014, 128 Stat. 4049.)

AMENDMENTS

2014—Par. (1). Pub. L. 113–295, §221(a)(80)(A), struck out ''after March 1, 1954,'' after ''such exchanges'' in introductory provisions.

Par. (4). Pub. L. 113–295, §221(a)(80)(B), struck out ''(or under so much of section 1052(c) as refers to section 113(a)(23) of the Internal Revenue Code of 1939)'' after ''section 307''. Amendment was executed to reflect the probable intent of Congress notwithstanding a second set of quotation marks around the text directed to be stricken.

Par. (6). Pub. L. 113–295, §221(a)(80)(C), struck out par. (6) which read as follows: ''In determining the period for which the taxpayer has held a residence, the acquisition of which resulted under section 1034 (as in effect on the day before the date of the enactment of the Taxpayer Relief Act of 1997) in the nonrecognition of any part of the gain realized on the sale or exchange of another residence, there shall be included the period for which such other residence had been held as of the date of such sale or exchange. For purposes of this paragraph, the term 'sale or exchange' includes an involuntary conversion occurring after December 31, 1950, and before January 1, 1954.''

Par. (8). Pub. L. 113–295, §221(a)(80)(C), struck out par. (8) which read as follows: ''Any reference in this section to a provision of this title shall, where applicable, be deemed a reference to the corresponding provision of the Internal Revenue Code of 1939, or prior internal revenue laws.''

2005—Pars. (3) to (16). Pub. L. 109–135 redesignated pars. (4) to (16) as (3) to (15), respectively, and struck out former par. (3) which read as follows: ''In determining the period for which the taxpayer has held stock or securities received upon a distribution where no gain was recognized to the distributee under section 1081(c) (or under section 112(g) of the Revenue Act of 1928, 45 Stat. 818, or the Revenue Act of 1932, 48 Stat. 705), there shall be included the period for which he held the stock or securities in the distributing corporation before the receipt of the stock or securities on such distribution.''

2004—Pars. (10) to (17). Pub. L. 108–357 redesignated pars. (11) to (17) as (10) to (16), respectively, and struck out former par. (10) which read as follows: ''In determining the period for which the taxpayer has held trust certificates of a trust to which subsection (d) of section 1246 applies, or the period for which the taxpayer has held stock in a corporation to which subsection (d) of section 1246 applies, there shall be included the period for which the trust or corporation (as the case may be) held the stock of foreign investment companies.''

2000—Par. (15). Pub. L. 106–554, §1(a)(7) [title I, §116(b)(2)], amended par. (15) generally. Prior to amendment, par. (15) read as follows: ''In determining the period for which the taxpayer has held property the acquisition of which resulted under section 1045 in the nonrecognition of any part of the gain realized on the sale of other property, there shall be included the period for which such other property has been held as of the date of such sale.''

Pars. (16), (17). Pub. L. 106–554, §1(a)(7) [title IV, §401(h)(1)], added par. (16) and redesignated former par. (16) as (17).

1998—Pars. (11), (12). Pub. L. 105–206, §6005(d)(4), substituted ''18 months'' for ''1 year'' in subpar. (B) and concluding provisions.

Pub. L. 105–206, §5001(a)(5), substituted ''1 year'' for ''18 months'' in subpar. (B) and concluding provisions.

1997—Par. (7). Pub. L. 105–34, §312(d)(9), inserted ''(as in effect on the day before the date of the enactment of the Taxpayer Relief Act of 1997)'' after ''section 1034''.

Pars. (15), (16). Pub. L. 105–34, §313(b)(2), added par. (15) and redesignated former par. (15) as (16).

1989—Pars. (14), (15). Pub. L. 101–194 added par. (14) and redesignated former par. (14) as (15).

1988—Par. (14). Pub. L. 100–647 amended par. (14) generally, substituting ''reference'' for ''references'' in heading, striking out ''(A)'' before ''For special holding'', and striking out subpar. (B) which related to distributions of appreciated property to corporations.

1984—Pars. (11), (12). Pub. L. 98–369, §1001(b)(14), (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.

Par. (13). Pub. L. 98–369, §541(b)(1), added par. (13). Former par. (13) redesignated (14).

Par. (14). Pub. L. 98–369, §541(b)(1), redesignated former par. (13) as (14).

Pub. L. 98–369, §54(c), designated existing cross reference as subpar. (A) and added subpar. (B).

1983—Par. (8). Pub. L. 97–448, §105(c)(4), inserted ''(other than a commodity futures contract to which section 1256 applies)'' after ''acquired in satisfaction of a commodity futures contract''.

Pars. (12), (13). Pub. L. 97–448, §104(b)(3)(C), added par. (12) and redesignated former par. (12) as (13).

1980—Par. (11)(A). Pub. L. 96–223 repealed the amendment made by Pub. L. 95–600. See 1978 Amendment note below.

1978—Par. (11)(A). Pub. L. 95–600 inserted reference to determination of basis of property under section 1023. See Repeals note below.

1976—Par. (5). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Par. (11). Pub. L. 94–455, §1402(b)(2), provided that ''9 months'' would be changed to ''1 year''.

Pub. L. 94–455, §1402(b)(1)(Q), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

1970—Pars. (11), (12). Pub. L. 91–614 added par. (11) and redesignated former par. (11) as (12).

1962—Pars. (10), (11). Pub. L. 87–834 added par. (10) and redesignated former par. (10) as (11).

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 provisions of the Energy Policy Act of 2005, Pub. L. 109–58, to which it relates, but not applicable with respect to any transaction ordered in compliance with the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.) before its repeal, see section 402(m) of Pub. L. 109–135, set out as an Effective and Termination Dates of 2005 Amendments note under section 23 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 2000 AMENDMENT

Amendment by section 1(a)(7) [title I, §116(b)(2)] of Pub. L. 106–554 applicable to qualified empowerment zone assets acquired after Dec. 21, 2000, see section 1(a)(7) [title I, §116(c)] of Pub. L. 106–554, set out as a note under section 1016 of this title.

Amendment by section 1(a)(7) [title IV, §401(h)(1)] of Pub. L. 106–554 effective Dec. 21, 2000, see section 1(a)(7) [title IV, §401(j)] of Pub. L. 106–554, set out as a note under section 1032 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 5001(a)(5) of Pub. L. 105–206 effective Jan. 1, 1998, see section 5001(b)(2) of Pub. L. 105–206, set out as a note under section 1 of this title.

Amendment by section 6005(d)(4) 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)(9) of Pub. L. 105–34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105–34, set out as a note under section 121 of this title.

Amendment by section 313(b)(2) of Pub. L. 105–34 applicable to sales after Aug. 5, 1997, see section 313(c) of Pub. L. 105–34, set out as a note under section 1016 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–194 applicable to sales after Nov. 30, 1989, see section 502(c) of Pub. L. 101–194, set out as a note under section 1016 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 1984 AMENDMENT

Amendment by section 541(b)(1) of Pub. L. 98–369 applicable to sales of securities in taxable years beginning after July 18, 1984, see section 541(c) of Pub. L. 98–369, set out as an Effective Date note under section 1042 of this title.

Amendment by section 1001(b)(14) 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 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 1980 AMENDMENT AND REVIVAL OF PRIOR LAW

Amendment by Pub. L. 96–223 (repealing section 702(c)(5) of Pub. L. 95–600 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.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 to take effect as if included in the amendments and additions made by, and the appropriate provisions of Pub. L. 94–455, see section 702(c)(10) of Pub. L. 95–600, set out as a note under section 1014 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.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–614 applicable with respect to decedents dying after Dec. 31, 1970, see section 101(j) of Pub. L. 91–614, set out as a note under section 2032 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 14(c) of Pub. L. 87–834, set out as a note under section 312 of this title.

REPEALS

Pub. L. 95–600, §702(c)(5), 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 702(c)(5). See Effective Date of 1980 Amendment and Revival of Prior Law note set out above.

PART IV—SPECIAL RULES FOR DETERMINING CAPITAL GAINS AND LOSSES

Sec.
1231. Property used in the trade or business and involuntary conversions.

AMENDMENTS

2004—Pub. L. 108–357, title IV, § 413(c)(32), Oct. 22, 2004, 118 Stat. 1510, struck out items 1246 ''Gain on foreign investment company stock'' and 1247 ''Election by foreign investment companies to distribute income currently''.

Pub. L. 108–311, title IV, § 408(a)(18), Oct. 4, 2004, 118 Stat. 1192, substituted ''Gains or losses from securities futures contracts'' for ''Securities futures contracts'' in item 1234B.

2000—Pub. L. 106–554, § 1(a)(7) [title IV, § 401(h)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–650, which directed the amendment of the table of sections of subpart IV of subchapter P of chapter 1 by adding item 1234B, was executed by adding item 1234B to the table of sections for this part which is part IV of subchapter P of chapter 1 to reflect the probable intent of Congress.

1999—Pub. L. 106–170, title V, § 534(b), Dec. 17, 1999, 113 Stat. 1934, added item 1260.

1997—Pub. L. 105–34, title X, § 1001(c), Aug. 5, 1997, 111 Stat. 907, added item 1259.

1993—Pub. L. 103–66, title XIII, § 13206(a)(2), Aug. 10, 1993, 107 Stat. 465, added item 1258.

1990—Pub. L. 101–508, title XI, § 11801(b)(10), Nov. 5, 1990, 104 Stat. 1388–522, struck out item 1238 ''Amortization in excess of depreciation''.

1988—Pub. L. 100–647, title I, § 1018(u)(24), Nov. 10, 1988, 102 Stat. 3591, substituted ''geothermal, or other mineral properties'' for ''or geothermal property'' in item 1254.

1986—Pub. L. 99–514, title IV, § 403(b), Oct. 22, 1986, 100 Stat. 2222, added item 1257.

1984—Pub. L. 98–369, div. A, title I, §§ 42(b)(2), 102(e)(6), title IV, § 492(c), July 18, 1984, 98 Stat. 557, 624, 854, struck out items 1232 ''Bonds and other evidence of indebtedness'', 1232A ''Original issue discount'', 1232B ''Tax treatment of stripped bonds'', 1251 ''Gain from disposition of property used in farming where farm losses offset nonfarm income'', and substituted ''Section 1256 contracts'' for ''Regulated futures contracts'' in item 1256.

1982—Pub. L. 97–248, title II, §§ 231(d), 232(c), Sept. 3, 1982, 96 Stat. 499, 501, added items 1232A and 1232B.

1981—Pub. L. 97–34, title V, §§ 503(b), 507(b), Aug. 13, 1981, 95 Stat. 330, 333, added items 1234A and 1256.

1978—Pub. L. 95–618, title IV, § 402(c)(4), Nov. 9, 1978, 92 Stat. 3202, substituted ''oil, gas, or geothermal'' for ''oil or gas'' in item 1254.

Pub. L. 95–600, title V, § 543(c)(2), Nov. 6, 1978, 92 Stat. 2890, added item 1255.

1976—Pub. L. 94–455, title II, § 205(d), title XIX, § 1901(b)(34), Oct. 4, 1976, 90 Stat. 1535, 1802, added item 1254 and struck out item 1240 ''Taxability to employee of termination payments''.

1969—Pub. L. 91–172, title II, §§ 211(b)(7), 214(b), title V, § 516(c)(2)(C), Dec. 30, 1969, 83 Stat. 570, 573, 648, added items 1251 to 1253.

1964—Pub. L. 88–272, title II, § 231(b)(7), Feb. 26, 1964, 78 Stat. 105, added item 1250.

1962—Pub. L. 87–834, §§ 13(a)(2), 14(a)(2), 15(b), 16(b), Oct. 16, 1962, 76 Stat. 1033, 1040, 1044, 1045, added items 1245–1249.

1958—Pub. L. 85–866, title I, § 57(c)(3), title II, § 202(c), Sept. 2, 1958, 72 Stat. 1646, 1678, added items 1242–1244.

§ 1231. Property used in the trade or business and involuntary conversions

(a) General rule

(1) Gains exceed losses

If—

(A) the section 1231 gains for any taxable year, exceed

(B) the section 1231 losses for such taxable year,

such gains and losses shall be treated as long-term capital gains or long-term capital losses, as the case may be.

(2) Gains do not exceed losses

If—

(A) the section 1231 gains for any taxable year, do not exceed

(B) the section 1231 losses for such taxable year,

such gains and losses shall not be treated as gains and losses from sales or exchanges of capital assets.

(3) Section 1231 gains and losses

For purposes of this subsection—

(A) Section 1231 gain

The term ''section 1231 gain'' means—

(i) any recognized gain on the sale or exchange of property used in the trade or business, and

(ii) any recognized gain from the compulsory or involuntary conversion (as a result of destruction in whole or in part, theft or seizure, or an exercise of the power of requisition or condemnation or the threat or imminence thereof) into other property or money of—

(I) property used in the trade or business, or

[1] So in original. Does not conform to section catchline.

(II) any capital asset which is held for more than 1 year and is held in connection with a trade or business or a transaction entered into for profit.

(B) Section 1231 loss

The term ''section 1231 loss'' means any recognized loss from a sale or exchange or conversion described in subparagraph (A).

(4) Special rules

For purposes of this subsection—

(A) In determining under this subsection whether gains exceed losses—

(i) the section 1231 gains shall be included only if and to the extent taken into account in computing gross income, and

(ii) the section 1231 losses shall be included only if and to the extent taken into account in computing taxable income, except that section 1211 shall not apply.

(B) Losses (including losses not compensated for by insurance or otherwise) on the destruction, in whole or in part, theft or seizure, or requisition or condemnation of—

(i) property used in the trade or business, or

(ii) capital assets which are held for more than 1 year and are held in connection with a trade or business or a transaction entered into for profit,

shall be treated as losses from a compulsory or involuntary conversion.

(C) In the case of any involuntary conversion (subject to the provisions of this subsection but for this sentence) arising from fire, storm, shipwreck, or other casualty, or from theft, of any—

(i) property used in the trade or business, or

(ii) any capital asset which is held for more than 1 year and is held in connection with a trade or business or a transaction entered into for profit,

this subsection shall not apply to such conversion (whether resulting in gain or loss) if during the taxable year the recognized losses from such conversions exceed the recognized gains from such conversions.

(b) Definition of property used in the trade or business

For purposes of this section—

(1) General rule

The term ''property used in the trade or business'' means property used in the trade or 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 the trade or business, held for more than 1 year, which is not—

(A) property of a kind which would properly be includible in the inventory of the taxpayer if on hand at the close of the taxable year,

(B) property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business,

(C) a patent, invention, model or design (whether or not patented), a secret formula or process, a copyright, a literary, musical, or artistic composition, a letter or memorandum, or similar property, held by a taxpayer described in paragraph (3) of section 1221(a), or

(D) a publication of the United States Government (including the Congressional Record) which is received from the United States Government, or any agency thereof, other than by purchase at the price at which it is offered for sale to the public, and which is held by a taxpayer described in paragraph (5) of section 1221(a).

(2) Timber, coal, or domestic iron ore

Such term includes timber, coal, and iron ore with respect to which section 631 applies.

(3) Livestock

Such term includes—

(A) cattle and horses, regardless of age, held by the taxpayer for draft, breeding, dairy, or sporting purposes, and held by him for 24 months or more from the date of acquisition, and

(B) other livestock, regardless of age, held by the taxpayer for draft, breeding, dairy, or sporting purposes, and held by him for 12 months or more from the date of acquisition.

Such term does not include poultry.

(4) Unharvested crop

In the case of an unharvested crop on land used in the trade or business and held for more than 1 year, if the crop and the land are sold or exchanged (or compulsorily or involuntarily converted) at the same time and to the same person, the crop shall be considered as ''property used in the trade or business.''

(c) Recapture of net ordinary losses

(1) In general

The net section 1231 gain for any taxable year shall be treated as ordinary income to the extent such gain does not exceed the non-recaptured net section 1231 losses.

(2) Non-recaptured net section 1231 losses

For purposes of this subsection, the term ''non-recaptured net section 1231 losses'' means the excess of—

(A) the aggregate amount of the net section 1231 losses for the 5 most recent preceding taxable years, over

(B) the portion of such losses taken into account under paragraph (1) for such preceding taxable years.

(3) Net section 1231 gain

For purposes of this subsection, the term ''net section 1231 gain'' means the excess of—

(A) the section 1231 gains, over

(B) the section 1231 losses.

(4) Net section 1231 loss

For purposes of this subsection, the term ''net section 1231 loss'' means the excess of—

(A) the section 1231 losses, over

(B) the section 1231 gains.

(5) Special rules

For purposes of determining the amount of the net section 1231 gain or loss for any tax-

able year, the rules of paragraph (4) of subsection (a) shall apply.

(Aug. 16, 1954, ch. 736, 68A Stat. 325; Pub. L. 85–866, title I, §49(a), Sept. 2, 1958, 72 Stat. 1642; Pub. L. 88–272, title II, §227(a)(2), Feb. 26, 1964, 78 Stat. 97; Pub. L. 91–172, title II, §212(b)(1), title V, §§514(b)(2), 516(b), Dec. 30, 1969, 83 Stat. 571, 643, 646; Pub. L. 94–455, title XIV, §1402(b)(1)(R), (2), Oct. 4, 1976, 90 Stat. 1732; Pub. L. 95–600, title VII, §701(ee)(1), Nov. 6, 1978, 92 Stat. 2924; Pub. L. 97–34, title V, §505(c)(1), Aug. 13, 1981, 95 Stat. 332; Pub. L. 98–369, div. A, title I, §176(a), title VII, §711(c)(2)(A)(iii), title X, §1001(b)(15), (e), July 18, 1984, 98 Stat. 709, 944, 1012; Pub. L. 106–170, title V, §532(c)(1)(G), Dec. 17, 1999, 113 Stat. 1930; Pub. L. 113–295, div. A, title II, §221(a)(81), Dec. 19, 2014, 128 Stat. 4049; Pub. L. 115–97, title I, §13314(b), Dec. 22, 2017, 131 Stat. 2133.)

AMENDMENTS

2017—Subsec. (b)(1)(C). Pub. L. 115–97 inserted ''a patent, invention, model or design (whether or not patented), a secret formula or process,'' before ''a copyright''.

2014—Subsec. (c)(2)(A). Pub. L. 113–295 struck out ''beginning after December 31, 1981'' after ''years''.

1999—Subsec. (b)(1)(C), (D). Pub. L. 106–170 substituted ''section 1221(a)'' for ''section 1221''.

1984—Subsec. (a). Pub. L. 98–369, §1001(b)(15), (e), 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.

Pub. L. 98–369, §711(c)(2)(A)(iii), amended subsec. (a) generally, substituting pars. (1) to (4), for ''If, during the taxable year, the recognized gains on sales or exchanges of property used in the trade or business, plus the recognized gains from the compulsory or involuntary conversion (as a result of destruction in whole or in part, theft or seizure, or an exercise of the power of requisition or condemnation or the threat or imminence thereof) of property used in the trade or business and capital assets held for more than 1 year into other property or money, exceed the recognized losses from such sales, exchanges, and conversions, such gains and losses shall be considered as gains and losses from sales or exchanges of capital assets held for more than 1 year. If such gains do not exceed such losses, such gains and losses shall not be considered as gains and losses from sales or exchanges of capital assets. For purposes of this subsection—

''(1) in determining under this subsection whether gains exceed losses, the gains described therein shall be included only if and to the extent taken into account in computing gross income and the losses described therein shall be included only if and to the extent taken into account in computing taxable income, except that section 1211 shall not apply; and

''(2) losses (including losses not compensated for by insurance or otherwise) upon the destruction, in whole or in part, theft or seizure, or requisition or condemnation of (A) property used in the trade or business or (B) capital assets held for more than 1 year shall be considered losses from a compulsory or involuntary conversion.

In the case of any involuntary conversion (subject to the provisions of this subsection but for this sentence) arising from fire, storm, shipwreck, or other casualty, or from theft, of any property used in the trade or business or of any capital asset held for more than 1 year, this subsection shall not apply to such conversion (whether resulting in gain or loss) if during the taxable year the recognized losses from such conversions exceed the recognized gains from such conversions.''

Subsec. (b)(1), (4). Pub. L. 98–369, §1001(b)(15), (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, §176(a), added subsec. (c).

1981—Subsec. (b)(1)(D). Pub. L. 97–34 substituted ''paragraph (5)'' for ''paragraph (6)''.

1978—Subsec. (b)(1)(D). Pub. L. 95–600 added subpar. (D).

1976—Subsecs. (a), (b)(1), (4). 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)(R), provided that in subsecs. (a), first and last sentences, (a)(2), and (b)(1), (4), ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

1969—Subsec. (a). Pub. L. 91–172, §516(b), provided that casualty (or theft) losses with respect to depreciable property and real estate used in trade or business and capital assets held for the production of income as well as personal assets are to be consolidated with casualty (or theft) gains with respect to this type of property and if the casualty losses exceed the casualty gains, the net loss is treated as an ordinary loss without regard to whether there may be noncasualty gains under this section, but, if the casualty gains exceed the casualty losses, the net gain is treated as a gain under this section and must be consolidated with other gains and losses under this section.

Subsec. (b)(1)(C). Pub. L. 91–172, §514(b)(2), inserted reference to a letter or memorandum.

Subsec. (b)(3). Pub. L. 91–172, §212(b)(1), redesignated existing provisions as subpar. (B) and added subpar. (A).

1964—Subsec. (b)(2). Pub. L. 88–272 inserted reference to iron ore in text, and to domestic iron ore in heading.

1958—Subsec. (a). Pub. L. 85–866 inserted provision respecting casualty losses sustained upon certain uninsured property.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–97 applicable to dispositions after Dec. 31, 2017, see section 13314(c) of Pub. L. 115–97, set out as a note under section 1221 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 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 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §176(b), July 18, 1984, 98 Stat. 709, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to net section 1231 gains for taxable years beginning after December 31, 1984.''

Amendment by section 711(c)(2)(A)(iii) of 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.

Amendment by section 1001(b)(15) 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 property acquired and positions established by the taxpayer after June 23, 1981, in taxable years ending after such date, and applicable when so elected with respect to property held on June 23, 1981, see section 508 of Pub. L. 97–34, set out as an Effective Date note under section 1092 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title VII, §701(ee)(2), Nov. 6, 1978, 92 Stat. 2924, provided that: ''The amendment made by

paragraph (1) [amending this section] shall apply with respect to sales, exchanges, and contributions made after October 4, 1976.''

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.

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title II, §212(b)(2), Dec. 30, 1969, 83 Stat. 571, provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to livestock acquired after December 31, 1969.''

Amendment by section 514(b)(2) of Pub. L. 91–172 applicable to sales and other dispositions occurring after July 25, 1969, see section 514(c) of Pub. L. 91–172, set out as a note under section 1221 of this title.

Amendment by section 516(b) of Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 516(d)(2) of Pub. L. 91–172, set out as a note under section 1001 of this title.

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.

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–866, title I, §49(b), Sept. 2, 1958, 72 Stat. 1642, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1957.''

[§§ 1232 to 1232B. Repealed. Pub. L. 98–369, div. A, title I, §42(a)(1), July 18, 1984, 98 Stat. 556]

Section 1232, acts Aug. 16, 1954, ch. 736, 68A Stat. 326; Sept. 2, 1958, Pub. L. 85–866, title I, §§50(a), 51, 72 Stat. 1642, 1643; June 25, 1959, Pub. L. 86–69, §3(e), 73 Stat. 140; Sept. 2, 1964, Pub. L. 88–563, §5, 78 Stat. 845; Dec. 30, 1969, Pub. L. 91–172, title IV, §413(a), (b), 83 Stat. 609, 611; Oct. 4, 1976, Pub. L. 94–455, title XIV, §1402(b)(1)(S), (2), title XIX, §§1901(b)(3)(I), (14)(D), 1904(b)(10)(C), 90 Stat. 1732, 1793, 1796, 1817; Aug. 13, 1981, Pub. L. 97–34, title V, §505(b), 95 Stat. 331; Sept. 3, 1982, Pub. L. 97–248, title II, §§231(c), 232(b), title III, §310(b)(6), 96 Stat. 499, 501, 599; Jan. 12, 1983, Pub. L. 97–448, title III, §306(a)(9)(B), (C)(i), (ii), 96 Stat. 2403, 2404; July 18, 1984, Pub. L. 98–369, div. A, title X, §1001(b)(16), (d), (e), 98 Stat. 1012, related to bonds and other evidences of indebtedness. See section 1271 et seq. of this title.

Section 1232A, added Pub. L. 97–248, title II, §231(a), Sept. 3, 1982, 96 Stat. 496; amended Pub. L. 98–369, div. A, title II, §211(b)(17), July 18, 1984, 98 Stat. 756, related to original issue discount. See section 1271 et seq. of this title.

Section 1232B, added Pub. L. 97–248, title II, §232(a), Sept. 3, 1982, 96 Stat. 499, related to stripped bonds. See section 1286 of this title.

EFFECTIVE DATE OF REPEAL

Repeal 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.

§1233. Gains and losses from short sales

(a) Capital assets

For purposes of this subtitle, gain or loss from the short sale of property shall be considered as gain or loss from the sale or exchange of a capital asset to the extent that the property, including a commodity future, used to close the short sale constitutes a capital asset in the hands of the taxpayer.

(b) Short-term gains and holding periods

If gain or loss from a short sale is considered as gain or loss from the sale or exchange of a capital asset under subsection (a) and if on the date of such short sale substantially identical property has been held by the taxpayer for not more than 1 year (determined without regard to the effect, under paragraph (2) of this subsection, of such short sale on the holding period), or if substantially identical property is acquired by the taxpayer after such short sale and on or before the date of the closing thereof—

(1) any gain on the closing of such short sale shall be considered as a gain on the sale or exchange of a capital asset held for not more than 1 year (notwithstanding the period of time any property used to close such short sale has been held); and

(2) the holding period of such substantially identical property shall be considered to begin (notwithstanding section 1223, relating to the holding period of property) on the date of the closing of the short sale, or on the date of a sale, gift, or other disposition of such property, whichever date occurs first. This paragraph shall apply to such substantially identical property in the order of the dates of the acquisition of such property, but only to so much of such property as does not exceed the quantity sold short.

For purposes of this subsection, the acquisition of an option to sell property at a fixed price shall be considered as a short sale, and the exercise or failure to exercise such option shall be considered as a closing of such short sale.

(c) Certain options to sell

Subsection (b) shall not include an option to sell property at a fixed price acquired on the same day on which the property identified as intended to be used in exercising such option is acquired and which, if exercised, is exercised through the sale of the property so identified. If the option is not exercised, the cost of the option shall be added to the basis of the property with which the option is identified. This subsection shall apply only to options acquired after August 16, 1954.

(d) Long-term losses

If on the date of such short sale substantially identical property has been held by the taxpayer for more than 1 year, any loss on the closing of such short sale shall be considered as a loss on the sale or exchange of a capital asset held for more than 1 year (notwithstanding the period of time any property used to close such short sale has been held, and notwithstanding section 1234).

(e) Rules for application of section

(1) Subsection (b)(1) or (d) shall not apply to the gain or loss, respectively, on any quantity of property used to close such short sale which is in excess of the quantity of the substantially identical property referred to in the applicable subsection.

(2) For purposes of subsections (b) and (d)—

(A) the term ''property'' includes only stocks and securities (including stocks and securities dealt with on a ''when issued'' basis), and commodity futures, which are capital assets in the hands of the taxpayer, but does not include any position to which section 1092(b) applies;

(B) in the case of futures transactions in any commodity on or subject to the rules of a board of trade or commodity exchange, a commodity future requiring delivery in 1 calendar month shall not be considered as property substantially identical to another commodity future requiring delivery in a different calendar month;

(C) in the case of a short sale of property by an individual, the term ''taxpayer'', in the application of this subsection and subsections (b) and (d), shall be read as ''taxpayer or his spouse''; but an individual who is legally separated from the taxpayer under a decree of divorce or of separate maintenance shall not be considered as the spouse of the taxpayer;

(D) a securities futures contract (as defined in section 1234B) to acquire substantially identical property shall be treated as substantially identical property; and

(E) entering into a securities futures contract (as so defined) to sell shall be considered to be a short sale, and the settlement of such contract shall be considered to be the closing of such short sale.

(3) Where the taxpayer enters into 2 commodity futures transactions on the same day, one requiring delivery by him in one market and the other requiring delivery to him of the same (or substantially identical) commodity in the same calendar month in a different market, and the taxpayer subsequently closes both such transactions on the same day, subsections (b) and (d) shall have no application to so much of the commodity involved in either such transaction as does not exceed in quantity the commodity involved in the other.

(4)(A) In the case of a taxpayer who is a dealer in securities (within the meaning of section 1236)—

(i) if, on the date of a short sale of stock, substantially identical property which is a capital asset in the hands of the taxpayer has been held for not more than 1 year, and

(ii) if such short sale is closed more than 20 days after the date on which it was made,

subsection (b)(2) shall apply in respect of the holding period of such substantially identical property.

(B) For purposes of subparagraph (A)—

(i) the last sentence of subsection (b) applies; and

(ii) the term ''stock'' means any share or certificate of stock in a corporation, any bond or other evidence of indebtedness which is convertible into any such share or certificate, or any evidence of an interest in, or right to subscribe to or purchase, any of the foregoing.

(f) Arbitrage operations in securities

In the case of a short sale which had been entered into as an arbitrage operation, to which sale the rule of subsection (b)(2) would apply except as otherwise provided in this subsection—

(1) subsection (b)(2) shall apply first to substantially identical assets acquired for arbitrage operations held at the close of business on the day such sale is made, and only to the extent that the quantity sold short exceeds the substantially identical assets acquired for arbitrage operations held at the close of business on the day such sale is made, shall the holding period of any other such identical assets held by the taxpayer be affected;

(2) in the event that assets acquired for arbitrage operations are disposed of in such manner as to create a net short position in assets acquired for arbitrage operations, such net short position shall be deemed to constitute a short sale made on that day;

(3) for the purpose of paragraphs (1) and (2) of this subsection the taxpayer will be deemed as of the close of any business day to hold property which he is or will be entitled to receive or acquire by virtue of any other asset acquired for arbitrage operations or by virtue of any contract he has entered into in an arbitrage operation; and

(4) for the purpose of this subsection arbitrage operations are transactions involving the purchase and sale of assets for the purpose of profiting from a current difference between the price of the asset purchased and the price of the asset sold, and in which the asset purchased, if not identical to the asset sold, is such that by virtue thereof the taxpayer is, or will be, entitled to acquire assets identical to the assets sold. Such operations must be clearly identified by the taxpayer in his records as arbitrage operations on the day of the transaction or as soon thereafter as may be practicable. Assets acquired for arbitrage operations will include stocks and securities and the right to acquire stocks and securities.

(g) Hedging transactions

This section shall not apply in the case of a hedging transaction in commodity futures.

(h) Short sales of property which becomes substantially worthless

(1) In general

If—

(A) the taxpayer enters into a short sale of property, and

(B) such property becomes substantially worthless,

the taxpayer shall recognize gain in the same manner as if the short sale were closed when the property becomes substantially worthless. To the extent provided in regulations prescribed by the Secretary, the preceding sentence also shall apply with respect to any option with respect to property, any offsetting notional principal contract with respect to property, any futures or forward contract to deliver any property, and any other similar transaction.

(2) Statute of limitations

If property becomes substantially worthless during a taxable year and any short sale of such property remains open at the time such

property becomes substantially worthless, then—

(A) the statutory period for the assessment of any deficiency attributable to any part of the gain on such transaction shall not expire before the earlier of—

(i) the date which is 3 years after the date the Secretary is notified by the taxpayer (in such manner as the Secretary may by regulations prescribe) of the substantial worthlessness of such property, or

(ii) the date which is 6 years after the date the return for such taxable year is filed, and

(B) such deficiency may be assessed before the date applicable under subparagraph (A) notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

(Aug. 16, 1954, ch. 736, 68A Stat. 327; Aug. 12, 1955, ch. 871, §1, 69 Stat. 717; Pub. L. 85–866, title I, §52(a), (b), Sept. 2, 1958, 72 Stat. 1643, 1644; Pub. L. 94–455, title XIV, §1402(b)(1)(T), (2), title XIX, §1901(a)(137), Oct. 4, 1976, 90 Stat. 1732, 1787; Pub. L. 97–34, title V, §501(c), Aug. 13, 1981, 95 Stat. 326; Pub. L. 98–369, div. A, title X, §1001(b)(17), (e), July 18, 1984, 98 Stat. 1012; Pub. L. 105–34, title X, §1003(b)(1), Aug. 5, 1997, 111 Stat. 910; Pub. L. 106–554, §1(a)(7) [title IV, §401(f)], Dec. 21, 2000, 114 Stat. 2763, 2763A–649; Pub. L. 107–147, title IV, §412(d)(3)(A), Mar. 9, 2002, 116 Stat. 54.)

AMENDMENTS

2002—Subsec. (e)(2)(E). Pub. L. 107–147 added subpar. (E).

2000—Subsec. (e)(2)(D). Pub. L. 106–554 added subpar. (D).

1997—Subsec. (h). Pub. L. 105–34 added subsec. (h).

1984—Subsecs. (b), (d), (e)(4)(A)(i). 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.

1981—Subsec. (e)(2)(A). Pub. L. 97–34 inserted '', but does not include any position to which section 1092(b) applies'' after ''taxpayer''.

1976—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)(T), (2), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

Subsec. (c). Pub. L. 94–455, §1901(a)(137), substituted ''August 16, 1954'' for ''the date of enactment of this title''.

Subsecs. (d), (e)(4)(A)(i). Pub. L. 94–455, §1402(b)(2), provided that ''9 months'' would be changed to ''1 year''.

Pub. L. 94–455, §1402(b)(1)(T), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

1958—Subsec. (a). Pub. L. 85–866, §52(b), struck out '', other than a hedging transaction in commodity futures,'' after ''sale of property''.

Subsec. (e)(4). Pub. L. 85–866, §52(a), added par. (4).

Subsec. (g). Pub. L. 85–866, §52(b), added subsec. (g).

1955—Subsec. (f). Act Aug. 12, 1955, added subsec. (f).

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 1997 AMENDMENT

Pub. L. 105–34, title X, §1003(b)(2), Aug. 5, 1997, 111 Stat. 910, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to property which becomes substantially worthless after the date of the enactment of this Act [Aug. 5, 1997].''

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 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to property acquired and positions established by the taxpayer after June 23, 1981, in taxable years ending after such date, and applicable when so elected with respect to property held on June 23, 1981, see section 508 of Pub. L. 97–34, set out as an Effective Date note under section 1092 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)(137) 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 section 52(b) 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, §52(c), Sept. 2, 1958, 72 Stat. 1644, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to short sales made after December 31, 1957.''

EFFECTIVE DATE OF 1955 AMENDMENT

Act Aug. 12, 1955, ch. 871, §2, 69 Stat. 718, provided that: ''The amendment made by the first section of this Act [amending this section] shall apply only with respect to taxable years ending after the date of the enactment of this Act [Aug. 12, 1955] and only in the case of a short sale of property made by the taxpayer after such date.''

§ 1234. Options to buy or sell

(a) Treatment of gain or loss in the case of the purchaser

(1) General rule

Gain or loss attributable to the sale or exchange of, or loss attributable to failure to exercise, an option to buy or sell property shall be considered gain or loss from the sale or exchange of property which has the same character as the property to which the option relates has in the hands of the taxpayer (or would have in the hands of the taxpayer if acquired by him).

(2) Special rule for loss attributable to failure to exercise option

For purposes of paragraph (1), if loss is attributable to failure to exercise an option, the option shall be deemed to have been sold or exchanged on the day it expired.

(3) Nonapplication of subsection

This subsection shall not apply to—

(A) an option which constitutes property described in paragraph (1) of section 1221(a);

(B) in the case of gain attributable to the sale or exchange of an option, any income derived in connection with such option which, without regard to this subsection, is treated as other than gain from the sale or exchange of a capital asset; and

(C) a loss attributable to failure to exercise an option described in section 1233(c).

(b) Treatment of grantor of option in the case of stock, securities, or commodities

(1) General rule

In the case of the grantor of the option, gain or loss from any closing transaction with respect to, and gain on lapse of, an option in property shall be treated as a gain or loss from the sale or exchange of a capital asset held not more than 1 year.

(2) Definitions

For purposes of this subsection—

(A) Closing transaction

The term ''closing transaction'' means any termination of the taxpayer's obligation under an option in property other than through the exercise or lapse of the option.

(B) Property

The term ''property'' means stocks and securities (including stocks and securities dealt with on a ''when issued'' basis), commodities, and commodity futures.

(3) Nonapplication of subsection

This subsection shall not apply to any option granted in the ordinary course of the taxpayer's trade or business of granting options.

(c) Treatment of options on section 1256 contracts and cash settlement options

(1) Section 1256 contracts

Gain or loss shall be recognized on the exercise of an option on a section 1256 contract (within the meaning of section 1256(b)).

(2) Treatment of cash settlement options

(A) In general

For purposes of subsections (a) and (b), a cash settlement option shall be treated as an option to buy or sell property.

(B) Cash settlement option

For purposes of subparagraph (A), the term ''cash settlement option'' means any option which on exercise settles in (or could be settled in) cash or property other than the underlying property.

(Aug. 16, 1954, ch. 376, 68A Stat. 329; Pub. L. 85–866, title I, § 53, Sept. 2, 1958, 72 Stat. 1644; Pub. L. 89–809, title II, § 210(a), Nov. 13, 1966, 80 Stat. 1580; Pub. L. 94–455, title XIV, § 1402(b)(1)(U), (2), title XXI, § 2136(a), Oct. 4, 1976, 90 Stat. 1732, 1929; Pub. L. 98–369, div. A, title I, § 105(a), title X, § 1001(b)(18), (e), July 18, 1984, 98 Stat. 629, 1012; Pub. L. 106–170, title V, § 532(c)(1)(H), Dec. 17, 1999, 113 Stat. 1930.)

AMENDMENTS

1999—Subsec. (a)(3)(A). Pub. L. 106–170 substituted ''section 1221(a)'' for ''section 1221''.

1984—Subsec. (b)(1). Pub. L. 98–369, § 1001(b)(18), (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, § 105(a), added subsec. (c).

1976—Subsec. (a). Pub. L. 94–455, § 2136(a), inserted in heading ''in the case of the purchaser''; designated existing provisions as par. ''(1) General rule'' and substituted ''an option'' and ''the option'' for ''a privilege or option'' and ''the option or privilege''; redesignated existing subsec. (b) as par. (2) and substituted ''an option'' and ''the option'' for ''a privilege or option'' and ''the privilege or option''; and redesignated existing subsec. (d)(1) to (3) as par. (3)(A) to (C) and substituted in heading and introductory text ''Nonapplication'' and ''subsection'' for ''Non-application'' and ''section'', in par. (3)(A) ''an option'' for ''a privilege or option'', in par. (3)(B) ''an option'', ''such option'' and ''subsection'' for ''a privilege or option'', ''such privilege or option'' and ''section'' and in par. (3)(C) substituted a period for ''; or''.

Subsec. (b). Pub. L. 94–455, § 2136(a), added subsec. (b), incorporating provisions of a prior subsec. (c) providing for a special rule for grantors of straddles, par. (1) relating to ''gain on lapse'' and reading ''In the case of gain on lapse of an option granted by the taxpayer as part of a straddle, the gain shall be deemed to be gain from the sale or exchange of a capital asset held for not more than 6 months on the day that the option expired.''; par. (2) relating to ''exception'' and reading ''This subsection shall not apply to any person who holds securities for sale to customers in the ordinary course of his trade or business.'', now covered in subsec. (b)(3); and par. (3) relating to definitions of ''straddle'' and ''security''.

Subsec. (b)(1). Pub. L. 94–455, § 1402(b)(2), provided that ''9 months'' would be changed to ''1 year''.

Pub. L. 94–455, § 1402(b)(1)(U), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

Subsec. (c). Pub. L. 94–455, § 2136(a), struck out provision respecting special rule for grantors of straddles, the paragraphs relating to: (1) gain on lapse; (2) exception, now covered in subsec. (b)(3); and (3) definitions of ''straddle'' and ''security'', such provision now covered generally by subsec. (b) of this section.

Subsec. (d). Pub. L. 94–455, § 2136(a), struck out provision respecting non-application of section, pars. (1) to (3) now covered in subsec. (a)(3)(A) to (C) of this section, and par. (4) providing for such non-application to gain attributable to the sale or exchange of a privilege or option acquired by the taxpayer before Mar. 1, 1954, if in the hands of the taxpayer such privilege or option was a capital asset.

1966—Subsecs. (c), (d). Pub. L. 89–809 added subsec. (c) and redesignated former subsec. (c) as (d).

1958—Pub. L. 85–866 amended section generally and among other changes provided in subsec. (a) that gain or loss resulting from option to buy or sell property is to be considered gain or loss arising from property which has the same character as the property underlying the option, incorporated existing provisions in subsecs. (b) and (c)(3), and inserted provisions set out in subsec. (c)(1), (2), (4).

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 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, § 105(b), July 18, 1984, 98 Stat. 629, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to options purchased or granted after October 31, 1983, in taxable years ending after such date.''

Amendment by section 1001(b)(18) 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 XXI, §2136(b), Oct. 4, 1976, 90 Stat. 1930, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to options granted after September 1, 1976.''

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89–809, title II, §210(b), Nov. 13, 1966, 80 Stat. 1580, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to straddle transactions entered into after January 25, 1965, in taxable years ending after such date.''

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.

§ 1234A. Gains or losses from certain terminations

Gain or loss attributable to the cancellation, lapse, expiration, or other termination of—

(1) a right or obligation (other than a securities futures contract, as defined in section 1234B) with respect to property which is (or on acquisition would be) a capital asset in the hands of the taxpayer, or

(2) a section 1256 contract (as defined in section 1256) not described in paragraph (1) which is a capital asset in the hands of the taxpayer,

shall be treated as gain or loss from the sale of a capital asset. The preceding sentence shall not apply to the retirement of any debt instrument (whether or not through a trust or other participation arrangement).

(Added Pub. L. 97–34, title V, §507(a), Aug. 13, 1981, 95 Stat. 333; amended Pub. L. 97–448, title I, §105(e), Jan. 12, 1983, 96 Stat. 2387; Pub. L. 98–369, div. A, title I, §102(e)(4), (9), July 18, 1984, 98 Stat. 624, 625; Pub. L. 105–34, title X, §1003(a)(1), Aug. 5, 1997, 111 Stat. 909; Pub. L. 106–554, §1(a)(7) [title IV, §401(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–648; Pub. L. 107–147, title IV, §412(d)(1)(A), Mar. 9, 2002, 116 Stat. 53.)

AMENDMENTS

2002—Pars. (1) to (3). Pub. L. 107–147 inserted ''or'' at end of par. (1), struck out ''or'' at end of par. (2), and struck out par. (3) which read as follows: ''a securities futures contract (as so defined) which is a capital asset in the hands of the taxpayer,''.

2000—Par. (1). Pub. L. 106–554, §1(a)(7) [title IV, §401(b)(1)], inserted ''(other than a securities futures contract, as defined in section 1234B)'' after ''right or obligation''.

Par. (3). Pub. L. 106–554, §1(a)(7) [title IV, §401(b)(2)–(4)], added par. (3).

1997—Par. (1). Pub. L. 105–34 substituted ''property'' for ''personal property (as defined in section 1092(d)(1))''.

1984—Pub. L. 98–369, §102(e)(9), inserted at end ''The preceding sentence shall not apply to the retirement of any debt instrument (whether or not through a trust or other participation arrangement).''

Par. (2). Pub. L. 98–369, §102(e)(4), substituted ''a section 1256 contract'' for ''a regulated futures contract''.

1983—Pub. L. 97–448 inserted reference to a regulated futures contract (as defined in section 1256) not described in paragraph (1) which is a capital asset in the hands of the taxpayer.

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 1997 AMENDMENT

Pub. L. 105–34, title X, §1003(a)(2), Aug. 5, 1997, 111 Stat. 910, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to terminations more than 30 days after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 102(e)(4) of Pub. L. 98–369 applicable to positions established after July 18, 1984, in taxable years ending after that date, except as otherwise provided, and amendment by section 102(e)(9) of Pub. L. 98–369, applicable as if included in the amendment made by section 507(a) of Pub. L. 97–34, as amended by section 105(e) of Pub. L. 97–448, see section 102(f), (g) of Pub. L. 98–369, set out as a note under section 1256 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

Section applicable to property acquired and positions established by the taxpayer after June 23, 1981, in taxable years ending after such date, and applicable when so elected with respect to property held on June 23, 1981, see section 508 of Pub. L. 97–34, set out as a note under section 1092 of this title.

§ 1234B. Gains or losses from securities futures contracts

(a) Treatment of gain or loss

(1) In general

Gain or loss attributable to the sale, exchange, or termination of a securities futures contract shall be considered gain or loss from the sale or exchange of property which has the same character as the property to which the contract relates has in the hands of the taxpayer (or would have in the hands of the taxpayer if acquired by the taxpayer).

(2) Nonapplication of subsection

This subsection shall not apply to—

(A) a contract which constitutes property described in paragraph (1) or (7) of section 1221(a), and

(B) any income derived in connection with a contract which, without regard to this subsection, is treated as other than gain from the sale or exchange of a capital asset.

(b) Short-term gains and losses

Except as provided in the regulations under section 1092(b) or this section, or in section 1233,

if gain or loss on the sale, exchange, or termination of a securities futures contract to sell property is considered as gain or loss from the sale or exchange of a capital asset, such gain or loss shall be treated as short-term capital gain or loss.

(c) Securities futures contract

For purposes of this section, the term ''securities futures contract'' means any security future (as defined in section 3(a)(55)(A) of the Securities Exchange Act of 1934, as in effect on the date of the enactment of this section). The Secretary may prescribe regulations regarding the status of contracts the values of which are determined directly or indirectly by reference to any index which becomes (or ceases to be) a narrow-based security index (as defined for purposes of section 1256(g)(6)).

(d) Contracts not treated as commodity futures contracts

For purposes of this title, a securities futures contract shall not be treated as a commodity futures contract.

(e) Regulations

The Secretary shall prescribe such regulations as may be appropriate to provide for the proper treatment of securities futures contracts under this title.

(f) Cross reference

For special rules relating to dealer securities futures contracts, see section 1256.

(Added Pub. L. 106–554, § 1(a)(7) [title IV, § 401(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–648; amended Pub. L. 107–147, title IV, § 412(d)(1)(B), (3)(B), Mar. 9, 2002, 116 Stat. 53, 54; Pub. L. 108–311, title IV, § 405(a)(1), Oct. 4, 2004, 118 Stat. 1188.)

REFERENCES IN TEXT

Section 3(a)(55)(A) of the Securities Exchange Act of 1934, referred to in subsec. (c), is classified to section 78c(a)(55)(A) of Title 15, Commerce and Trade.

The date of the enactment of this section, referred to in subsec. (c), is the date of enactment of Pub. L. 106–554, which was approved Dec. 21, 2000.

CODIFICATION

Pub. L. 106–554, § 1(a)(7) [title IV, § 401(a)], which directed amendment of subpart IV of subchapter P of chapter 1 by adding this section after section 1234A, was executed by adding this section after 1234A of this part which is part IV of subchapter P of chapter 1, to reflect the probable intent of Congress.

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–311 inserted at end ''The Secretary may prescribe regulations regarding the status of contracts the values of which are determined directly or indirectly by reference to any index which becomes (or ceases to be) a narrow-based security index (as defined for purposes of section 1256(g)(6)).''

2002—Subsec. (a)(1). Pub. L. 107–147, § 412(d)(1)(B)(i), substituted ''sale, exchange, or termination of a securities futures contract'' for ''sale or exchange of a securities futures contract''.

Subsec. (b). Pub. L. 107–147, § 412(d)(1)(B)(i), (3)(B), inserted ''or in section 1233,'' after ''or this section,'' and substituted ''sale, exchange, or termination of a securities futures contract'' for ''sale or exchange of a securities futures contract''.

Subsec. (f). Pub. L. 107–147, § 412(d)(1)(B)(ii), added subsec. (f).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–311, title IV, § 405(b), Oct. 4, 2004, 118 Stat. 1189, provided that: ''The amendments made by subsection (a) [amending this section and section 1256 of this title] shall take effect as if included in section 401 of the Community Renewal Tax Relief Act of 2000 [H.R. 5662, as enacted by section 1(a)(7) of Pub. L. 106–554, Dec. 21, 2000, 114 Stat. 2763, 2763A–587].''

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.

§ 1235. Sale or exchange of patents

(a) General

A transfer (other than by gift, inheritance, or devise) of property consisting of all substantial rights to a patent, or an undivided interest therein which includes a part of all such rights, by any holder shall be considered the sale or exchange of a capital asset held for more than 1 year, regardless of whether or not payments in consideration of such transfer are—

(1) payable periodically over a period generally coterminous with the transferee's use of the patent, or

(2) contingent on the productivity, use, or disposition of the property transferred.

(b) "Holder" defined

For purposes of this section, the term ''holder'' means—

(1) any individual whose efforts created such property, or

(2) any other individual who has acquired his interest in such property in exchange for consideration in money or money's worth paid to such creator prior to actual reduction to practice of the invention covered by the patent, if such individual is neither—

(A) the employer of such creator, nor

(B) related to such creator (within the meaning of subsection (c)).

(c) Related persons

Subsection (a) shall not apply to any transfer, directly or indirectly, between persons specified within any one of the paragraphs of section 267(b) or persons described in section 707(b); except that, in applying section 267(b) and (c) and section 707(b) for purposes of this section—

(1) the phrase ''25 percent or more'' shall be substituted for the phrase ''more than 50 percent'' each place it appears in section 267(b) or 707(b), and

(2) paragraph (4) of section 267(c) shall be treated as providing that the family of an individual shall include only his spouse, ancestors, and lineal descendants.

(d) Cross reference

For special rule relating to nonresident aliens, see section 871(a).

(Aug. 16, 1954, ch. 736, 68A Stat. 329; Pub. L. 85–866, title I, § 54(a), Sept. 2, 1958, 72 Stat. 1644; Pub. L. 94–455, title XIV, § 1402(b)(1)(V), (2), Oct. 4, 1976, 90 Stat. 1732; Pub. L. 98–369, div. A, title I, § 174(b)(5)(C), title X, § 1001(b)(19), (e), July 18,

1984, 98 Stat. 707, 1012; Pub. L. 105–206, title V, §5001(a)(5), title VI, §6005(d)(4), July 22, 1998, 112 Stat. 788, 805; Pub. L. 113–295, div. A, title II, §221(a)(82), Dec. 19, 2014, 128 Stat. 4049.)

AMENDMENTS

2014—Subsec. (b)(2)(B). Pub. L. 113–295, §221(a)(82)(B), substituted ''subsection (c)'' for ''subsection (d)''.

Subsecs. (c) to (e). Pub. L. 113–295, §221(a)(82)(A), redesignated subsecs. (d) and (e) as (c) and (d), respectively, and struck out former subsec. (c). Prior to amendment, text of subsec. (c) read as follows: ''This section shall be applicable with regard to any amounts received, or payments made, pursuant to a transfer described in subsection (a) in any taxable year to which this subtitle applies, regardless of the taxable year in which such transfer occurred.''

1998—Subsec. (a). Pub. L. 105–206, §6005(d)(4), substituted ''18 months'' for ''1 year'' in introductory provisions.

Pub. L. 105–206, §5001(a)(5), substituted ''1 year'' for ''18 months'' in introductory provisions.

1984—Subsec. (a). Pub. L. 98–369, §1001(b)(19), (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. (d). Pub. L. 98–369, §174(b)(5)(C), substituted ''section 267(b) or persons described in section 707(b)'' for ''section 267(b)'' and ''section 267(b) and (c) and section 707(b)'' for ''section 267(b) and (c)'' in introductory provisions, and substituted ''section 267(b) or 707(b)'' for ''section 267(b)'' in par. (1).

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)(V), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

1958—Subsec. (d). Pub. L. 85–866 substituted provisions set out as subsec. (d) for provisions reading ''Subsection (a) shall not apply to any sale or exchange between an individual and any other related person (as defined in section 267(b)), except brothers and sisters, whether by the whole or half blood.''

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 1998 AMENDMENT

Amendment by section 5001 of Pub. L. 105–206 effective Jan. 1, 1998, see section 5001(b)(2) of Pub. L. 105–206, set out as a note under section 1 of this title.

Amendment by section 6000(d)(4) 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 1984 AMENDMENT

Amendment by section 174(b)(5)(C) 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.

Amendment by section 1001(b)(19) 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.

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–866, title I, §54(b), Sept. 2, 1958, 72 Stat. 1644, provided that: ''The amendment made by subsection (a) [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 transfers after such date.''

§ 1236. Dealers in securities

(a) Capital gains

Gain by a dealer in securities from the sale or exchange of any security shall in no event be considered as gain from the sale or exchange of a capital asset unless—

(1) the security was, before the close of the day on which it was acquired (or such earlier time as the Secretary may prescribe by regulations), clearly identified in the dealer's records as a security held for investment; and

(2) the security was not, at any time after the close of such day (or such earlier time), held by such dealer primarily for sale to customers in the ordinary course of his trade or business.

(b) Ordinary losses

Loss by a dealer in securities from the sale or exchange of any security shall, except as otherwise provided in section 582(c), (relating to bond, etc., losses of banks), in no event be considered as ordinary loss if at any time the security was clearly identified in the dealer's records as a security held for investment.

(c) Definition of security

For purposes of this section, the term ''security'' means any share of stock in any corporation, certificate of stock or interest in any corporation, note, bond, debenture, or evidence of indebtedness, or any evidence of an interest in or right to subscribe to or purchase any of the foregoing.

(d) Special rule for floor specialists

(1) In general

In the case of a floor specialist (but only with respect to acquisitions, in connection with his duties on an exchange, of stock in which the specialist is registered with the exchange), subsection (a) shall be applied—

(A) by inserting ''the 7th business day following'' before ''the day'' the first place it appears in paragraph (1) and by inserting ''7th business'' before ''day'' in paragraph (2), and

(B) by striking the parenthetical phrase in paragraph (1).

(2) Floor specialist

The term ''floor specialist'' means a person who is—

(A) a member of a national securities exchange,

(B) is registered as a specialist with the exchange, and

(C) meets the requirements for specialists established by the Securities and Exchange Commission.

(e) Special rule for options

For purposes of subsection (a), any security acquired by a dealer pursuant to an option held

by such dealer may be treated as held for investment only if the dealer, before the close of the day on which the option was acquired, clearly identified the option on his records as held for investment. For purposes of the preceding sentence, the term ''option'' includes the right to subscribe to or purchase any security.

(Aug. 16, 1954, ch. 736, 68A Stat. 330; Pub. L. 94–455, title XIX, § 1901(b)(3)(E), Oct. 4, 1976, 90 Stat. 1793; Pub. L. 97–34, title V, § 506, Aug. 13, 1981, 95 Stat. 332; Pub. L. 97–448, title I, § 105(d)(1), Jan. 12, 1983, 96 Stat. 2387; Pub. L. 98–369, div. A, title I, § 107(b), July 18, 1984, 98 Stat. 630; Pub. L. 113–295, div. A, title II, § 221(a)(83), Dec. 19, 2014, 128 Stat. 4049.)

AMENDMENTS

2014—Subsec. (b). Pub. L. 113–295 struck out ''after November 19, 1951,'' after ''time''.

1984—Subsec. (a)(1). Pub. L. 98–369, § 107(b)(1), substituted ''the security was, before the close of the day on which it was acquired (or such earlier time as the Secretary may prescribe by regulations), clearly identified in the dealer's records as a security held for investment; and'' for ''the security was, before the close of the day on which it was acquired (before the close of the following day in the case of an acquisition before January 1, 1982), clearly identified in the dealer's records as a security held for investment or if acquired before October 20, 1951, was so identified before November 20, 1951; and''.

Subsec. (a)(2). Pub. L. 98–369, § 107(b)(2), inserted ''(or such earlier time)'' after ''such day''.

1983—Subsec. (e). Pub. L. 97–448 added subsec. (e).

1981—Subsec. (a). Pub. L. 97–34, § 506(a), substituted ''before the close of the day on which it was acquired (before the close of the following day in the case of an acquisition before January 1, 1982)'' for ''before the expiration of the 30th day after the date of its acquisition'' in par. (1) and ''close of such day'' for ''expiration of such 30th day'' in par. (2).

Subsec. (d). Pub. L. 97–34, § 506(b), added subsec. (d).

1976—Subsec. (b). Pub. L. 94–455 substituted ''ordinary loss'' for ''loss from the sale or exchange of property which is not a capital asset''.

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 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to positions entered into after July 18, 1984, in taxable years ending after that date, see section 107(e) of Pub. L. 98–369, set out as a note under section 1092 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 97–448, title I, § 105(d)(2), Jan. 12, 1983, 96 Stat. 2387, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to securities acquired after September 22, 1982, in taxable years ending after such date.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to property acquired by the taxpayer after Aug. 13, 1981, in taxable years ending after such date, and applicable when so elected with respect to property held on June 23, 1981, see section 508 of Pub. L. 97–34, set out as an Effective Date note under section 1092 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.

§ 1237. Real property subdivided for sale

(a) General

Any lot or parcel which is part of a tract of real property in the hands of a taxpayer other than a C corporation shall not be deemed to be held primarily for sale to customers in the ordinary course of trade or business at the time of sale solely because of the taxpayer having subdivided such tract for purposes of sale or because of any activity incident to such subdivision or sale, if—

(1) such tract, or any lot or parcel thereof, had not previously been held by such taxpayer primarily for sale to customers in the ordinary course of trade or business (unless such tract at such previous time would have been covered by this section) and, in the same taxable year in which the sale occurs, such taxpayer does not so hold any other real property; and

(2) no substantial improvement that substantially enhances the value of the lot or parcel sold is made by the taxpayer on such tract while held by the taxpayer or is made pursuant to a contract of sale entered into between the taxpayer and the buyer. For purposes of this paragraph, an improvement shall be deemed to be made by the taxpayer if such improvement was made by—

(A) the taxpayer or members of his family (as defined in section 267(c)(4)), by a corporation controlled by the taxpayer, an S corporation which included the taxpayer as a shareholder, or by a partnership which included the taxpayer as a partner; or

(B) a lessee, but only if the improvement constitutes income to the taxpayer; or

(C) Federal, State, or local government, or political subdivision thereof, but only if the improvement constitutes an addition to basis for the taxpayer; and

(3) such lot or parcel, except in the case of real property acquired by inheritance or devise, is held by the taxpayer for a period of 5 years.

(b) Special rules for application of section

(1) Gains

If more than 5 lots or parcels contained in the same tract of real property are sold or exchanged, gain from any sale or exchange (which occurs in or after the taxable year in which the sixth lot or parcel is sold or exchanged) of any lot or parcel which comes within the provisions of paragraphs (1), (2) and (3) of subsection (a) of this section shall be deemed to be gain from the sale of property held primarily for sale to customers in the ordinary course of the trade or business to the extent of 5 percent of the selling price.

(2) Expenditures of sale

For the purpose of computing gain under paragraph (1) of this subsection, expenditures incurred in connection with the sale or exchange of any lot or parcel shall neither be allowed as a deduction in computing taxable income, nor treated as reducing the amount realized on such sale or exchange; but so much of such expenditures as does not exceed the

portion of gain deemed under paragraph (1) of this subsection to be gain from the sale of property held primarily for sale to customers in the ordinary course of trade or business shall be so allowed as a deduction, and the remainder, if any, shall be treated as reducing the amount realized on such sale or exchange.

(3) Necessary improvements

No improvement shall be deemed a substantial improvement for purposes of subsection (a) if the lot or parcel is held by the taxpayer for a period of 10 years and if—

(A) such improvement is the building or installation of water, sewer, or drainage facilities or roads (if such improvement would except for this paragraph constitute a substantial improvement);

(B) it is shown to the satisfaction of the Secretary that the lot or parcel, the value of which was substantially enhanced by such improvement, would not have been marketable at the prevailing local price for similar building sites without such improvement; and

(C) the taxpayer elects, in accordance with regulations prescribed by the Secretary, to make no adjustment to basis of the lot or parcel, or of any other property owned by the taxpayer, on account of the expenditures for such improvements. Such election shall not make any item deductible which would not otherwise be deductible.

(c) Tract defined

For purposes of this section, the term ''tract of real property'' means a single piece of real property, except that 2 or more pieces of real property shall be considered a tract if at any time they were contiguous in the hands of the taxpayer or if they would be contiguous except for the interposition of a road, street, railroad, stream, or similar property. If, following the sale or exchange of any lot or parcel from a tract of real property, no further sales or exchanges of any other lots or parcels from the remainder of such tract are made for a period of 5 years, such remainder shall be deemed a tract.

(Aug. 16, 1954, ch. 736, 68A Stat. 330; Apr. 27, 1956, ch. 214, §§1, 2, 70 Stat. 118; Pub. L. 85–866, title I, §55, Sept. 2, 1958, 72 Stat. 1645; Pub. L. 91–686, §2(a), Jan. 12, 1971, 84 Stat. 2071; Pub. L. 94–455, title XIX, §§1901(a)(138), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1787, 1834; Pub. L. 104–188, title I, §1314, Aug. 20, 1996, 110 Stat. 1785.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–188, §1314(a), substituted ''other than a C corporation'' for ''other than a corporation'' in introductory provisions.

Subsec. (a)(2)(A). Pub. L. 104–188, §1314(b), inserted ''an S corporation which included the taxpayer as a shareholder,'' after ''controlled by the taxpayer,''.

1976—Subsec. (b)(3)(B), (C). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (d). Pub. L. 94–455, §1901(a)(138), struck out effective date provision making the section applicable only with respect to sales of property occurring after Dec. 31, 1953, except that for purposes of subsec. (c) defining tract of real property and for determining the number of sales under subsec. (b)(1) of this section, all sales of lots and parcels from any tract of real property during the period of 5 years before Dec. 31, 1953, shall be taken into account, except as provided in subsec. (c).

1971—Subsec. (a). Pub. L. 91–686, §2(a)(1), substituted ''other than a corporation'' for ''(including corporations only if no shareholder directly or indirectly holds real property for sale to customers in the ordinary course of trade or business and only in the case of property described in the last sentence of subsection (b)(3))''.

Subsec. (b). Pub. L. 91–686, §2(a)(2), struck out sentence which made subpars. (B) and (C) inapplicable in the case of property acquired through the foreclosure of a lien thereon which secured the payment of an indebtedness to the taxpayer or (in the case of a corporation) to a creditor who has transferred the foreclosure bid to the taxpayer in exchange for all of its stock and other consideration and in the case of property adjacent to such property if 80 percent of the real property owned by the taxpayer was property described in the first part of the sentence.

1958—Subsec. (a)(1). Pub. L. 85–866 substituted ''and, in the same taxable year'' for ''or, in the same taxable year''.

1956—Subsec. (a). Act Apr. 27, 1956, §1, substituted ''(including corporations only if no shareholder directly or indirectly holds real property for sale to customers in the ordinary course of trade or business and only in the case of property described in the last sentence of subsection (b)(3))'' for ''other than a corporation''.

Subsec. (b)(3). Act Apr. 27, 1956, §2, substituted ''water, sewer, or drainage facilities'' for ''water or sewer facilities'' in subpar. (A), and inserted provision at end that requirements of subpars. (B) and (C) do not apply to certain specified property.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1317(a) of Pub. L. 104–188, set out as a note under section 641 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(138) 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 1971 AMENDMENT

Pub. L. 91–686, §2(b), Jan. 12, 1971, 84 Stat. 2071, provided that: ''The amendments made by subsection (a) [amending this section] shall be effective for taxable years beginning after the date of enactment of this Act [Jan. 12, 1971].''

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.

EFFECTIVE DATE OF 1956 AMENDMENT

Act Apr. 27, 1956, ch. 214, §3, 70 Stat. 119, provided that: ''This Act [amending this section] shall apply to all taxable years beginning after Dec. 31, 1954.''

SALES OR EXCHANGES BY CORPORATIONS OF REAL PROPERTY HELD MORE THAN 25 YEARS

Pub. L. 91–686, §1, Jan. 12, 1971, 84 Stat. 2070, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided: ''That (a) for purposes of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] any lot or parcel of real property sold or exchanged by a corporation which would, but for this Act, be treated as property held primarily for sale to customers in the ordinary course of trade or business shall not, except to the extent provided in (b), be so treated if—

''(1) no shareholder of the corporation directly or indirectly holds real property primarily for sale to

customers in the ordinary course of trade or business; and

''(2)(A) such lot or parcel is a part of real property (i) held for more than twenty-five years at the time of sale or exchange, and (ii) acquired before January 1, 1934, by the corporation as a result of the foreclosure of a lien (or liens) thereon which secured the payment of indebtedness held by one or more creditors who transferred one or more foreclosure bids to the corporation in exchange for all its stock (with or without other consideration), or

''(B)(i) such lot or parcel is a part of additional real property acquired before January 1, 1957, by the corporation in the near vicinity of any real property to which subparagraph (A) applies, or

''(ii) such lot or parcel is wholly or to some extent a part of any minor acquisition made after December 31, 1956, by the corporation to adjust boundaries, to fill gaps in previously acquired property, to facilitate the installation of streets, utilities, and other public facilities, or to facilitate the sale of adjacent property, or

''(iii) such lot or parcel is wholly or to some extent a part of a reacquisition by the corporation after December 31, 1956, of property previously owned by the corporation;

but only if at least 80 percent (as measured by area) of the real property sold or exchanged by the corporation within the taxable year is property described in subparagraph (A); and

''(3) there were no acquisitions of real property by the corporation after December 31, 1956, other than—

''(A) acquisitions described in paragraph (2)(B)(ii) and reacquisitions described in paragraph (2)(B)(iii), or

''(B) acquisitions of real property used in a trade or business of the corporation or held for investment by the corporation; and

''(4) the corporation did not after December 31, 1957, sell or exchange (except in condemnation or under threat of condemnation) any residential lot or parcel on which, at the time of the sale or exchange, there existed any substantial improvements (other than improvements in existence at the time the land was acquired by the corporation) except subdivision, clearing, grubbing, and grading, building or installation of water, sewer, and drainage facilities, construction of roads, streets, and sidewalks, and installation of utilities.''

In any case in which a corporation referred to in paragraphs (1), (2), (3), and (4) is a member of an affiliated group as defined in section 1504(a) of the Internal Revenue Code of 1986, such affiliated group shall, for purposes of such paragraphs, be treated as a single corporation.

''(b)(1) Gain from any sale or exchange described in subsection (a) shall be deemed, for purposes of such Code, to be gain from the sale of property held primarily for sale to customers in the ordinary course of trade or business to the extent of 5 percent of the selling price.

''(2) For the purpose of computing gain under paragraph (1), expenditures incurred in connection with the sale or exchange of any lot or parcel shall neither be allowed as a deduction in computing taxable income, nor treated as reducing the amount realized on such sale or exchange; but so much of such expenditures as does not exceed the portion of gain deemed under paragraph (1) to be gain from the sale of property held primarily for sale to customers in the ordinary course of trade or business shall be so allowed as a deduction, and the remainder, if any, shall be treated as reducing the amount realized on such sale or exchange.

''(c) The provisions of subsections (a) and (b) shall apply to taxable years beginning after December 31, 1957, and before January 1, 1984.''

[§ 1238. Repealed. Pub. L. 101–508, title XI, § 11801(a)(35), Nov. 5, 1990, 104 Stat. 1388–521]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 332; Oct. 4, 1976, Pub. L. 94–455, title XIX, §§ 1901(b)(3)(K), 1951(c)(2)(A), 90 Stat. 1793, 1840, related to amortization in excess of depreciation.

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.

§ 1239. Gain from sale of depreciable property between certain related taxpayers

(a) Treatment of gain as ordinary income

In the case of a sale or exchange of property, directly or indirectly, between related persons, any gain recognized to the transferor shall be treated as ordinary income if such property is, in the hands of the transferee, of a character which is subject to the allowance for depreciation provided in section 167.

(b) Related persons

For purposes of subsection (a), the term ''related persons'' means—

(1) a person and all entities which are controlled entities with respect to such person,

(2) a taxpayer and any trust in which such taxpayer (or his spouse) is a beneficiary, unless such beneficiary's interest in the trust is a remote contingent interest (within the meaning of section 318(a)(3)(B)(i)), and

(3) except in the case of a sale or exchange in satisfaction of a pecuniary bequest, an executor of an estate and a beneficiary of such estate.

(c) Controlled entity defined

(1) General rule

For purposes of this section, the term ''controlled entity'' means, with respect to any person—

(A) a corporation more than 50 percent of the value of the outstanding stock of which is owned (directly or indirectly) by or for such person,

(B) a partnership more than 50 percent of the capital interest or profits interest in which is owned (directly or indirectly) by or for such person, and

(C) any entity which is a related person to such person under paragraph (3), (10), (11), or (12) of section 267(b).

(2) Constructive ownership

For purposes of this section, ownership shall be determined in accordance with rules similar to the rules under section 267(c) (other than paragraph (3) thereof).

(d) Employer and related employee association

For purposes of subsection (a), the term ''related person'' also includes—

(1) an employer and any person related to the employer (within the meaning of subsection (b)), and

(2) a welfare benefit fund (within the meaning of section 419(e)) which is controlled directly or indirectly by persons referred to in paragraph (1).

(e) Patent applications treated as depreciable property

For purposes of this section, a patent application shall be treated as property which, in the hands of the transferee, is of a character which is subject to the allowance for depreciation provided in section 167.

(Aug. 16, 1954, ch. 736, 68A Stat. 332; Pub. L. 85–866, title I, §56, Sept. 2, 1958, 72 Stat. 1645; Pub. L. 94–455, title XXI, §2129(a), Oct. 4, 1976, 90 Stat. 1922; Pub. L. 95–600, title VII, §701(v)(1), Nov. 6, 1978, 92 Stat. 2920; Pub. L. 96–471, §5, Oct. 19, 1980, 94 Stat. 2255; Pub. L. 97–448, title III, §301, Jan. 12, 1983, 96 Stat. 2397; Pub. L. 98–369, div. A, title I, §175(a), (b), title IV, §421(b)(6)(A), title V, §557(a), July 18, 1984, 98 Stat. 708, 794, 898; Pub. L. 99–514, title VI, §642(a)(1)(A)–(C), Oct. 22, 1986, 100 Stat. 2283, 2284; Pub. L. 105–34, title XIII, §1308(b), Aug. 5, 1997, 111 Stat. 1041.)

AMENDMENTS

1997—Subsec. (b)(3). Pub. L. 105–34 added par. (3).

1986—Subsec. (b)(1). Pub. L. 99–514, §642(a)(1)(A), substituted ''controlled entities'' for ''80-percent owned entities''.

Subsec. (c). Pub. L. 99–514, §642(a)(1)(B), (C), in heading, substituted ''Controlled entity'' for ''80-percent owned entity'', in par. (1), in introductory provisions, substituted ''controlled entity'' for ''80-percent owned entity'', in subpar. (A), substituted ''more than 50 percent of the value'' for ''80 percent or more in value'', in subpar. (B), substituted ''more than 50 percent'' for ''80 percent or more'', and added subpar. (C), and amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''For purposes of subparagraphs (A) and (B) of paragraph (1), the principles of section 318 shall apply, except that—

''(A) the members of an individual's family shall consist only of such individual and such individual's spouse,

''(B) paragraph (2)(C) of section 318(a) shall be applied without regard to the 50-percent limitation contained therein, and

''(C) paragraph (3) of section 318(a) shall not apply.''

1984—Subsec. (b). Pub. L. 98–369, §421(b)(6), redesignated pars. (2) and (3) as (1) and (2), respectively. Former par. (1), defining a husband and wife as ''related persons'', was struck out.

Pub. L. 98–369, §175(b), amended subsec. (b) generally, adding par. (3).

Subsec. (d). Pub. L. 98–369, §557(a), added subsec. (d).

Subsec. (e). Pub. L. 98–369, §175(a), added subsec. (e).

1983—Subsec. (b). Pub. L. 97–448, §301(a), substituted provisions that ''related persons'' means (1) a husband and wife, and (2) a person and all entities which are 80-percent owned entities with respect to such person, for provisions which provided that ''related persons'' meant (1) the taxpayer and the taxpayer's spouse, (2) the taxpayer and an 80-percent owned entity, or (3) two 80-percent owned entities.

Subsec. (c)(1). Pub. L. 97–448, §301(b), inserted '', with respect to any person'' after ''means'' in introductory provisions and substituted ''such person'' for ''the taxpayer'' in subpars. (A) and (B).

Subsec. (c)(2). Pub. L. 97–448, §301(b), struck out ''and'' at end of subpar. (A), substituted ''paragraph (2)(C)'' for ''paragraphs (2)(C) and (3)(C)'' in subpar. (B), and added subpar. (C).

1980—Subsec. (b)(1). Pub. L. 96–471 substituted ''the taxpayer and the taxpayer's spouse'' for ''a husband and wife''.

Subsec. (b)(2). Pub. L. 96–471 substituted ''the taxpayer and an 80-percent owned entity, or'' for ''an individual and a corporation 80 percent or more in value of the outstanding stock of which is owned, directly or indirectly, by or for such individual, or''.

Subsec. (b)(3). Pub. L. 96–471 substituted ''two 80-percent owned entities'' for ''two or more corporations 80 percent or more in value of the outstanding stock of each of which is owned, directly or indirectly, by or for the same individual''.

Subsec. (c). Pub. L. 96–471 substituted provisions defining an ''80-percent owned entity'' for provisions relating to constructive ownership of stock.

1978—Subsec. (a). Pub. L. 95–600 substituted ''of a character which is subject to the allowance for depreciation provided in section 167'' for ''subject to the allowance for depreciation provided in section 167''.

1976—Pub. L. 94–455 substituted ''sale of depreciable property between certain related taxpayers'' for ''sale of certain property between spouses or between an individual and a controlled corporation'' in section catchline.

Subsec. (a). Pub. L. 94–455 substituted provisions for transactions between related persons for such transactions (1) between a husband and wife; or (2) between an individual and a corporation more than 80 percent in value of the outstanding stock of which is owned by such individual, his spouse, and his minor children and minor grandchildren and ''any gain recognized to the transferee shall be treated as ordinary income if such property is, in the hands of the transferee, subject to the allowance for depreciation provided in section 167'' for ''any gain recognized to the transferor from the sale or exchange of such property shall be considered as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231''.

Subsec. (b). Pub. L. 94–455 substituted definition of ''related persons'' for prior provision making section applicable only to sales or exchanges of depreciable property.

Subsec. (c). Pub. L. 94–455 substituted provision respecting constructive ownership of stock for prior provision making section inapplicable with respect to sales or exchanges made on or before May 3, 1951.

1958—Subsec. (c). Pub. L. 85–866 added subsec. (c).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to taxable years beginning after Aug. 5, 1997, see section 1308(c) of Pub. L. 105–34, set out as a note under section 267 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title VI, §642(c), Oct. 22, 1986, 100 Stat. 2284, as amended by Pub. L. 100–647, title I, §1006(i)(3), Nov. 10, 1988, 102 Stat. 3411, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 453 and 707 of this title] shall apply to sales after the date of the enactment of this Act [Oct. 22, 1986], in taxable years ending after such date.

''(2) TRANSITIONAL RULE FOR BINDING CONTRACTS.—The amendments made by this section shall not apply to sales made after August 14, 1986, which are made pursuant to a binding contract in effect on August 14, 1986, and at all times thereafter.''

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §175(c), July 18, 1984, 98 Stat. 708, provided that: ''The amendments made by this section [amending this section] shall apply to sales or exchanges after March 1, 1984, in taxable years ending after such date.''

Amendment by section 421(b)(6) of Pub. L. 98–369 applicable to transfers after July 18, 1984, in taxable years ending after such date, subject to election to have amendment apply to transfers after 1983 or to transfers pursuant to existing decrees, see section 421(d) of Pub.

L. 98–369, set out as an Effective Date note under section 1041 of this title.

Pub. L. 98–369, div. A, title V, § 557(b), July 18, 1984, 98 Stat. 899, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to sales or exchanges after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 applicable to dispositions made after Oct. 19, 1980, in taxable years ending after such date, see section 311(a) of Pub. L. 97–448, set out as a note under section 453 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title VII, § 701(v)(2), Nov. 6, 1978, 92 Stat. 2920, 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 as if included in the amendment made to section 1239 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] by section 2129(a) of the Tax Reform Act of 1976 [section 2129(a) of Pub. L. 94–455].''

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XXI, § 2129(b), Oct. 4, 1976, 90 Stat. 1922, provided that: ''The amendment made by this section [amending this section] shall apply to sales or exchanges after the date of the enactment of this Act [Oct. 4, 1976]. For purposes of the preceding sentence, a sale or exchange is considered to have occurred on or before such date of enactment if such sale or exchange is made pursuant to a binding contract entered into on or before that date.''

[§ 1240. Repealed. Pub. L. 94–455, title XIX, § 1901(a)(139), Oct. 4, 1976, 90 Stat. 1787]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 332, related to taxability to employee of termination payments.

EFFECTIVE DATE OF REPEAL

Repeal 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.

§ 1241. Cancellation of lease or distributor's agreement

Amounts received by a lessee for the cancellation of a lease, or by a distributor of goods for the cancellation of a distributor's agreement (if the distributor has a substantial capital investment in the distributorship), shall be considered as amounts received in exchange for such lease or agreement.

(Aug. 16, 1954, ch. 736, 68A Stat. 333.)

§ 1242. Losses on small business investment company stock

If—

(1) a loss is on stock in a small business investment company operating under the Small Business Investment Act of 1958, and

(2) such loss would (but for this section) be a loss from the sale or exchange of a capital asset,

then such loss shall be treated as an ordinary loss. For purposes of section 172 (relating to the net operating loss deduction) any amount of loss treated by reason of this section as an ordinary loss shall be treated as attributable to a trade or business of the taxpayer.

(Added Pub. L. 85–866, title I, § 57(a), Sept. 2, 1958, 72 Stat. 1645; amended Pub. L. 94–455, title XIX, § 1901(b)(3)(F), Oct. 4, 1976, 90 Stat. 1793.)

REFERENCES IN TEXT

The Small Business Investment Act of 1958, referred to in cl. (1), 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

1976—Pub. L. 94–455 substituted ''an ordinary loss'' for ''a loss from the sale or exchange of property which is not a capital asset'', each time appearing.

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

Section applicable with respect to taxable years beginning after Sept. 2, 1958, see section 57(d) of Pub. L. 85–866, set out as an Effective Date of 1958 Amendment note under section 243 of this title.

§ 1243. Loss of small business investment company

In the case of a small business investment company operating under the Small Business Investment Act of 1958, if—

(1) a loss is on stock received pursuant to the conversion privilege of convertible debentures acquired pursuant to section 304 of the Small Business Investment Act of 1958, and

(2) such loss would (but for this section) be a loss from the sale or exchange of a capital asset,

then such loss shall be treated as an ordinary loss.

(Added Pub. L. 85–866, title I, § 57(a), Sept. 2, 1958, 72 Stat. 1645; amended Pub. L. 91–172, title IV, § 433(b), Dec. 30, 1969, 83 Stat. 624; Pub. L. 94–455, title XIX, § 1901(b)(3)(F), Oct. 4, 1976, 90 Stat. 1793.)

REFERENCES IN TEXT

The Small Business Investment Act of 1958, referred to in text, 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 304 of the Small Business Investment Act of 1958, is classified to section 684 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

1976—Pub. L. 94–455 substituted ''an ordinary loss'' for ''a loss from the sale or exchange of property which is not a capital asset''.

1969—Par. (1). Pub. L. 91–172 substituted ''stock received pursuant to the conversion privilege of convertible debentures'' for ''convertible debentures (including stock received pursuant to the conversion privilege)''.

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

Amendment by Pub. L. 91–172 applicable to taxable years beginning after July 11, 1969, see section 433(d) of Pub. L. 91–172, set out as a note under section 582 of this title.

EFFECTIVE DATE

Section applicable with respect to taxable years beginning after Sept. 2, 1958, see section 57(d) of Pub. L. 85–866, set out as an Effective Date of 1958 Amendment note under section 243 of this title.

§ 1244. Losses on small business stock

(a) General rule

In the case of an individual, a loss on section 1244 stock issued to such individual or to a partnership which would (but for this section) be treated as a loss from the sale or exchange of a capital asset shall, to the extent provided in this section, be treated as an ordinary loss.

(b) Maximum amount for any taxable year

For any taxable year the aggregate amount treated by the taxpayer by reason of this section as an ordinary loss shall not exceed—

(1) $50,000, or

(2) $100,000, in the case of a husband and wife filing a joint return for such year under section 6013.

(c) Section 1244 stock defined

(1) In general

For purposes of this section, the term ''section 1244 stock'' means stock in a domestic corporation if—

(A) at the time such stock is issued, such corporation was a small business corporation,

(B) such stock was issued by such corporation for money or other property (other than stock and securities), and

(C) such corporation, during the period of its 5 most recent taxable years ending before the date the loss on such stock was sustained, derived more than 50 percent of its aggregate gross receipts from sources other than royalties, rents, dividends, interests, annuities, and sales or exchanges of stocks or securities.

(2) Rules for application of paragraph (1)(C)

(A) Period taken into account with respect to new corporations

For purposes of paragraph (1)(C), if the corporation has not been in existence for 5 taxable years ending before the date the loss on the stock was sustained, there shall be substituted for such 5-year period—

(i) the period of the corporation's taxable years ending before such date, or

(ii) if the corporation has not been in existence for 1 taxable year ending before such date, the period such corporation has been in existence before such date.

(B) Gross receipts from sales of securities

For purposes of paragraph (1)(C), gross receipts from the sales or exchanges of stock or securities shall be taken into account only to the extent of gains therefrom.

(C) Nonapplication where deductions exceed gross income

Paragraph (1)(C) shall not apply with respect to any corporation if, for the period taken into account for purposes of paragraph (1)(C), the amount of the deductions allowed by this chapter (other than by sections 172, 243, and 245) exceeds the amount of gross income.

(3) Small business corporation defined

(A) In general

For purposes of this section, a corporation shall be treated as a small business corporation if the aggregate amount of money and other property received by the corporation for stock, as a contribution to capital, and as paid-in surplus, does not exceed $1,000,000. The determination under the preceding sentence shall be made as of the time of the issuance of the stock in question but shall include amounts received for such stock and for all stock theretofore issued.

(B) Amount taken into account with respect to property

For purposes of subparagraph (A), the amount taken into account with respect to any property other than money shall be the amount equal to the adjusted basis to the corporation of such property for determining gain, reduced by any liability to which the property was subject or which was assumed by the corporation. The determination under the preceding sentence shall be made as of the time the property was received by the corporation.

(d) Special rules

(1) Limitations on amount of ordinary loss

(A) Contributions of property having basis in excess of value

If—

(i) section 1244 stock was issued in exchange for property,

(ii) the basis of such stock in the hands of the taxpayer is determined by reference to the basis in his hands of such property, and

(iii) the adjusted basis (for determining loss) of such property immediately before the exchange exceeded its fair market value at such time,

then in computing the amount of the loss on such stock for purposes of this section the basis of such stock shall be reduced by an amount equal to the excess described in clause (iii).

(B) Increases in basis

In computing the amount of the loss on stock for purposes of this section, any increase in the basis of such stock (through contributions to the capital of the corporation, or otherwise) shall be treated as allocable to stock which is not section 1244 stock.

(2) Recapitalizations, changes in name, etc.

To the extent provided in regulations prescribed by the Secretary, stock in a corporation, the basis of which (in the hands of a taxpayer) is determined in whole or in part by reference to the basis in his hands of stock in such corporation which meets the requirements of subsection (c)(1) (other than subpara-

graph (C) thereof), or which is received in a reorganization described in section 368(a)(1)(F) in exchange for stock which meets such requirements, shall be treated as meeting such requirements. For purposes of paragraphs (1)(C) and (3)(A) of subsection (c), a successor corporation in a reorganization described in section 368(a)(1)(F) shall be treated as the same corporation as its predecessor.

(3) Relationship to net operating loss deduction

For purposes of section 172 (relating to the net operating loss deduction), any amount of loss treated by reason of this section as an ordinary loss shall be treated as attributable to a trade or business of the taxpayer.

(4) Individual defined

For purposes of this section, the term ''individual'' does not include a trust or estate.

(e) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section.

(Added Pub. L. 85–866, title II, § 202(b), Sept. 2, 1958, 72 Stat. 1676; amended Pub. L. 94–455, title XIX, §§ 1901(b)(1)(W), (3)(G), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1792, 1793, 1834; Pub. L. 95–600, title III, § 345(a)–(d), Nov. 6, 1978, 92 Stat. 2844, 2845; Pub. L. 98–369, div. A, title IV, § 481(a), July 18, 1984, 98 Stat. 847; Pub. L. 113–295, div. A, title II, § 221(a)(41)(H), Dec. 19, 2014, 128 Stat. 4044.)

AMENDMENTS

2014—Subsec. (c)(2)(C). Pub. L. 113–295 struck out ''244,'' after ''243,''.

1984—Subsecs. (c)(1), (d)(2). Pub. L. 98–369 substituted ''stock in a'' for ''common stock in a''.

1978—Subsec. (b). Pub. L. 95–600, § 345(b), substituted in par. (1) ''$50,000'' for ''$25,000'' and in par. (2) ''$100,000'' for ''$50,000''.

Subsec. (c). Pub. L. 95–600, § 345(a), (c), among other changes, substituted provisions permitting a corporation to issue common stock under the provisions of this section without a written plan for provisions requiring that a written plan to issue section 1244 stock must be adopted by the issuing corporation and increased the amount of section 1244 stock that a qualified small business corporation may issue from $500,000 to $1,000,000.

Subsec. (d)(2). Pub. L. 95–600, § 345(d), substituted ''subparagraph (C)'' for ''subparagraph (E)'' and ''paragraphs (1)(C) and (3)(A)'' for ''paragraphs (1)(E) and (2)(A)''.

1976—Subsecs. (a), (b). Pub. L. 94–455, § 1901(b)(3)(G), substituted ''an ordinary loss'' for ''a loss from the sale or exchange of an asset which is not a capital asset''.

Subsec. (c)(1)(E). Pub. L. 94–455, § 1901(b)(1)(W), struck out reference to section 242 of this title.

Subsec. (d)(2). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (d)(3). Pub. L. 94–455, § 1901(b)(3)(G), substituted ''an ordinary loss'' for ''a loss from the sale or exchange of an asset which is not a capital asset''.

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 1984 AMENDMENT

Pub. L. 98–369, div. A, title IV, § 481(b), July 18, 1984, 98 Stat. 847, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to stock issued after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.''

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title III, § 345(e), Nov. 6, 1978, 92 Stat. 2845, as amended by Pub. L. 96–222, title I, § 103(a)(9), Apr. 1, 1980, 94 Stat. 212, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to stock issued after November 6, 1978.

''(2) SUBSECTION (b).—The amendments made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1978.

''(3) TRANSITIONAL RULE FOR SUBSECTION (b).—In the case of a taxable year which includes November 6, 1978, the amendments made by subsection (b) [amending this section] shall apply with respect to stock issued after such date.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(b)(1)(W), (3)(G) 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.

§ 1245. Gain from dispositions of certain depreciable property

(a) General rule

(1) Ordinary income

Except as otherwise provided in this section, if section 1245 property is disposed of the amount by which the lower of—

(A) the recomputed basis of the property, or

(B)(i) in the case of a sale, exchange, or involuntary conversion, the amount realized, or

(ii) in the case of any other disposition, the fair market value of such property,

exceeds 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) Recomputed basis

For purposes of this section—

(A) In general

The term ''recomputed basis'' means, with respect to any property, its adjusted basis recomputed by adding thereto all adjustments reflected in such adjusted basis on account of deductions (whether in respect of the same or other property) allowed or allowable to the taxpayer or to any other person for depreciation or amortization.

(B) Taxpayer may establish amount allowed

For purposes of subparagraph (A), if the taxpayer can establish by adequate records or other sufficient evidence that the amount allowed for depreciation or amortization for any period was less than the amount allowable, the amount added for such period shall be the amount allowed.

(C) Certain deductions treated as amortization

Any deduction allowable under section 179, 179B, 179C, 179D, 179E, 181, 190, 193, or 194 shall be treated as if it were a deduction allowable for amortization.

(3) Section 1245 property

For purposes of this section, the term ''section 1245 property'' means any property which is or has been property of a character subject to the allowance for depreciation provided in section 167 and is either—

(A) personal property,

(B) other property (not including a building or its structural components) but only if such other property is tangible and has an adjusted basis in which there are reflected adjustments described in paragraph (2) for a period in which such property (or other property)—

(i) was used as an integral part of manufacturing, production, or extraction or of furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services,

(ii) constituted a research facility used in connection with any of the activities referred to in clause (i), or

(iii) constituted a facility used in connection with any of the activities referred to in clause (i) for the bulk storage of fungible commodities (including commodities in a liquid or gaseous state),

(C) so much of any real property (other than any property described in subparagraph (B)) which has an adjusted basis in which there are reflected adjustments for amortization under section 169, 179, 179B, 179C, 179D, 179E, 185,[1] 188 (as in effect before its repeal by the Revenue Reconciliation Act of 1990), 190, 193, or 194[2]

(D) a single purpose agricultural or horticultural structure (as defined in section 168(i)(13)),

(E) a storage facility (not including a building or its structural components) used in connection with the distribution of petroleum or any primary product of petroleum, or

(F) any railroad grading or tunnel bore (as defined in section 168(e)(4)).

(b) Exceptions and limitations

(1) Gifts

Subsection (a) shall not apply to a disposition by gift.

(2) Transfers at death

Except as provided in section 691 (relating to income in respect of a decedent), subsection (a) shall not apply to a transfer at death.

(3) Certain tax-free transactions

If the basis of property in the hands of a transferee is determined by reference to its basis in the hands of the transferor by reason of the application of section 332, 351, 361, 721, or 731, then the amount of gain taken into account by the transferor under subsection (a)(1) shall not exceed the amount of gain recognized to the transferor on the transfer of such property (determined without regard to this section). Except as provided in paragraph (6), this paragraph shall not apply to a disposition to an organization (other than a cooperative described in section 521) which is exempt from the tax imposed by this chapter.

(4) Like kind exchanges; involuntary conversions, etc.

If property is disposed of and gain (determined without regard to this section) is not recognized in whole or in part under section 1031 or 1033, then the amount of gain taken into account by the transferor under subsection (a)(1) shall not exceed the sum of—

(A) the amount of gain recognized on such disposition (determined without regard to this section), plus

(B) the fair market value of property acquired which is not section 1245 property and which is not taken into account under subparagraph (A).

(5) Property distributed by a partnership to a partner

(A) In general

For purposes of this section, the basis of section 1245 property distributed by a partnership to a partner shall be deemed to be determined by reference to the adjusted basis of such property to the partnership.

(B) Adjustments added back

In the case of any property described in subparagraph (A), for purposes of computing the recomputed basis of such property the amount of the adjustments added back for periods before the distribution by the partnership shall be—

(i) the amount of the gain to which subsection (a) would have applied if such property had been sold by the partnership immediately before the distribution at its fair market value at such time, reduced by

(ii) the amount of such gain to which section 751(b) applied.

(6) Transfers to tax-exempt organization where property will be used in unrelated business

(A) In general

The second sentence of paragraph (3) shall not apply to a disposition of section 1245 property to an organization described in section 511(a)(2) or 511(b)(2) if, immediately after such disposition, such organization uses such property in an unrelated trade or business (as defined in section 513).

(B) Later change in use

If any property with respect to the disposition of which gain is not recognized by reason of subparagraph (A) ceases to be used in an unrelated trade or business of the organization acquiring such property, such organization shall be treated for purposes of this section as having disposed of such property on the date of such cessation.

(7) Timber property

In determining, under subsection (a)(2), the recomputed basis of property with respect to

[1] See References in Text note below.

[2] So in original. Probably should be followed by a comma.

which a deduction under section 194 was allowed for any taxable year, the taxpayer shall not take into account adjustments under section 194 to the extent such adjustments are attributable to the amortizable basis of the taxpayer acquired before the 10th taxable year preceding the taxable year in which gain with respect to the property is recognized.

(8) Disposition of amortizable section 197 intangibles

(A) In general

If a taxpayer disposes of more than 1 amortizable section 197 intangible (as defined in section 197(c)) in a transaction or a series of related transactions, all such amortizable 197 intangibles shall be treated as 1 section 1245 property for purposes of this section.

(B) Exception

Subparagraph (A) shall not apply to any amortizable section 197 intangible (as so defined) with respect to which the adjusted basis exceeds the fair market value.

(c) Adjustments to basis

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 (a).

(d) Application of section

This section shall apply notwithstanding any other provision of this subtitle.

(Added Pub. L. 87–834, § 13(a)(1), Oct. 16, 1962, 76 Stat. 1032; amended Pub. L. 88–272, title II, § 203(d), Feb. 26, 1964, 78 Stat. 35; Pub. L. 91–172, title II, § 212(a)(1), (2), title VII, § 704(b)(4), Dec. 30, 1969, 83 Stat. 571, 670; Pub. L. 92–178, title I, § 104(a)(2), title III, § 303(c)(1), (2), Dec. 10, 1971, 85 Stat. 501, 522; Pub. L. 94–81, § 2(a), Aug. 9, 1975, 89 Stat. 417; Pub. L. 94–455, title II, § 212(b)(1), title XIX, §§ 1901(a)(140), (b)(3)(K), (11)(D), 1906(b)(13)(A), 1951(c)(2)(C), title XXI, §§ 2122(b)(3), 2124(a)(2), Oct. 4, 1976, 90 Stat. 1546, 1787, 1793, 1795, 1834, 1840, 1915, 1917; Pub. L. 95–600, title VII, § 701(f)(3)(A), (B), (w)(1), (2), Nov. 6, 1978, 92 Stat. 2901, 2920; Pub. L. 96–223, title II, § 251(a)(2)(C), Apr. 2, 1980, 94 Stat. 287; Pub. L. 96–451, title III, § 301(c)(1), Oct. 14, 1980, 94 Stat. 1990; Pub. L. 97–34, title II, §§ 201(b), 202(b), 204(a)–(d), 212(d)(2)(F), Aug. 13, 1981, 95 Stat. 218, 220, 222, 223, 239; Pub. L. 97–448, title I, § 102(e)(2)(B), Jan. 12, 1983, 96 Stat. 2371; Pub. L. 98–369, div. A, title I, § 111(e)(5), (10), July 18, 1984, 98 Stat. 633; Pub. L. 99–121, title I, § 103(b)(1)(D), Oct. 11, 1985, 99 Stat. 509; Pub. L. 99–514, title II, § 201(d)(11), Oct. 22, 1986, 100 Stat. 2141; Pub. L. 100–647, title I, § 1002(i)(2)(I), Nov. 10, 1988, 102 Stat. 3371; Pub. L. 101–239, title VII, § 7622(b)(2)[(d)(2)], Dec. 19, 1989, 103 Stat. 2378; Pub. L. 101–508, title XI, §§ 11704(a)(13), 11801(c)(6)(E), (8)(H), 11813(b)(21), Nov. 5, 1990, 104 Stat. 1388–518, 1388–524, 1388–555; Pub. L. 103–66, title XIII, § 13261(f)(4), (5), Aug. 10, 1993, 107 Stat. 539; Pub. L. 104–7, § 2(b), Apr. 11, 1995, 109 Stat. 93; Pub. L. 104–188, title I, § 1703(n)(6), Aug. 20, 1996, 110 Stat. 1877; Pub. L. 105–34, title XVI, § 1604(a)(3), Aug. 5, 1997, 111 Stat. 1097; Pub. L. 108–357, title III, § 338(b)(5), title VIII, § 886(b)(2), Oct. 22, 2004, 118 Stat. 1481, 1641; Pub. L. 109–58, title XIII, §§ 1323(b)(1), 1331(b)(2), 1363(a), Aug. 8, 2005, 119 Stat. 1014, 1024, 1060; Pub. L. 109–135, title IV, §§ 402(a)(6), 403(e)(2), (i)(2), Dec. 21, 2005, 119 Stat. 2610, 2623, 2625; Pub. L. 109–432, div. A, title IV, § 404(b)(3), Dec. 20, 2006, 120 Stat. 2956; Pub. L. 113–295, div. A, title II, § 221(a)(34)(H), Dec. 19, 2014, 128 Stat. 4042.)

REFERENCES IN TEXT

Section 185 of this title, referred to in subsec. (a)(3)(C), was repealed by Pub. L. 99–514, title II, § 242(a), Oct. 22, 1986, 100 Stat. 2181.

The Revenue Reconciliation Act of 1990, referred to in subsec. (a)(3)(C), is title XI of Pub. L. 101–508, Nov. 5, 1990, 104 Stat. 1388–400. Section 11801(a)(13) of the Act repealed section 188 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1 of this title and Tables.

AMENDMENTS

2014—Subsec. (a)(2)(C), (3)(C). Pub. L. 113–295 struck out ''179A,'' after ''179,''.

2006—Subsec. (a)(2)(C), (3)(C). Pub. L. 109–432 inserted ''179E,'' after ''179D,''.

2005—Subsec. (a)(2)(C). Pub. L. 109–135, § 403(e)(2), (i)(2), inserted ''181,'' after ''179B,'' and substituted ''193, or 194'' for ''or 193''.

Pub. L. 109–58, § 1331(b)(2), inserted ''179D,'' after ''179C,''.

Pub. L. 109–58, § 1323(b)(1), inserted ''179C,'' after ''179B,''.

Subsec. (a)(3)(C). Pub. L. 109–58, § 1331(b)(2), inserted ''179D,'' after ''179C,''.

Pub. L. 109–58, § 1323(b)(1), inserted ''179C,'' after ''179B,''.

Subsec. (b)(3). Pub. L. 109–135, § 402(a)(6)(B), substituted ''paragraph (6)'' for ''paragraph (7)''.

Subsec. (b)(5) to (8). Pub. L. 109–135, § 402(a)(6)(A), redesignated pars. (6) to (9) as (5) to (8), respectively, and struck out heading and text of former par. (5). Text read as follows: ''Under regulations prescribed by the Secretary, rules consistent with paragraphs (3) and (4) of this subsection shall apply in the case of transactions described in section 1081 (relating to exchanges in obedience to SEC orders).''

Subsec. (b)(9). Pub. L. 109–135, § 402(a)(6)(A), redesignated par. (9) as (8).

Pub. L. 109–58, § 1363(a), added par. (9).

2004—Subsec. (a)(2)(C), (3)(C). Pub. L. 108–357, § 338(b)(5), inserted ''179B,'' after ''179A,''.

Subsec. (a)(4). Pub. L. 108–357, § 886(b)(2), struck out par. (4) which related to special rule for player contracts if a franchise to conduct any sports enterprise is sold or exchanged.

1997—Subsec. (a)(2)(C), (3)(C). Pub. L. 105–34 inserted ''179A,'' after ''179,''.

1996—Subsec. (a)(3). Pub. L. 104–188 reenacted heading without change and amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: ''For purposes of this section, the term 'section 1245 property' means any property which is or has been property of a character subject to the allowance for depreciation provided in section 167 (or subject to the allowance of amortization provided in)) and is either—''.

1995—Subsec. (b)(5). Pub. L. 104–7 struck out ''1071 and'' before ''1081 transactions'' in heading and ''section 1071 (relating to gain from sale or exchange to effectuate policies of FCC) or'' before ''section 1081'' in text.

1993—Subsec. (a)(2)(C). Pub. L. 103–66, § 13261(f)(4), substituted ''or 193'' for ''193, or 1253(d)(2) or (3)''.

Subsec. (a)(3). Pub. L. 103–66, § 13261(f)(5), struck out ''section 185 or 1253(d)(2) or (3)'' after ''amortization provided in'' in introductory provisions.

1990—Subsec. (a)(3). Pub. L. 101–508, § 11704(a)(13), substituted ''or (3))'' for ''or (3)'' in introductory provisions.

Subsec. (a)(3)(C). Pub. L. 101–508, § 11801(c)(6)(E), substituted ''188 (as in effect before its repeal by the Revenue Reconciliation Act of 1990),'' for ''188,''.

Subsec. (a)(3)(D). Pub. L. 101–508, §11813(b)(21), substituted ''section 168(i)(13)'' for ''section 48(p)''.

Subsec. (b)(3). Pub. L. 101–508, §11801(c)(8)(H), struck out ''371(a), 374(a),'' after ''332, 351, 361,''.

1989—Subsec. (a)(2)(C). Pub. L. 101–239, §7622(b)(2)(A)[(d)(2)(A)], substituted ''193, or 1253(d)(2) or (3)'' for ''or 193''.

Subsec. (a)(3). Pub. L. 101–239, §7622(b)(2)(B)[(d)(2)(B)], substituted ''section 185 or 1253(d)(2) or (3)'' for ''section 185'' in introductory provisions.

1988—Subsec. (a)(3)(F). Pub. L. 100–647 added subpar. (F).

1986—Subsec. (a)(1). Pub. L. 99–514, §201(d)(11)(A), struck out ''during a taxable year beginning after December 31, 1962, or section 1245 recovery property is disposed of after December 31, 1980,'' after ''if section 1245 property is disposed of''.

Subsec. (a)(2). Pub. L. 99–514, §201(d)(11)(B), amended par. (2) generally, restating former subpars. (A) to (E) and concluding provisions as subpars. (A) to (C).

Subsec. (a)(3). Pub. L. 99–514, §201(d)(11)(C), redesignated subpars. (D), (E), and (F) as (C), (D), and (E), respectively, and struck out former subpar. (C) which read as follows: ''an elevator or an escalator''.

Subsec. (a)(5), (6). Pub. L. 99–514, §201(d)(11)(D), struck out par. (5) which defined ''section 1245 recovery property'' and par. (6) which provided special rule for qualified leased property.

1985—Subsec. (a)(5)(A) to (C). Pub. L. 99–121 substituted ''19-year real property'' for ''18-year real property''.

1984—Subsec. (a)(5)(A) to (C). Pub. L. 98–369, §111(e)(5), substituted ''18-year real property and low-income housing'' for ''15-year real property''.

Subsec. (d)(5)(D). Pub. L. 98–369, §111(e)(10), substituted ''low-income housing (within the meaning of section 168(c)(2)(F))'' for ''15-year real property which is described in clause (i), (ii), (iii), or (iv) of section 1250(a)(1)(B)''.

1983—Subsec. (a)(3)(F). Pub. L. 97–448 inserted ''(not including a building or its structural components)'' after ''a storage facility''.

1981—Subsec. (a)(1). Pub. L. 97–34, §204(a), inserted reference to section 1245 recovery property disposed of after Dec. 31, 1980, in introductory provisions.

Subsec. (a)(2). Pub. L. 97–34, §§202(b)(1)–(3), 204(b), inserted reference to section 179 in subpar. (D), added subpar. (E), and, in provisions following subpar. (E), and inserted references to section 179 in three places. Pub. L. 97–34, §212(d)(2)(F), in provisions following subpar. (E), substituted ''191 (as in effect before its repeal by the Economic Recovery Tax Act of 1981)'' for ''191'' in two places.

Subsec. (a)(3)(D). Pub. L. 97–34, §202(b)(3), inserted reference to section 179.

Subsec. (a)(3)(E), (F). Pub. L. 97–34, §201(b), added subpars. (E) and (F).

Subsec. (a)(5). Pub. L. 97–34, §204(c), added par. (5).

Subsec. (a)(6). Pub. L. 97–34, §204(d), added par. (6).

1980—Subsec. (a)(2). Pub. L. 96–451, §301(c)(1)(A), (B), inserted references to section 194 in subpar. (D) and text following subpar. (D).

Pub. L. 96–223, §251(a)(2)(C)(i)–(iii), inserted references to section 193 in subpar. (D) and text following subpar. (D).

Subsec. (a)(3)(D). Pub. L. 96–451, §301(c)(1)(B), inserted reference to section 194.

Pub. L. 96–223, §251(a)(2)(C)(i), inserted reference to section 193.

Subsec. (b)(8). Pub. L. 96–451, §301(c)(1)(C), added par. (8).

1978—Subsec. (a)(2). Pub. L. 95–600, §701(f)(3)(A), struck out from the listed sections in subpar. (D) reference to 191 and inserted ''(in the case of property described in paragraph (3)(C))'' before ''191'' in two places in next to last sentence.

Subsec. (a)(3)(D). Pub. L. 95–600, §701(f)(3)(B), struck out reference to section 191.

Subsec. (a)(4)(B). Pub. L. 95–600, §701(w)(2), inserted ''attributable to periods after December 31, 1975,'' after ''for the depreciation'', ''incurred after December 31, 1975,'' after ''allowable for losses'', and ''described in clause (i)'' after ''of the amounts''.

Subsec. (a)(4)(C). Pub. L. 95–600, §701(w)(1), struck out provisions relating to the aggregate of the amounts treated as ordinary income.

1976—Subsec. (a)(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''.

Subsec. (a)(2)(D). Pub. L. 94–455, §§2122(b)(3)(B), 2124(a)(2), inserted reference to sections 190 and 191.

Subsec. (a)(2) foll. (D). Pub. L. 94–455, §§1901(b)(11)(D), 1951(c)(2)(C), 2122(b)(3)(A), (C), 2124(a)(2), in text following subpar. (D): struck out reference to section 187 in two places; inserted ''(as in effect before its repeal by the Tax Reform Act of 1976),'' after ''section 168,'' in two places; inserted provision for treatment for purposes of this section of any deduction allowable under section 190 as if it were a deduction allowable for amortization; and inserted reference to section 191 in two places, respectively.

Subsec. (a)(3)(D). Pub. L. 94–455, §§2122(b)(3)(A), 2124(a)(2), inserted reference to sections 190 and 191.

Subsec. (a)(4). Pub. L. 94–455, §212(b)(1), added par. (4).

Subsec. (b)(5). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (b)(7)(B). Pub. L. 94–455, §1901(a)(140), struck out ''such organization acquiring such property,'' before ''such organization''.

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

1975—Subsec. (b)(3), (7). Pub. L. 94–81, §2(a)(1), (2), inserted reference to par. (7) in par. (3), and added par. (7).

1971—Subsec. (a)(2). Pub. L. 92–178, §303(c)(1), inserted reference to section 188 in two places in text following subpar. (D).

Subsec. (a)(3)(B)(ii), (iii). Pub. L. 92–178, §104(a)(2), substituted ''research facility'' for ''research or storage facility'' in cl. (ii) and added cl. (iii).

Subsec. (a)(3)(D). Pub. L. 92–178, §303(c)(2), inserted reference to section 188.

1969—Subsec. (a)(2). Pub. L. 91–172, §§212(a)(1), 704(b)(4)(A), (B), added subpar. (C) and inserted references to sections 169, 185, and 187, and added subpar. (D).

Subsec. (a)(3). Pub. L. 91–172, §§212(a)(2), 704(b)(4)(C)–(F), struck out ''(other than livestock)'' after ''means any property'' and substituted ''section 167 (or subject to the allowance of amortization provided in section 185)'' for ''section 167'' and added subpar. (D).

1964—Subsec. (a)(2), (3)(C). Pub. L. 88–272 redefined ''recomputed basis'' with respect to elevators or escalators in par. (2), and inserted subpar. (C) in par. (3).

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. 109–432 applicable to costs paid or incurred after Dec. 20, 2006, see section 404(c) of Pub. L. 109–432, set out as an Effective Date note under section 179E of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 402(a)(6) of Pub. L. 109–135 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109–58, to which it relates, but not applicable with respect to any transaction ordered in compliance with the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.) before its repeal, see section 402(m) of Pub. L. 109–135, set out as an Effective and Termination Dates of 2005 Amendments note under section 23 of this title.

Amendments by section 403(e)(2), (i)(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.

Amendment by section 1323(b)(1) of Pub. L. 109–58 applicable to properties placed in service after Aug. 8, 2005, see section 1323(c) of Pub. L. 109–58, set out as an Effective Date note under section 179C of this title.

Amendment by section 1331(b)(2) of Pub. L. 109–58 applicable to property placed in service after Dec. 31, 2005, see section 1331(d) of Pub. L. 109–58, set out as an Effective Date note under section 179D of this title.

Pub. L. 109–58, title XIII, § 1363(b), Aug. 8, 2005, 119 Stat. 1060, provided that: ''The amendment made by this section [amending this section] shall apply to dispositions of property after the date of the enactment of this Act [Aug. 8, 2005].''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 338(b)(5) of Pub. L. 108–357 applicable to expenses paid or incurred after Dec. 31, 2002, in taxable years ending after such date, see section 338(c) of Pub. L. 108–357, set out as an Effective Date note under section 179B of this title.

Amendment by section 886(b)(2) of Pub. L. 108–357 applicable to franchises acquired after Oct. 22, 2004, see section 886(c)(2) of Pub. L. 108–357, set out as a note under section 197 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 effective as if included in the amendments made by section 1913 of the Energy Policy Act of 1992, Pub. L. 102–486, see section 1604(a)(4) of Pub. L. 105–34, set out as a note under section 263 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§ 13001–13444, to which such amendment relates, see section 1703(*o*) of Pub. L. 104–188, set out as a note under section 39 of this title.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–7 applicable to sales and exchanges on or after January 17, 1995, and to sales and exchanges before such date if FCC tax certificate with respect to such sale or exchange was issued on or after such date, but not applicable with respect to certain binding contracts, see section 2(d) of Pub. L. 104–7, set out as an Effective Date of Repeal note under section 1071 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 OF 1990 AMENDMENT

Amendment by section 11813(b)(21) 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 Pub. L. 101–239 applicable to transfers after Oct. 2, 1989, but not applicable to any transfer pursuant to a written binding contract in effect on Oct. 2, 1989, and at all times thereafter before the transfer, see section 7622(c)[(e)] of Pub. L. 101–239, set out as a note under section 167 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 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 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 1985 AMENDMENT

Amendment by Pub. L. 99–121 applicable with respect to property placed in service by the taxpayer after May 8, 1985, with specified exceptions, see section 105(b) of Pub. L. 99–121, set out as a note under section 168 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable with respect to property placed in service by the taxpayer after Mar. 15, 1984, subject to certain exceptions, see section 111(g) of Pub. L. 98–369, set out as a note under section 168 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 sections 201(b), 202(b), and 204(a)–(d) of Pub. L. 97–34 applicable to property placed in service after Dec. 31, 1980, in taxable years ending after that date, see section 209(a) of Pub. L. 97–34, set out as an Effective Date note under section 168 of this title.

Amendment by section 212(d)(2)(F) of 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 1980 AMENDMENT

Amendment by Pub. L. 96–451 applicable with respect to additions to capital account made after Dec. 31, 1979, see section 301(d) of Pub. L. 96–451, set out as an Effective Date note under section 194 of this title.

Amendment by Pub. L. 96–223 applicable to taxable years beginning after Dec. 31, 1979, see section 251(b) of Pub. L. 96–223, set out as an Effective Date note under section 193 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 701(f)(3)(A), (B) of Pub. L. 95–600 effective as if included within the amendment of subsec. (a)(2), (3)(D) by section 2124 of Pub. L. 94–455, see section 701(f)(8) of Pub. L. 95–600, set out as an Effective and Termination Dates of 1978 Amendments note under section 167 of this title.

Pub. L. 95–600, title VII, § 701(w)(3), Nov. 6, 1978, 92 Stat. 2920, provided that: ''The amendments made by this subsection [amending this section] shall apply to transfers of player contracts in connection with any sale or exchange of a franchise after December 31, 1975.''

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title II, § 212(b)(2), Oct. 4, 1976, 90 Stat. 1547, provided that: ''The amendment made by this sub-

section [amending this section] applies to transfers of player contracts in connection with any sale or exchange of a franchise after December 31, 1975.''

Amendment by section 1901(a)(140), (b)(3)(K), (11)(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.

Amendment by section 1951(c)(2)(C) of Pub. L. 94–455 applicable 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.

Amendment by section 2122(b)(3) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1976, see section 2122(c) of Pub. L. 94–455, as amended, set out as an Effective Date note under section 190 of this title.

Amendment by section 2124(a)(2) of Pub. L. 94–455 applicable with respect to additions to capital account made after June 14, 1976 and before June 15, 1981, see section 2124(a)(4) of Pub. L. 94–455, set out as an Effective Date note under section 642 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–81 applicable to dispositions after Dec. 31, 1969, in taxable years ending after such date, with special provision for an election in the case of dispositions occurring before Aug. 9, 1975, see section 2(c) of Pub. L. 94–81, set out as a note under section 1250 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by section 104(a)(2) of Pub. L. 92–178 applicable to property described in section 50 of this title relating to restoration of credit, see section 104(h) of Pub. L. 92–178, set out as a note under section 48 of this title.

Amendment by section 303(c)(1), (2) of Pub. L. 92–178 applicable to taxable years ending after Dec. 31, 1971, see section 303(d) of Pub. L. 92–178, set out as a note under section 642 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title II, §212(a)(3), Dec. 30, 1969, 83 Stat. 571, provided that: ''The amendments made by paragraphs (1) and (2) [amending this section] shall apply with respect to taxable years beginning after December 31, 1969.''

Amendment by section 704(b)(4) 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 a note under section 169 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable with respect to dispositions after Dec. 31, 1963, in taxable years ending after such date, see section 203(f)(3) of Pub. L. 88–272, set out as a note under section 48 of this title.

EFFECTIVE DATE

Pub. L. 87–834, §13(g), Oct. 16, 1962, 76 Stat. 1035, provided that: ''The amendments made by this section [enacting this section and amending sections 167, 170, 301, 312, 341, 453, 613, and 751 of this title] (other than the amendments made by subsection (c) [amending sections 167, 179, and 642 of this title]) shall apply to taxable years beginning after December 31, 1962. The amendments made by subsection (c) shall apply to taxable years beginning after December 31, 1961, and ending after the date of the enactment of this Act [Oct. 16, 1962].''

SAVINGS PROVISION

For provisions that nothing in amendment by sections 11801 and 11813 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.

[§§ 1246, 1247. Repealed. Pub. L. 108–357, title IV, § 413(a)(2), (3), Oct. 22, 2004, 118 Stat. 1506]

Section 1246, added Pub. L. 87–834, §14(a)(1), Oct. 16, 1962, 76 Stat. 1036; amended Pub. L. 94–455, title XIV, §1402(b)(1)(W), (2), title XIX, §§1901(a)(141), (b)(3)(I), (32)(B)(ii), 1906(b)(13)(A), title XX, §2005(a)(5), Oct. 4, 1976, 90 Stat. 1732, 1787, 1793, 1800, 1834, 1877; Pub. L. 96–223, title IV, §401(a), Apr. 2, 1980, 94 Stat. 299; Pub. L. 97–34, title VIII, §832(a), Aug. 13, 1981, 95 Stat. 355; Pub. L. 98–369, div. A, title I, §134(a), title X, §1001(b)(20), (e), July 18, 1984, 98 Stat. 668, 1012; Pub. L. 99–514, title XII, §1235(b), Oct. 22, 1986, 100 Stat. 2574; Pub. L. 100–647, title I, §§1012(p)(21), 1018(*o*)(2), Nov. 10, 1988, 102 Stat. 3519, 3585; Pub. L. 107–16, title V, §542(e)(5)(A), June 7, 2001, 115 Stat. 85; Pub. L. 111–312, title III, §301(a), Dec. 17, 2010, 124 Stat. 3300, related to treatment of gain on foreign investment company stock.

Section 1247, added Pub. L. 87–834, §14(a)(1), Oct. 16, 1962, 76 Stat. 1037; amended Pub. L. 94–455, title XIV, §1402(b)(1)(X), (2), title XIX, §§1901(b)(33)(P), (R), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1732, 1802, 1834; Pub. L. 98–369, div. A, title X, §1001(b)(21), (e), July 18, 1984, 98 Stat. 1012, related to election by foreign investment companies to distribute income currently.

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.

§ 1248. Gain from certain sales or exchanges of stock in certain foreign corporations

(a) General rule

If—

(1) a United States person sells or exchanges stock in a foreign corporation, and

(2) such person owns, within the meaning of section 958(a), or is considered as owning by applying the rules of ownership of section 958(b), 10 percent or more of the total combined voting power of all classes of stock entitled to vote of such foreign corporation at any time during the 5-year period ending on the date of the sale or exchange when such foreign corporation was a controlled foreign corporation (as defined in section 957),

then the gain recognized on the sale or exchange of such stock shall be included in the gross income of such person as a dividend, to the extent of the earnings and profits of the foreign corporation attributable (under regulations prescribed by the Secretary) to such stock which were accumulated in taxable years of such foreign corporation beginning after December 31, 1962, and during the period or periods the stock sold or exchanged was held by such person while such foreign corporation was a controlled foreign corporation. For purposes of this section, a United States person shall be treated as having sold or exchanged any stock if, under any provision of this subtitle, such person is treated as realizing gain from the sale or exchange of such stock.

(b) Limitation on tax applicable to individuals

In the case of an individual, if the stock sold or exchanged is a capital asset (within the meaning of section 1221) and has been held for more than 1 year, the tax attributable to an

amount included in gross income as a dividend under subsection (a) shall not be greater than a tax equal to the sum of—

(1) a pro rata share of the excess of—

(A) the taxes that would have been paid by the foreign corporation with respect to its income had it been taxed under this chapter as a domestic corporation (but without allowance for deduction of, or credit for, taxes described in subparagraph (B)), for the period or periods the stock sold or exchanged was held by the United States person in taxable years beginning after December 31, 1962, while the foreign corporation was a controlled foreign corporation, adjusted for distributions and amounts previously included in gross income of a United States shareholder under section 951, over

(B) the income, war profits, or excess profits taxes paid by the foreign corporation with respect to such income; and

(2) an amount equal to the tax that would result by including in gross income, as gain from the sale or exchange of a capital asset held for more than 1 year, an amount equal to the excess of (A) the amount included in gross income as a dividend under subsection (a), over (B) the amount determined under paragraph (1).

(c) Determination of earnings and profits

(1) In general

Except as provided in section 312(k)(4), for purposes of this section, the earnings and profits of any foreign corporation for any taxable year shall be determined according to rules substantially similar to those applicable to domestic corporations, under regulations prescribed by the Secretary.

(2) Earnings and profits of subsidiaries of foreign corporations

If—

(A) subsection (a) or (f) applies to a sale, exchange, or distribution by a United States person of stock of a foreign corporation and, by reason of the ownership of the stock sold or exchanged, such person owned within the meaning of section 958(a)(2) stock of any other foreign corporation; and

(B) such person owned, within the meaning of section 958(a), or was considered as owning by applying the rules of ownership of section 958(b), 10 percent or more of the total combined voting power of all classes of stock entitled to vote of such other foreign corporation at any time during the 5-year period ending on the date of the sale or exchange when such other foreign corporation was a controlled foreign corporation (as defined in section 957),

then, for purposes of this section, the earnings and profits of the foreign corporation the stock of which is sold or exchanged which are attributable to the stock sold or exchanged shall be deemed to include the earnings and profits of such other foreign corporation which—

(C) are attributable (under regulations prescribed by the Secretary) to the stock of such other foreign corporation which such person owned within the meaning of section 958(a)(2) (by reason of his ownership within the meaning of section 958(a)(1)(A) of the stock sold or exchanged) on the date of such sale or exchange (or on the date of any sale or exchange of the stock of such other foreign corporation occurring during the 5-year period ending on the date of the sale or exchange of the stock of such foreign corporation, to the extent not otherwise taken into account under this section but not in excess of the fair market value of the stock of such other foreign corporation sold or exchanged over the basis of such stock (for determining gain) in the hands of the transferor); and

(D) were accumulated in taxable years of such other corporation beginning after December 31, 1962, and during the period or periods—

(i) such other corporation was a controlled foreign corporation, and

(ii) such person owned within the meaning of section 958(a) the stock of such other foreign corporation.

(d) Exclusions from earnings and profits

For purposes of this section, the following amounts shall be excluded, with respect to any United States person, from the earnings and profits of a foreign corporation:

(1) Amounts included in gross income under section 951

Earnings and profits of the foreign corporation attributable to any amount previously included in the gross income of such person under section 951, with respect to the stock sold or exchanged, but only to the extent the inclusion of such amount did not result in an exclusion of an amount from gross income under section 959.

[(2) Repealed. Pub. L. 100–647, title I, § 1006(e)(14)(A), Nov. 10, 1988, 102 Stat. 3402]

(3) Less developed country corporations under prior law

Earnings and profits of a foreign corporation which were accumulated during any taxable year beginning before January 1, 1976, while such corporation was a less developed country corporation under section 902(d) as in effect before the enactment of the Tax Reduction Act of 1975.

(4) United States income

Any item includible in gross income of the foreign corporation under this chapter—

(A) for any taxable year beginning before January 1, 1967, as income derived from sources within the United States of a foreign corporation engaged in trade or business within the United States, or

(B) for any taxable year beginning after December 31, 1966, as income effectively connected with the conduct by such corporation of a trade or business within the United States.

This paragraph shall not apply with respect to any item which is exempt from taxation (or is

subject to a reduced rate of tax) pursuant to a treaty obligation of the United States.

(5) Foreign trade income

Earnings and profits of the foreign corporation attributable to foreign trade income of a FSC (as defined in section 922) other than foreign trade income which—

(A) is section 923(a)(2) non-exempt income (within the meaning of section 927(d)(6)), or

(B) would not (but for section 923(a)(4)) be treated as exempt foreign trade income.

For purposes of the preceding sentence, the terms ''foreign trade income'' and ''exempt foreign trade income'' have the respective meanings given such terms by section 923. Any reference in this paragraph 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.

(6) Amounts included in gross income under section 1293

Earnings and profits of the foreign corporation attributable to any amount previously included in the gross income of such person under section 1293 with respect to the stock sold or exchanged, but only to the extent the inclusion of such amount did not result in an exclusion of an amount under section 1293(c).

(e) Sales or exchanges of stock in certain domestic corporations

Except as provided in regulations prescribed by the Secretary, if—

(1) a United States person sells or exchanges stock of a domestic corporation, and

(2) such domestic corporation was formed or availed of principally for the holding, directly or indirectly, of stock of one or more foreign corporations,

such sale or exchange shall, for purposes of this section, be treated as a sale or exchange of the stock of the foreign corporation or corporations held by the domestic corporation.

(f) Certain nonrecognition transactions

Except as provided in regulations prescribed by the Secretary—

(1) In general

If—

(A) a domestic corporation satisfies the stock ownership requirements of subsection (a)(2) with respect to a foreign corporation, and

(B) such domestic corporation distributes stock of such foreign corporation in a distribution to which section 311(a), 337, 355(c)(1), or 361(c)(1) applies,

then, notwithstanding any other provision of this subtitle, an amount equal to the excess of the fair market value of such stock over its adjusted basis in the hands of the domestic corporation shall be included in the gross income of the domestic corporation as a dividend to the extent of the earnings and profits of the foreign corporation attributable (under regulations prescribed by the Secretary) to such stock which were accumulated in taxable years of such foreign corporation beginning after December 31, 1962, and during the period or periods the stock was held by such domestic corporation while such foreign corporation was a controlled foreign corporation. For purposes of subsections (c)(2), (d), and (h), a distribution of stock to which this subsection applies shall be treated as a sale of stock to which subsection (a) applies.

(2) Exception for certain distributions

In the case of any distribution of stock of a foreign corporation, paragraph (1) shall not apply if such distribution is to a domestic corporation—

(A) which is treated under this section as holding such stock for the period for which the stock was held by the distributing corporation, and

(B) which, immediately after the distribution, satisfies the stock ownership requirements of subsection (a)(2) with respect to such foreign corporation.

(3) Application to cases described in subsection (e)

To the extent that earnings and profits are taken into account under this subsection, they shall be excluded and not taken into account for purposes of subsection (e).

(g) Exceptions

This section shall not apply to—

(1) distributions to which section 303 (relating to distributions in redemption of stock to pay death taxes) applies; or

(2) any amount to the extent that such amount is, under any other provision of this title, treated as—

(A) a dividend (other than an amount treated as a dividend under subsection (f)),

(B) ordinary income, or

(C) gain from the sale of an asset held for not more than 1 year.

(h) Taxpayer to establish earnings and profits

Unless the taxpayer establishes the amount of the earnings and profits of the foreign corporation to be taken into account under subsection (a) or (f), all gain from the sale or exchange shall be considered a dividend under subsection (a) or (f), and unless the taxpayer establishes the amount of foreign taxes to be taken into account under subsection (b), the limitation of such subsection shall not apply.

(i) Treatment of certain indirect transfers

(1) In general

If any shareholder of a 10-percent corporate shareholder of a foreign corporation exchanges stock of the 10-percent corporate shareholder for stock of the foreign corporation, such 10-percent corporate shareholder shall recognize gain in the same manner as if the stock of the foreign corporation received in such exchange had been—

(A) issued to the 10-percent corporate shareholder, and

(B) then distributed by the 10-percent corporate shareholder to such shareholder in redemption or liquidation (whichever is appropriate).

The amount of gain recognized by such 10-percent corporate shareholder under the preceding sentence shall not exceed the amount treated as a dividend under this section.

(2) 10-percent corporate shareholder defined

For purposes of this subsection, the term ''10-percent corporate shareholder'' means any domestic corporation which, as of the day before the exchange referred to in paragraph (1), satisfies the stock ownership requirements of subsection (a)(2) with respect to the foreign corporation.

(j) Coordination with dividends received deduction

In the case of the sale or exchange by a domestic corporation of stock in a foreign corporation held for 1 year or more, any amount received by the domestic corporation which is treated as a dividend by reason of this section shall be treated as a dividend for purposes of applying section 245A.

(k) Cross reference

For provision excluding amounts previously taxed under this section from gross income when subsequently distributed, see section 959(e).

(Added Pub. L. 87–834, § 15(a), Oct. 16, 1962, 76 Stat. 1041; amended Pub. L. 89–809, title I, § 104(k), Nov. 13, 1966, 80 Stat. 1562; Pub. L. 91–172, title IV, § 442(b)(2), Dec. 30, 1969, 83 Stat. 628; Pub. L. 94–455, title X, §§ 1022(a), 1042(b), (c)(1), (3), title XIV, § 1402(b)(1)(Y), (2), title XIX, §§ 1901(b)(3)(H), (32)(B)(iii), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1619, 1636, 1637, 1732, 1793, 1800, 1834; Pub. L. 97–448, title I, § 102(c)(1), Jan. 12, 1983, 96 Stat. 2370; Pub. L. 98–369, div. A, title I, § 133(a), (b)(2), (c), title VIII, § 801(d)(6), title X, § 1001(b)(22), (e), July 18, 1984, 98 Stat. 667, 668, 996, 1012; Pub. L. 99–514, title VI, § 631(d)(2), title XVIII, §§ 1810(i)(1), 1875(g)(1), 1876(a)(2), Oct. 22, 1986, 100 Stat. 2272, 2829, 2897; Pub. L. 100–647, title I, §§ 1006(e)(14), 1012(p)(19), Nov. 10, 1988, 102 Stat. 3402, 3518; Pub. L. 104–188, title I, § 1702(g)(1), Aug. 20, 1996, 110 Stat. 1872; Pub. L. 108–357, title IV, § 413(c)(22), Oct. 22, 2004, 118 Stat. 1509; Pub. L. 110–172, § 11(g)(17), Dec. 29, 2007, 121 Stat. 2491; Pub. L. 115–97, title I, § 14102(a)(1), Dec. 22, 2017, 131 Stat. 2192.)

REFERENCES IN TEXT

Section 902(d) as in effect before the enactment of the Tax Reduction Act of 1975, referred to in subsec. (d)(3), means section 902(d) of this title as in effect before the amendment made by Pub. L. 94–12, title VI, § 602(c)(6), Mar. 29, 1975, 89 Stat. 59. Section 902 was subsequently amended generally by Pub. L. 99–514, title XII, § 1202(a), Oct. 22, 1986, 100 Stat. 2528, and repealed by Pub. L. 115–97, title I, § 14301(a), Dec. 22, 2017, 131 Stat. 2221.

The FSC Repeal and Extraterritorial Income Exclusion Act of 2000, referred to in subsec. (d)(5), 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.

AMENDMENTS

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

2007—Subsec. (d)(5). Pub. L. 110–172 inserted ''(as defined in section 922)'' after ''a FSC'' in introductory provisions and inserted second sentence in concluding provisions.

2004—Subsec. (d)(5) to (7). Pub. L. 108–357 redesignated pars. (6) and (7) as (5) and (6), respectively, and struck out heading and text of former par. (5). Text read as follows: ''If the United States person whose stock is sold or exchanged was a qualified shareholder (as defined in section 1247(c)) of a foreign corporation which was a foreign investment company (as described in section 1246(b)(1)), the earnings and profits of the foreign corporation for taxable years in which such person was a qualified shareholder.''

1996—Subsec. (a). Pub. L. 104–188, § 1702(g)(1)(A)(ii), in closing provisions inserted at end ''For purposes of this section, a United States person shall be treated as having sold or exchanged any stock if, under any provision of this subtitle, such person is treated as realizing gain from the sale or exchange of such stock.''

Subsec. (a)(1). Pub. L. 104–188, § 1702(g)(1)(A)(i), struck out '', or if a United States person receives a distribution from a foreign corporation which, under section 302 or 331, is treated as an exchange of stock'' after ''in a foreign corporation''.

Subsec. (e)(1). Pub. L. 104–188, § 1702(g)(1)(B), struck out '', or receives a distribution from a domestic corporation which, under section 302 or 331, is treated as an exchange of stock'' after ''of a domestic corporation''.

Subsec. (f)(1)(B). Pub. L. 104–188, § 1702(g)(1)(C), substituted ''355(c)(1), or 361(c)(1)'' for ''or 361(c)(1)''.

Subsec. (i)(1). Pub. L. 104–188, § 1702(g)(1)(D), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''If any shareholder of a 10-percent corporate shareholder of a foreign corporation exchanges stock of the 10-percent corporate shareholder for stock of the foreign corporation, for purposes of this section, the stock of the foreign corporation received in such exchange shall be treated as if it had been—

''(A) issued to the 10-percent corporate shareholder, and

''(B) then distributed by the 10-percent corporate shareholder to such shareholder in redemption or liquidation (whichever is appropriate).''

1988—Subsec. (d)(2). Pub. L. 100–647, § 1006(e)(14)(A), struck out par. (2) which related to gain realized from sale or exchange of property in pursuance of plan of complete liquidation.

Subsec. (d)(7). Pub. L. 100–647, § 1012(p)(19), added par. (7).

Subsec. (f). Pub. L. 100–647, § 1006(e)(14)(E), substituted ''nonrecognition'' for ''section 311, 336, or 337'' in heading.

Subsec. (f)(1). Pub. L. 100–647, § 1006(e)(14)(C), struck out '', sale, or exchange'' after ''(h), a distribution'' in last sentence.

Subsec. (f)(1)(B). Pub. L. 100–647, § 1006(e)(14)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''such domestic corporation distributes, sells, or exchanges stock of such foreign corporation in a transaction to which section 311, 336, or 337 applies,''.

Subsec. (f)(3), (4). Pub. L. 100–647, § 1006(e)(14)(D), redesignated par. (4) as (3) and struck out former par. (3) which related to nonapplication of paragraph (1) in certain cases.

1986—Subsec. (d)(6). Pub. L. 99–514, § 1876(a)(2), amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''Earnings and profits of the foreign corporation attributable to foreign trade income (within the meaning of section 923(b)) of a FSC.''

Subsec. (e). Pub. L. 99–514, § 631(d)(2)(A), substituted ''Except as provided in regulations'' for ''Under regulations''.

Subsec. (f). Pub. L. 99–514, § 631(d)(2)(B), inserted ''Except as provided in regulations prescribed by the Secretary—'' after heading.

Subsec. (g). Pub. L. 99–514, § 1875(g)(1), inserted ''or'' at end of par. (1), redesignated par. (3) as (2), and struck out former par. (2) which read as follows: ''gain realized on exchanges to which section 356 (relating to receipt of additional consideration in certain reorganizations) applies; or''.

Subsec. (i)(1)(B). Pub. L. 99–514, §1810(i)(1), substituted ''in redemption or liquidation (whichever is appropriate)'' for ''in redemption of his stock''.

1984—Subsec. (b). Pub. L. 98–369, §1001(b)(22), (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)(2)(D). Pub. L. 98–369, §133(c), substituted ''section 958(a)'' for ''section 958(a)(2)''.

Subsec. (d)(6). Pub. L. 98–369, §801(d)(6), added par. (6).

Subsec. (g)(3)(C). Pub. L. 98–369, §1001(b)(22), (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. (i). Pub. L. 98–369, §133(a), added subsec. (i).

Subsec. (j). Pub. L. 98–369, §133(b)(2), added subsec. (j).

1983—Subsec. (c)(1). Pub. L. 97–448 substituted ''section 312(k)(4)'' for ''section 312(k)(3)''.

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

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)(Y), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

Subsec. (c)(1). Pub. L. 94–455, §§1901(b)(32)(B)(iii), 1906(b)(13(A), substituted ''section 312(k)'' for ''section 312(m)(3)'', and struck out ''or his delegate'' after ''Secretary''.

Subsec. (c)(2)(A). Pub. L. 94–455, §1042(c)(3)(A), substituted ''subsection (a) or (f) applies to a sale, exchange, or distribution'' for ''subsection (a) applies to a sale or exchange''.

Subsec. (c)(2)(C). Pub. L. 94–455, §1042(b), inserted ''(or on the date of any sale or exchange of the stock of such other foreign corporation occurring during the 5–year period ending on the date of the sale or exchange of the stock of such foreign corporation, to the extent not otherwise taken into account under this section but not in excess of the fair market value of the stock of such other foreign corporation sold or exchanged over the basis of such stock (for determining gain) in the hands of the transferor)''. §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (d)(2). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (d)(3). Pub. L. 94–455, §1022(a), substituted provisions of par. (3) relating to ''Less developed country corporations under prior law'' and reading ''Earnings and profits of a foreign corporation which were accumulated during any taxable year beginning before January 1, 1976, while such corporation was a less developed country corporation under section 902(d) as in effect before the enactment of the Tax Reduction Act of 1975'' for prior par. (3) relating to ''Less developed country corporations'' and reading ''Earnings and profits accumulated by a foreign corporation while it was a less developed country corporation (as defined in section 902(d)), if the stock sold or exchanged was owned for a continuous period of at least 10 years, ending with the date of the sale or exchange, by the United States person who sold or exchanged such stock. In the case of stock sold or exchanged by a corporation, if United States persons who are individuals, estates, or trusts (each of whom owned within the meaning of section 958(a), or were considered as owning by applying the rules of ownership of section 958(b), 10 percent or more of the total combined voting power of all classes of stock entitled to vote of such corporation) owned, or were considered as owning, at any time during the 10-year period ending on the date of the sale or exchange more than 50 percent of the total combined voting power of all classes of stock entitled to vote such corporation, this paragraph shall apply only if such United States persons owned, or were considered as owning, at all times during the remainder of such 10-year period more than 50 percent of the total combined voting power of all classes of stock entitled to vote of such corporation. For purposes of this paragraph, stock owned by a United States person who is an individual, estate, or trust which was acquired by reason of the death of the predecessor in interest of such United States person shall be considered as owned by such United States person during the period such stock was owned by such predecessor in interest, and during the period such stock was owned by any other predecessor in interest if between such United States person and such other predecessor in interest there was no transfer other than by reason of the death of an individual.''

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

Subsec. (f). Pub. L. 94–455, §1042(c)(1), added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 94–455, §§1042(c)(1), (3)(B), 1901(b)(3)(H), redesignated former subsec. (f) as (g); inserted ''(other than an amount treated as a dividend under subsection (f))'' in par. (3)(A); and substituted in par. (3)(B) ''ordinary income'' for ''gain from the sale of an asset which is not a capital asset'', respectively. Former subsec. (g) redesignated (h).

Subsec. (g)(3)(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)(Y), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

Subsec. (h). Pub. L. 94–455, §1042(c)(1), (3)(C), redesignated former subsec. (g) as (h) and inserted reference to subsec. (f) in two places.

1969—Subsec. (c)(1). Pub. L. 91–172 inserted reference to the exception provided for in section 312(m)(3).

1966—Subsec. (d)(4). Pub. L. 89–809 provided that for taxable years beginning after December 31, 1966, the earnings and profits of the foreign corporation, for purposes of this section, is not to include income effectively connected with the conduct of a trade or business within the United States, and inserted provision that the exclusion does not apply to income which is exempt from tax or subject to a reduced rate of tax pursuant to a treaty.

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–97, title I, §14102(a)(2), Dec. 22, 2017, 131 Stat. 2192, provided that: ''The amendments made by this subsection [amending this section] shall apply to sales or exchanges after December 31, 2017.''

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 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 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(d)(2) 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 ex-

ceptions 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.

Pub. L. 99–514, title XVIII, § 1875(g)(2), Oct. 22, 1986, 100 Stat. 2897, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to exchanges after March 1, 1986.''

Amendment by sections 1810(i)(1) and 1876(a)(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.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, § 133(d)(1), July 18, 1984, 98 Stat. 668, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to exchanges after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.''

Amendment by section 133(b)(2), (c) of Pub. L. 98–369 applicable with respect to transactions to which subsec. (a) or (f) of this section applies occurring after July 18, 1984, with election of earlier date for certain transactions, see section 133(d)(2), (3) of Pub. L. 98–369, set out as a note under section 959 of this title.

Amendment by section 801(d)(6) 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.

Amendment by section 1001(b)(22) 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 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

Pub. L. 94–455, title X, § 1022(b), Oct. 4, 1976, 90 Stat. 1619, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1975.''

For effective date of amendment by section 1042 of Pub. L. 94–455, see section 1042(e) of Pub. L. 94–455, set out as a note under section 367 of this title.

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)(3)(H), (32)(B)(iii) 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 sales or exchanges occurring 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

Pub. L. 87–834, § 15(c), Oct. 16, 1962, 76 Stat. 1044, provided that: ''The amendments made by this section [enacting this section] shall apply with respect to sales or exchanges occurring after December 31, 1962.''

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, § 1875(g)(3), Oct. 22, 1986, 100 Stat. 2897, provided that: ''An exchange shall be treated as occurring on or before March 1, 1986, if—

''(A) on or before such date, the taxpayer adopts a plan of reorganization to which section 356 [of the Internal Revenue Code of 1986] applies, and

''(B) such plan or reorganization is implemented and distributions pursuant to such plan are completed on or before the date of enactment of this Act [Oct. 22, 1986].''

§ 1249. Gain from certain sales or exchanges of patents, etc., to foreign corporations

(a) General rule

Gain from the sale or exchange of a patent, an invention, model, or design (whether or not patented), a copyright, a secret formula or process, or any other similar property right to any foreign corporation by any United States person (as defined in section 7701(a)(30)) which controls such foreign corporation shall, if such gain would (but for the provisions of this subsection) be gain from the sale or exchange of a capital asset or of property described in section 1231, be considered as ordinary income.

(b) Control

For purposes of subsection (a), control means, with respect to any foreign corporation, the ownership, directly or indirectly, of stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote. For purposes of this subsection, the rules for determining ownership of stock prescribed by section 958 shall apply.

(Added Pub. L. 87–834, § 16(a), Oct. 16, 1962, 76 Stat. 1045; amended Pub. L. 89–809, title I, § 104(m)(3), Nov. 13, 1966, 80 Stat. 1563; Pub. L. 94–455, title XIX, § 1901(b)(3)(K), Oct. 4, 1976, 90 Stat. 1793; Pub. L. 113–295, div. A, title II, § 221(a)(84), Dec. 19, 2014, 128 Stat. 4049.)

AMENDMENTS

2014—Subsec. (a). Pub. L. 113–295 struck out ''after December 31, 1962,'' before ''of a patent''.

1976—Subsec. (a). Pub. L. 94–455 substituted ''ordinary income'' for ''gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231''.

1966—Subsec. (a). Pub. L. 89–809 substituted ''Gain'' for ''Except as provided in subsection (c), gain''.

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 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, see sec-

tion 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

EFFECTIVE DATE

Pub. L. 87–834, §16(c), Oct. 16, 1962, 76 Stat. 1045, provided that: ''The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1962.''

§ 1250. Gain from dispositions of certain depreciable realty

(a) General rule

Except as otherwise provided in this section—

(1) Additional depreciation after December 31, 1975

(A) In general

If section 1250 property is disposed of after December 31, 1975, then the applicable percentage of the lower of—

(i) that portion of the additional depreciation (as defined in subsection (b)(1) or (4)) attributable to periods after December 31, 1975, in respect of the property, or

(ii) the excess of the amount realized (in the case of a sale, exchange, or involuntary conversion), or the fair market value of such property (in the case of any other disposition), over the adjusted basis of such property,

shall be treated as gain which is ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle.

(B) Applicable percentage

For purposes of subparagraph (A), the term ''applicable percentage'' means—

(i) in the case of section 1250 property with respect to which a mortgage is insured under section 221(d)(3) or 236 of the National Housing Act, or housing financed or assisted by direct loan or tax abatement under similar provisions of State or local laws and with respect to which the owner is subject to the restrictions described in section 1039(b)(1)(B) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990), 100 percent minus 1 percentage point for each full month the property was held after the date the property was held 100 full months;

(ii) in the case of dwelling units which, on the average, were held for occupancy by families or individuals eligible to receive subsidies under section 8 of the United States Housing Act of 1937, as amended, or under the provisions of State or local law authorizing similar levels of subsidy for lower-income families, 100 percent minus 1 percentage point for each full month the property was held after the date the property was held 100 full months;

(iii) in the case of section 1250 property with respect to which a depreciation deduction for rehabilitation expenditures was allowed under section 167(k), 100 percent minus 1 percentage point for each full month in excess of 100 full months after the date on which such property was placed in service;

(iv) in the case of section 1250 property with respect to which a loan is made or insured under title V of the Housing Act of 1949, 100 percent minus 1 percentage point for each full month the property was held after the date the property was held 100 full months; and

(v) in the case of all other section 1250 property, 100 percent.

In the case of a building (or a portion of a building devoted to dwelling units), if, on the average, 85 percent or more of the dwelling units contained in such building (or portion thereof) are units described in clause (ii), such building (or portion thereof) shall be treated as property described in clause (ii). Clauses (i), (ii), and (iv) shall not apply with respect to the additional depreciation described in subsection (b)(4) which was allowed under section 167(k).

(2) Additional depreciation after December 31, 1969, and before January 1, 1976

(A) In general

If section 1250 property is disposed of after December 31, 1969, and the amount determined under paragraph (1)(A)(ii) exceeds the amount determined under paragraph (1)(A)(i), then the applicable percentage of the lower of—

(i) that portion of the additional depreciation attributable to periods after December 31, 1969, and before January 1, 1976, in respect of the property, or

(ii) the excess of the amount determined under paragraph (1)(A)(ii) over the amount determined under paragraph (1)(A)(i),

shall also be treated as gain which is ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle.

(B) Applicable percentage

For purposes of subparagraph (A), the term ''applicable percentage'' means—

(i) in the case of section 1250 property disposed of pursuant to a written contract which was, on July 24, 1969, and at all times thereafter, binding on the owner of the property, 100 percent minus 1 percentage point for each full month the property was held after the date the property was held 20 full months;

(ii) in the case of section 1250 property with respect to which a mortgage is insured under section 221(d)(3) or 236 of the National Housing Act, or housing financed or assisted by direct loan or tax abatement under similar provisions of State or local laws, and with respect to which the owner is subject to the restrictions described in section 1039(b)(1)(B) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990), 100 percent minus 1 percentage point for each full month the property was held after the date the property was held 20 full months;

(iii) in the case of residential rental property (as defined in section 167(j)(2)(B)) other than that covered by clauses (i) and

(ii), 100 percent minus 1 percentage point for each full month the property was held after the date the property was held 100 full months;

(iv) in the case of section 1250 property with respect to which a depreciation deduction for rehabilitation expenditures was allowed under section 167(k), 100 percent minus 1 percentage point for each full month in excess of 100 full months after the date on which such property was placed in service; and

(v) in the case of all other section 1250 property, 100 percent.

Clauses (i), (ii), and (iii) shall not apply with respect to the additional depreciation described in subsection (b)(4).

(3) Additional depreciation before January 1, 1970

(A) In general

If section 1250 property is disposed of after December 31, 1963, and the amount determined under paragraph (1)(A)(ii) exceeds the sum of the amounts determined under paragraphs (1)(A)(i) and (2)(A)(i), then the applicable percentage of the lower of—

(i) that portion of the additional depreciation attributable to periods before January 1, 1970, in respect of the property, or

(ii) the excess of the amount determined under paragraph (1)(A)(ii) over the sum of the amounts determined under paragraphs (1)(A)(i) and (2)(A)(i),

shall also be treated as gain which is ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle.

(B) Applicable percentage

For purposes of subparagraph (A), the term ''applicable percentage'' means 100 percent minus 1 percentage point for each full month the property was held after the date on which the property was held for 20 full months.

(4) Special rule

For purposes of this subsection, any reference to section 167(k) or 167(j)(2)(B) shall be treated as a reference to such section as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990.

(5) Cross reference

For reduction in the case of corporations on capital gain treatment under this section, see section 291(a)(1).

(b) Additional depreciation defined

For purposes of this section—

(1) In general

The term ''additional depreciation'' means, in the case of any property, the depreciation adjustments in respect of such property; except that, in the case of property held more than one year, it means such adjustments only to the extent that they exceed the amount of the depreciation adjustments which would have resulted if such adjustments had been determined for each taxable year under the straight line method of adjustment.

(2) Property held by lessee

In the case of a lessee, in determining the depreciation adjustments which would have resulted in respect of any building erected (or other improvement made) on the leased property, or in respect of any cost of acquiring the lease, the lease period shall be treated as including all renewal periods. For purposes of the preceding sentence—

(A) the term ''renewal period'' means any period for which the lease may be renewed, extended, or continued pursuant to an option exercisable by the lessee, but

(B) the inclusion of renewal periods shall not extend the period taken into account by more than ⅔ of the period on the basis of which the depreciation adjustments were allowed.

(3) Depreciation adjustments

The term ''depreciation adjustments'' means, in respect of any property, all adjustments attributable to periods after December 31, 1963, reflected in the adjusted basis of such property on account of deductions (whether in respect of the same or other property) allowed or allowable to the taxpayer or to any other person for exhaustion, wear and tear, obsolescence, or amortization (other than amortization under section 168 (as in effect before its repeal by the Tax Reform Act of 1976), 169, 185 (as in effect before its repeal by the Tax Reform Act of 1986), 188 (as in effect before its repeal by the Revenue Reconciliation Act of 1990), 190, or 193). For purposes of the preceding sentence, if the taxpayer can establish by adequate records or other sufficient evidence that the amount allowed as a deduction for any period was less than the amount allowable, the amount taken into account for such period shall be the amount allowed.

(4) Additional depreciation attributable to rehabilitation expenditures

The term ''additional depreciation'' also means, in the case of section 1250 property with respect to which a depreciation or amortization deduction for rehabilitation expenditures was allowed under section 167(k) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) or 191 (as in effect before its repeal by the Economic Recovery Tax Act of 1981), the depreciation or amortization adjustments allowed under such section to the extent attributable to such property, except that, in the case of such property held for more than one year after the rehabilitation expenditures so allowed were incurred, it means such adjustments only to the extent that they exceed the amount of the depreciation adjustments which would have resulted if such adjustments had been determined under the straight line method of adjustment without regard to the useful life permitted under section 167(k) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) or 191 (as in effect before its repeal by the Economic Recovery Tax Act of 1981).

(5) Method of computing straight line adjustments

For purposes of paragraph (1), the depreciation adjustments which would have resulted for any taxable year under the straight line method shall be determined—

(A) in the case of property to which section 168 applies, by determining the adjustments which would have resulted for such year if the taxpayer had elected the straight line method for such year using the recovery period applicable to such property, and

(B) in the case any property to which section 168 does not apply, if a useful life (or salvage value) was used in determining the amount allowable as a deduction for any taxable year, by using such life (or value).

(c) Section 1250 property

For purposes of this section, the term ''section 1250 property'' means any real property (other than section 1245 property, as defined in section 1245(a)(3)) which is or has been property of a character subject to the allowance for depreciation provided in section 167.

(d) Exceptions and limitations

(1) Gifts

Subsection (a) shall not apply to a disposition by gift.

(2) Transfers at death

Except as provided in section 691 (relating to income in respect of a decedent), subsection (a) shall not apply to a transfer at death.

(3) Certain tax-free transactions

If the basis of property in the hands of a transferee is determined by reference to its basis in the hands of the transferor by reason of the application of section 332, 351, 361, 721, or 731, then the amount of gain taken into account by the transferor under subsection (a) shall not exceed the amount of gain recognized to the transferor on the transfer of such property (determined without regard to this section). Except as provided in paragraph (9), this paragraph shall not apply to a disposition to an organization (other than a cooperative described in section 521) which is exempt from the tax imposed by this chapter.

(4) Like kind exchanges; involuntary conversions, etc.

(A) Recognition limit

If property is disposed of and gain (determined without regard to this section) is not recognized in whole or in part under section 1031 or 1033, then the amount of gain taken into account by the transferor under subsection (a) shall not exceed the greater of the following:

(i) the amount of gain recognized on the disposition (determined without regard to this section), increased as provided in subparagraph (B), or

(ii) the amount determined under subparagraph (C).

(B) Increase for certain stock

With respect to any transaction, the increase provided by this subparagraph is the amount equal to the fair market value of any stock purchased in a corporation which (but for this paragraph) would result in nonrecognition of gain under section 1033(a)(2)(A).

(C) Adjustment where insufficient section 1250 property is acquired

With respect to any transaction, the amount determined under this subparagraph shall be the excess of—

(i) the amount of gain which would (but for this paragraph) be taken into account under subsection (a), over

(ii) the fair market value (or cost in the case of a transaction described in section 1033(a)(2)) of the section 1250 property acquired in the transaction.

(D) Basis of property acquired

In the case of property purchased by the taxpayer in a transaction described in section 1033(a)(2), in applying section 1033(b)(2), such sentence [1] shall be applied—

(i) first solely to section 1250 properties and to the amount of gain not taken into account under subsection (a) by reason of this paragraph, and

(ii) then to all purchased properties to which such sentence applies and to the remaining gain not recognized on the transaction as if the cost of the section 1250 properties were the basis of such properties computed under clause (i).

In the case of property acquired in any other transaction to which this paragraph applies, rules consistent with the preceding sentence shall be applied under regulations prescribed by the Secretary.

(E) Additional depreciation with respect to property disposed of

In the case of any transaction described in section 1031 or 1033, the additional depreciation in respect of the section 1250 property acquired which is attributable to the section 1250 property disposed of shall be an amount equal to the amount of the gain which was not taken into account under subsection (a) by reason of the application of this paragraph.

(5) Property distributed by a partnership to a partner

(A) In general

For purposes of this section, the basis of section 1250 property distributed by a partnership to a partner shall be deemed to be determined by reference to the adjusted basis of such property to the partnership.

(B) Additional depreciation

In respect of any property described in subparagraph (A), the additional depreciation attributable to periods before the distribution by the partnership shall be—

(i) the amount of the gain to which subsection (a) would have applied if such property had been sold by the partnership immediately before the distribution at its

[1] See References in Text note below.

fair market value at such time and the applicable percentage for the property had been 100 percent, reduced by

(ii) if section 751(b) applied to any part of such gain, the amount of such gain to which section 751(b) would have applied if the applicable percentage for the property had been 100 percent.

(6) Transfers to tax-exempt organization where property will be used in unrelated business

(A) In general

The second sentence of paragraph (3) shall not apply to a disposition of section 1250 property to an organization described in section 511(a)(2) or 511(b)(2) if, immediately after such disposition, such organization uses such property in an unrelated trade or business (as defined in section 513).

(B) Later change in use

If any property with respect to the disposition of which gain is not recognized by reason of subparagraph (A) ceases to be used in an unrelated trade or business of the organization acquiring such property, such organization shall be treated for purposes of this section as having disposed of such property on the date of such cessation.

(7) Foreclosure dispositions

If any section 1250 property is disposed of by the taxpayer pursuant to a bid for such property at foreclosure or by operation of an agreement or of process of law after there was a default on indebtedness which such property secured, the applicable percentage referred to in paragraph (1)(B), (2)(B), or (3)(B) of subsection (a), as the case may be, shall be determined as if the taxpayer ceased to hold such property on the date of the beginning of the proceedings pursuant to which the disposition occurred, or, in the event there are no proceedings, such percentage shall be determined as if the taxpayer ceased to hold such property on the date, determined under regulations prescribed by the Secretary, on which such operation of an agreement or process of law, pursuant to which the disposition occurred, began.

(e) Holding period

For purposes of determining the applicable percentage under this section, the provisions of section 1223 shall not apply, and the holding period of section 1250 property shall be determined under the following rules:

(1) Beginning of holding period

The holding period of section 1250 property shall be deemed to begin—

(A) in the case of property acquired by the taxpayer, on the day after the date of acquisition, or

(B) in the case of property constructed, reconstructed, or erected by the taxpayer, on the first day of the month during which the property is placed in service.

(2) Property with transferred basis

If the basis of property acquired in a transaction described in paragraph (1), (2), or (3) of subsection (d) is determined by reference to its basis in the hands of the transferor, then the holding period of the property in the hands of the transferee shall include the holding period of the property in the hands of the transferor.

(f) Special rules for property which is substantially improved

(1) Amount treated as ordinary income

If, in the case of a disposition of section 1250 property, the property is treated as consisting of more than one element by reason of paragraph (3), then the amount taken into account under subsection (a) in respect of such section 1250 property as ordinary income shall be the sum of the amounts determined under paragraph (2).

(2) Ordinary income attributable to an element

For purposes of paragraph (1), the amount taken into account for any element shall be the sum of a series of amounts determined for the periods set forth in subsection (a), with the amount for any such period being determined by multiplying—

(A) the amount which bears the same ratio to the lower of the amounts specified in clause (i) or (ii) of subsection (a)(1)(A), in clause (i) or (ii) of subsection (a)(2)(A), or in clause (i) or (ii) of subsection (a)(3)(A), as the case may be, for the section 1250 property as the additional depreciation for such element attributable to such period bears to the sum of the additional depreciation for all elements attributable to such period, by

(B) the applicable percentage for such element for such period.

For purposes of this paragraph, determinations with respect to any element shall be made as if it were a separate property.

(3) Property consisting of more than one element

In applying this subsection in the case of any section 1250 property, there shall be treated as a separate element—

(A) each separate improvement,

(B) if, before completion of section 1250 property, units thereof (as distinguished from improvements) were placed in service, each such unit of section 1250 property, and

(C) the remaining property which is not taken into account under subparagraphs (A) and (B).

(4) Property which is substantially improved

For purposes of this subsection—

(A) In general

The term ''separate improvement'' means each improvement added during the 36–month period ending on the last day of any taxable year to the capital account for the property, but only if the sum of the amounts added to such account during such period exceeds the greatest of—

(i) 25 percent of the adjusted basis of the property,

(ii) 10 percent of the adjusted basis of the property, determined without regard to the adjustments provided in paragraphs (2) and (3) of section 1016(a), or

(iii) $5,000.

For purposes of clauses (i) and (ii), the adjusted basis of the property shall be deter-

mined as of the beginning of the first day of such 36–month period, or of the holding period of the property (within the meaning of subsection (e)), whichever is the later.

(B) Exception

Improvements in any taxable year shall be taken into account for purposes of subparagraph (A) only if the sum of the amounts added to the capital account for the property for such taxable year exceeds the greater of—

(i) $2,000, or

(ii) one percent of the adjusted basis referred to in subparagraph (A)(ii), determined, however, as of the beginning of such taxable year.

For purposes of this section, if the amount added to the capital account for any separate improvement does not exceed the greater of clause (i) or (ii), such improvement shall be treated as placed in service on the first day, of a calendar month, which is closest to the middle of the taxable year.

(C) Improvement

The term ''improvement'' means, in the case of any section 1250 property, any addition to capital account for such property after the initial acquisition or after completion of the property.

(g) Adjustments to basis

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 (a).

(h) Application of section

This section shall apply notwithstanding any other provision of this subtitle.

(Added Pub. L. 88–272, title II, §231(a), Feb. 26, 1964, 78 Stat. 100; amended Pub. L. 91–172, title V, §521(b), (c), (e), title VII, §704(b)(5), title IX, §910(b), Dec. 30, 1969, 83 Stat. 652, 653, 670, 720; Pub. L. 92–178, title III, §303(c)(3), Dec. 10, 1971, 85 Stat. 522; Pub. L. 93–625, §5(c), Jan. 3, 1975, 88 Stat. 2112; Pub. L. 94–81, §2(b), Aug. 9, 1975, 89 Stat. 417; Pub. L. 94–455, title II, §202(a)–(c)(1), (2), title XIX, §§1901(b)(3)(K), (31)(A), (B), (E), 1906(b)(13)(A), 1951(c)(2)(C), title XXI, §§2122(b)(4), 2124(a)(3)(D), Oct. 4, 1976, 90 Stat. 1527, 1529, 1530, 1793, 1799, 1800, 1834, 1840, 1915, 1918; Pub. L. 95–600, title IV, §§404(c)(7), 405(c)(4), title VII, §701(f)(3)(C), (E), Nov. 6, 1978, 92 Stat. 2870, 2871, 2901; Pub. L. 96–222, title I, §107(a)(1)(D), Apr. 1, 1980, 94 Stat. 222; Pub. L. 96–223, title II, §251(a)(2)(D), Apr. 2, 1980, 94 Stat. 287; Pub. L. 97–34, title II, §§204(e), 212(d)(2)(F), Aug. 13, 1981, 95 Stat. 223, 239; Pub. L. 97–448, title I, §102(a)(7), Jan. 12, 1983, 96 Stat. 2368; Pub. L. 98–369, div. A, title VII, §712(a)(1)(B), July 18, 1984, 98 Stat. 946; Pub. L. 99–514, title II, §242(b)(2), Oct. 22, 1986, 100 Stat. 2181; Pub. L. 100–647, title I, §1002(a)(1), Nov. 10, 1988, 102 Stat. 3352; Pub. L. 101–239, title VII, §7831(b), Dec. 19, 1989, 103 Stat. 2426; Pub. L. 101–508, title XI, §§11801(c)(6)(F), (8)(I), (15), 11812(b)(11), (12), Nov. 5, 1990, 104 Stat. 1388–524, 1388–527, 1388–536; Pub. L. 104–7, §2(b), Apr. 11, 1995, 109 Stat. 93; Pub. L. 104–188, title I, §1702(h)(18), Aug. 20, 1996, 110 Stat. 1874; Pub. L. 105–34, title III, §312(d)(10), Aug. 5, 1997, 111 Stat. 840; Pub. L. 105–206, title VI, §6023(12), July 22, 1998, 112 Stat. 825; Pub. L. 109–58, title XIII, §1331(b)(3), Aug. 8, 2005, 119 Stat. 1024; Pub. L. 109–135, title IV, §402(a)(7), (h), Dec. 21, 2005, 119 Stat. 2610, 2611.)

REFERENCES IN TEXT

Sections 221 and 236 of the National Housing Act, referred to in subsec. (a)(1)(B)(i), (2)(B)(ii), are classified to sections 1715*l* and 1715z–1, respectively, of Title 12, Banks and Banking.

The date of the enactment of the Revenue Reconciliation Act of 1990, referred to in subsecs. (a)(1)(B)(i), (2)(B)(ii), (4) and (b)(4), is the date of enactment of Pub. L. 101–508, which was approved Nov. 5, 1990.

Section 8 of the United States Housing Act of 1937, referred to in subsec. (a)(1)(B)(ii), is classified to section 1437f of Title 42, The Public Health and Welfare.

The Housing Act of 1949, referred to in subsec. (a)(1)(B)(iv), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended. Title V of the Housing Act of 1949 is classified generally to subchapter III (§1471 et seq.) of chapter 8A of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of Title 42 and Tables.

The Tax Reform Act of 1976, referred to in subsec. (b)(3), is Pub. L. 94–455, Oct. 4, 1976, 90 Stat. 1520, as amended. Section 1951(a)(4)(A) of the Act repealed section 168 of this title. For complete classification of this Act to the Code, see Tables.

The Tax Reform Act of 1986, referred to in subsec. (b)(3), is Pub. L. 99–514, Oct. 22, 1986, 100 Stat. 2085. Section 242(a) of the Act repealed section 185 of this title. For complete classification of this Act to the Code, see Tables.

The Revenue Reconciliation Act of 1990, referred to in subsec. (b)(3), is title XI of Pub. L. 101–508, Nov. 5, 1990, 104 Stat. 1388–400. Section 11801(a)(13) of the Act repealed section 188 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1 of this title and Tables.

The Economic Recovery Tax Act of 1981, referred to in subsec. (b)(4), is Pub. L. 97–34, Aug. 13, 1981, 95 Stat. 172, as amended. Section 191 of this title was repealed by section 212(d)(1) of Pub. L. 97–34. For complete classification of this Act to the Code, see Tables.

Such sentence, referred to in subsec. (d)(4)(D), probably should be a reference to section 1033(b)(2) of this title, following the amendment by Pub. L. 105–206, §6023(12), which substituted ''section 1033(b)(2)'' for ''the last sentence of section 1033(b)'' in the preceding reference. See 1998 Amendment note below.

AMENDMENTS

2005—Subsec. (b)(3). Pub. L. 109–135, §402(h), struck out ''or by section 179D'' after ''190, or 193)''.

Pub. L. 109–58, §1331(b)(3), inserted ''or by section 179D'' after ''190, or 193)''.

Subsec. (d)(5) to (8). Pub. L. 109–135, §402(a)(7)(A), redesignated pars. (6) to (8) as (5) to (7), respectively, and struck out heading and text of former par. (5). Text read as follows: ''Under regulations prescribed by the Secretary, rules consistent with paragraphs (3) and (4) of this subsection and with subsections (e) and (f) shall apply in the case of transactions described in section 1081 (relating to exchanges in obedience to SEC orders).''

Subsec. (e)(2). Pub. L. 109–135, §402(a)(7)(B), substituted ''or (3)'' for ''(3), or (5)''.

1998—Subsec. (d)(4)(D). Pub. L. 105–206 substituted ''section 1033(b)(2)'' for ''the last sentence of section 1033(b)'' in introductory provisions.

1997—Subsec. (d)(7) to (10). Pub. L. 105–34, §312(d)(10)(A), redesignated pars. (9) and (10) as (7) and (8), respectively, and struck out heading and text of former par. (7). Text read as follows: ''Subsection (a) shall not apply to a disposition of—

''(A) property to the extent used by the taxpayer as his principal residence (within the meaning of section

1034, relating to rollover of gain on sale of principal residence), and

''(B) property in respect of which the taxpayer meets the age and ownership requirements of section 121 (relating to one-time exclusion of gain from sale of principal residence by individual who has attained age 55) but only to the extent that he meets the use requirements of such section in respect of such property.''

Subsec. (e)(3). Pub. L. 105–34, § 312(d)(10)(B), struck out heading and text of par. (3). Text read as follows: ''If the basis of property acquired in a transaction described in paragraph (7) of subsection (d) is determined by reference to the basis in the hands of the taxpayer of other property, then the holding period of the property acquired shall include the holding period of such other property.''

1996—Subsec. (e)(4). Pub. L. 104–188 struck out par. (4) which read as follows:

''(4) QUALIFIED LOW-INCOME HOUSING.—The holding period of any section 1250 property acquired which is described in subsection (d)(8)(E)(i) shall include the holding period of the corresponding element of section 1250 property disposed of.''

1995—Subsec. (d)(5). Pub. L. 104–7 struck out ''1071 and'' before ''1081 transactions'' in heading and ''section 1071 (relating to gain from sale or exchange to effectuate policies of FCC) or'' before ''section 1081'' in text.

1990—Subsec. (a)(1)(B)(i), (2)(B)(ii). Pub. L. 101–508, § 11801(c)(15)(A), which directed the insertion of ''(as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)'' after ''section 1039(b)(1)(B)'' in pars. (1)(A)(i) and (2)(B)(ii) of subsec. (a), was executed to pars. (1)(B)(i) and (2)(B)(ii) to reflect the probable intent of Congress.

Subsec. (a)(4), (5). Pub. L. 101–508, § 11812(b)(11), added par. (4) and redesignated former par. (4) as (5).

Subsec. (b)(3). Pub. L. 101–508, § 11801(c)(6)(F), substituted ''188 (as in effect before its repeal by the Revenue Reconciliation Act of 1990),'' for ''188,''.

Subsec. (b)(4). Pub. L. 101–508, § 11812(b)(12), substituted ''section 167(k) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)'' for ''section 167(k)'' in two places.

Subsec. (d)(3). Pub. L. 101–508, § 11801(c)(8)(I), struck out ''371(a), 374(a),'' after ''332, 351, 361,''.

Subsec. (d)(8). Pub. L. 101–508, § 11801(c)(15)(B), struck out par. (8) which related to the treatment of gain from the disposition of qualified low-income housing.

Subsecs. (g) to (i). Pub. L. 101–508, § 11801(c)(15)(C), redesignated subsecs. (h) and (i) as (g) and (h), respectively, and struck out former subsec. (g) which provided special rules for qualified low-income housing.

1989—Subsec. (b)(5)(A). Pub. L. 101–239, § 7831(b)(1), substituted ''of property to which section 168 applies'' for ''of recovery property''.

Subsec. (b)(5)(B). Pub. L. 101–239, § 7831(b)(2), substituted ''to which section 168 does not apply'' for ''which is not recovery property''.

1988—Subsec. (d)(11). Pub. L. 100–647 struck out par. (11) which related to section 1245 recovery property.

1986—Subsec. (b)(3). Pub. L. 99–514 inserted ''(as in effect before its repeal by the Tax Reform Act of 1986)'' after ''185''.

1984—Subsec. (a)(4). Pub. L. 98–369 added par. (4).

1983—Subsec. (b)(1). Pub. L. 97–448, § 102(a)(7)(B), struck out last sentence providing that, for purposes of defining ''additional depreciation'', if a useful life (or salvage value) was used in determining the amount allowed as a deduction for any taxable year, such life (or value) was to be used in determining the depreciation adjustments which would have resulted for such year under the straight line method.

Subsec. (b)(5). Pub. L. 97–448, § 102(a)(7)(A), added par. (5).

1981—Subsec. (b)(4). Pub. L. 97–34, § 212(d)(2)(F), inserted ''(as in effect before its repeal by the Economic Recovery Tax Act of 1981)'' after ''section 167(k) or 191'' in two places.

Subsec. (d)(11). Pub. L. 97–34, § 204(e), added par. (11).

1980—Subsec. (a)(1)(B). Pub. L. 96–222 inserted ''which was allowed under section 167(k)'' at end of last sentence.

Subsec. (b)(3). Pub. L. 96–223 inserted reference to section 193.

1978—Subsec. (b)(3). Pub. L. 95–600, § 701(f)(3)(C), struck out reference to section 191.

Subsec. (b)(4). Pub. L. 95–600, § 701(f)(3)(E), inserted reference to amortization deduction, amortization adjustments, and to section 191 in two places.

Subsec. (d)(7)(A). Pub. L. 95–600, § 405(c)(4), substituted ''relating to rollover of gain on sale of principal residence'' for ''relating to sale or exchange of residence''.

Subsec. (d)(7)(B). Pub. L. 95–600, § 404(c)(7), inserted provisions relating to a one-time exclusion and principal residence and substituted ''55'' for ''65''.

1976—Subsec. (a). Pub. L. 94–455, § 202(a), in revising text generally, made the following changes:

(1) Added par. (1).

(2) Redesignated as pars. (2) and (3) existing pars. (1) and (2).

(3) Made the following changes in par. (2): inserted in heading '', and before January 1, 1976''; designated introductory text as subpar. ''(A) In general''; inserted therein ''and the amount determined under paragraph (1)(A)(ii) exceeds the amount determined under paragraph (1)(A)(i), then''; redesignated as cl. (i) existing subpar. (A); substituted therein ''attributable to periods after December 31, 1969, and before January 1, 1976'' for ''(as defined in subsection (b)(1) or (4) attributable to periods after December 31, 1969''; substituted cl. (ii) and concluding text for subpar. (B) and concluding text which read:

''(B) the excess of—

''(i) the amount realized (in the case of a sale, exchange, or involuntary conversion), or the fair market value of such property (in the case of any other disposition), over

''(ii) the adjusted basis of such property,

shall be treated as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231. Such gain shall be recognized notwithstanding any other provision of this subtitle.''; redesignated as subpar. (B) existing subpar. (C); substituted therein introductory ''subparagraph (A)'' for ''paragraph (1)''; and deleted from cl. (ii) ''constructed, reconstructed, or acquired by the taxpayer before January 1, 1976,'' after ''section 1250 property'' and ''is'' before ''financed'', and substituted ''1'' for ''one''.

(4) Made the following changes in par. (3): substituted in subpar. (A) ''determined under paragraph (1)(A)(ii) exceeds the sum of the amounts determined under paragraphs (1)(A)(i) and (2)(A)(i)'' for ''determined under paragraph (1)(B) exceeds the amount determined under paragraph (1)(A)''; and substituted subpar. (A)(ii) and concluding text for par. (2)(A)(ii), and concluding text which read:

''(ii) the excess of the amount determined under paragraph (1)(B) over the amount determined under paragraph (1)(A),

shall also be treated as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231. Such gain shall be recognized notwithstanding any other provisions of this subtitle.''

Subsec. (b)(3). Pub. L. 94–455, §§ 1951(c)(2)(C), 2122(b)(4), 2124(a)(3)(D), inserted ''(as in effect before its repeal by the Tax Reform Act of 1976)'' after ''section 168'' and reference to sections 190 and 191.

Subsec. (d)(4)(B). Pub. L. 94–455, § 1901(b)(31)(A), substituted reference to section ''1033(a)(2)(A)'' for ''1033(a)(3)(A)''.

Subsec. (d)(4)(C). Pub. L. 94–455, § 1901(b)(31)(B), substituted reference to section ''1033(a)(2)'' for ''1033(a)(3)''.

Subsec. (d)(4)(D). Pub. L. 94–455, §§ 1901(b)(31)(B), (E), 1906(b)(13)(A), substituted reference to sections ''1033(a)(2)'' and ''1033(b)'' for ''1033(a)(3)'' and ''1033(c)'', respectively, and struck out ''or his delegate'' after ''Secretary''.

Subsec. (d)(5), (8)(F)(ii). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (d)(10). Pub. L. 94–455, §202(b), added par. (10).

Subsec. (f)(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''.

Subsec. (f)(2). Pub. L. 94–455, §202(c)(1), substituted introductory text ''the sum of a series of amounts determined for the periods set forth in subsection (a), with the amount for any such period being determined by multiplying'' for ''the sum of—(A) the amount (if any) determined by multiplying''; substituted subpar. (A) as combined text for prior subpars. (A)(i) and (B)(i) reading ''(i) the amount which bears the same ratio to the lower of the amounts specified in subparagraph (A) or (B) of subsection (a)(1) for the section 1250 property as the additional depreciation for such element attributable to periods after December 31, 1969, bears to the sum of the additional depreciation for all elements attributable to periods after December 31, 1969, by'' and ''(i) the amount which bears the same ratio to the lower of the amounts specified in subsection (a)(2)(A)(i) or (ii) for the section 1250 property as the additional depreciation for such element attributable to periods before January 1, 1970, bears to the sum of the additional depreciation for all elements attributable to periods before January 1, 1970, by''; and substituted subpar. (B) as combined text for prior subpars. (A)(ii) and (B)(ii), inserting therein ''for such period'' after ''for such element''.

Subsec. (g)(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''.

Subsec. (g)(2). Pub. L. 94–455, §202(c)(2), substituted ''shall be determined in a manner similar to that provided by subsection (f)(2).'' for ''shall be the amount determined by multiplying—

''(A) the amount which bears the same ratio to the lower of the additional depreciation or the gain recognized for the section 1250 property disposed of as the additional depreciation for such element bears to the sum of the additional depreciation for all elements disposed of, by

''(B) the applicable percentage for such element.

For purposes of this paragraph, determinations with respect to any element shall be made as if it were a separate property.''

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

1975—Subsec. (a)(1)(C)(ii). Pub. L. 93–625 substituted ''January 1, 1976'' for ''January 1, 1975''.

Subsec. (d)(3), (9). Pub. L. 94–81, §2(b), inserted reference to par. (9) in par. (3), and added par. (9).

1971—Subsec. (b)(3). Pub. L. 92–178 inserted reference to section 188.

1969—Subsec. (a). Pub. L. 91–172, §521(b), modified the recapture rules pertaining to residential housing by allowing a 1 percent per month reduction in the amount to be recaptured as ordinary income after the property has been held for 100 full months, with other real property remaining subject to full recapture, applied the existing recapture rules where the sale of property was subject to a binding contract in existence prior to July 25, 1969, provided that changes in the recapture rules are not to apply in federally assisted projects (such as programs under section 221(d)(3) or 236 of the National Housing Act) or to other publicly assisted housing programs under which the return to the investor is limited on a comparable basis, thereby rendering these projects subject to a recapture of the depreciation in full if the sale occurs in the first 12 months and for a phaseout of the recapture of the excess of accelerated over straight-line depreciation after 20 months, the recapture being reduced at the rate of 1 percent per month until 120 months after which no recapture applies, with such recapture rules to continue to apply only with respect to such property constructed, reconstructed, or acquired before Jan. 1, 1975, and applied new recapture rules to depreciation attributable to periods after Dec. 31, 1969.

Subsec. (b)(4). Pub. L. 91–172, §512(c), added par. (4).

Subsec. (b)(3). Pub. L. 91–172, §704(b)(5), inserted reference to sections 169 and 185.

Subsec. (d). Pub. L. 91–172, §§521(e)(1), 910(b)(1), substituted ''subsection (a)'' for ''subsection (a)(1)'' wherever it appears and added par. (8).

Subsec. (e)(4). Pub. L. 91–172, §910(b)(2), added par. (4).

Subsec. (f)(1). Pub. L. 91–172, §521(e)(2)(A), substituted ''subsection (a)'' for ''subsection (a)(1)''.

Subsec. (f)(2). Pub. L. 91–172, §521(e)(2)(B), redesignated subpars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (A) and, in cls. (i) and (ii) as so redesignated, inserted reference to depreciation attributable to periods after Dec. 31, 1969, and added subpar. (B).

Subsecs. (g) to (i). Pub. L. 91–172, §910(b)(3), added subsec. (g) and redesignated former subsecs. (g) and (h) as (h) and (i), respectively.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendments by Pub. L. 109–135 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109–58, to which they relate, but amendment by section 402(a)(7) of Pub. L. 109–135 not applicable with respect to any transaction ordered in compliance with the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.) before its repeal, see section 402(m) of Pub. L. 109–135, set out as an Effective and Termination Dates of 2005 Amendments note under section 23 of this title.

Amendment by Pub. L. 109–58 applicable to property placed in service after Dec. 31, 2005, see section 1331(d) of Pub. L. 109–58, set out as an Effective Date note under section 179D of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105–34, set out as a note under section 121 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 1995 AMENDMENT

Amendment by Pub. L. 104–7 applicable to sales and exchanges on or after January 17, 1995, and to sales and exchanges before such date if FCC tax certificate with respect to such sale or exchange was issued on or after such date, but not applicable with respect to certain binding contracts, see section 2(d) of Pub. L. 104–7, set out as an Effective Date of Repeal note under section 1071 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11812(b)(11), (12) 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 as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 7831(g) 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 that portion of the basis of any property which is attributable to expenditures paid or incurred after Dec. 31, 1986, except as otherwise provided, see section 242(c) of Pub. L. 99–514, set out as an Effective Date of Repeal note under former section 185 of this title.

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 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 204(e) of Pub. L. 97–34 applicable to property placed in service after Dec. 31, 1980, in taxable years ending after that date, see section 209(a) of Pub. L. 97–34, set out as an Effective Date note under section 168 of this title.

Amendment by section 212(d)(2)(F) of 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 1980 AMENDMENTS

Amendment by Pub. L. 96–223 applicable to taxable years beginning after Dec. 31, 1979, see section 251(b) of Pub. L. 96–223, set out as an Effective Date note under section 193 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 404(c)(7) of Pub. L. 95–600 applicable to sales or exchanges after July 26, 1978, in taxable years ending after such date, see section 404(d)(1) of Pub. L. 95–600, set out as a note under section 121 of this title.

Amendment by section 405(c)(4) of Pub. L. 95–600 applicable to sales and exchanges of residences after July 26, 1978, in taxable years ending after such date, see section 405(d) of Pub. L. 95–600, set out as a note under section 1038 of this title.

Amendment by section 701(f)(3)(C), (E) of Pub. L. 95–600 effective as if included within the amendment of subsec. (b)(3) and (4) by section 2124 of Pub. L. 94–455, see section 701(f)(8) of Pub. L. 95–600, set out as an Effective and Termination Dates of 1978 Amendments note under section 167 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title II, § 202(d), Oct. 4, 1976, 90 Stat. 1530, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section (other than subsection (b)) [amending this section and section 167 of this title] shall apply for taxable years ending after December 31, 1975. The amendment made by subsection (b) [amending this section] shall apply with respect to proceedings (and to operations of law) referred to in section 1250(d)(10) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] which begin after December 31, 1975.''

Amendment by section 1901(b)(3)(K), (31)(A), (B), (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.

Amendment by section 1951(c)(2)(C) of Pub. L. 94–455 applicable 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.

Amendment by section 2122(b)(4) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1976, and before Jan. 1, 1983, see section 2122(c) of Pub. L. 94–455, as amended by Pub. L. 96–167, 9(c), Dec. 29, 1979, 93 Stat. 1278, set out as a note under section 190 of this title.

Amendment by section 2124(a)(3)(D) of Pub. L. 94–455 applicable with respect to additions to capital accounts made after June 14, 1976 and before June 15, 1981, see section 2124(a)(4) of Pub. L. 94–455, set out as an Effective Date note under section 642 of this title.

EFFECTIVE DATE OF 1975 AMENDMENTS

Pub. L. 94–81, § 2(c), Aug. 9, 1975, 89 Stat. 418, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2) the amendments made by this section [amending this section and section 1245 of this title] shall apply to dispositions after December 31, 1969, in taxable years ending after such date.

''(2) ELECTION FOR PAST TRANSACTIONS.—In the case of any disposition occurring before the date of the enactment of this Act [Aug. 9, 1975], the amendments made by this section shall apply only if the organization acquiring the property elects (in the manner provided by regulations prescribed by the Secretary of the Treasury or his delegate) within 1 year after the date of the enactment of this Act to have such amendments apply with respect to such property.''

Amendment by Pub. L. 93–625 applicable with respect to property placed in service after Dec. 31, 1973, see section 5(d) of Pub. L. 93–625, set out as a note under section 167 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–178 applicable to taxable years ending after Dec. 31, 1971, see section 303(d) of Pub. L. 92–178, set out as a note under section 642 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 521(b), (c), (e) of Pub. L. 91–172 applicable with respect to taxable years ending after July 24, 1969, see section 521(g) of Pub. L. 91–172, set out as a note under section 167 of this title.

Amendment by section 704(b)(5) 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.

Pub. L. 91–172, title IX, § 910(d), Dec. 30, 1969, 83 Stat. 722, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [enacting section 1039 of this title and amending this section] shall apply to approved dispositions of qualified housing projects (within the meaning of section 1039 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] as added by subsection (a)) after October 9, 1969.''

EFFECTIVE DATE

Pub. L. 88–272, title II, § 231(c), Feb. 26, 1964, 78 Stat. 105, provided that: ''The amendments made by this section [enacting this section and amending sections 170, 301, 312, 341, 453, 751, and the analysis preceding section 1231 of this title] shall apply to dispositions after December 31, 1963, 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.

[§ 1251. Repealed. Pub. L. 98–369, div. A, title IV, § 492(a), July 18, 1984, 98 Stat. 853]

Section, added Pub. L. 91–172, title II, § 211(a), Dec. 30, 1969, 83 Stat. 566; amended Pub. L. 92–178, title III, § 305(a), Dec. 10, 1971, 85 Stat. 524; Pub. L. 94–455, title II, § 206(a), (b)(1), (2), title XIV, § 1402(b)(1)(Z), (2), title XIX, §§ 1901(b)(3)(K), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1535, 1732, 1793, 1834; Pub. L. 97–354, § 5(a)(36), Oct. 19, 1982, 96 Stat. 1695; Pub. L. 98–369, div. A, title X, § 1001(b)(23), (e), July 18, 1984, 98 Stat. 1012, related to gain from disposition of property used in farming where farm losses offset nonfarm income.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 1983, see section 492(d) of Pub. L. 98–369, set out as an Effective Date of 1984 Amendment note under section 170 of this title.

§ 1252. Gain from disposition of farm land

(a) General rule

(1) Ordinary income

Except as otherwise provided in this section, if farm land which the taxpayer has held for less than 10 years is disposed of during a taxable year beginning,[1] the lower of—

(A) the applicable percentage of the aggregate of the deductions allowed under sections 175 (relating to soil and water conservation expenditures) and 182[2] (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) for expenditures made by the taxpayer with respect to the farm land or

(B) the excess of—

(i) the amount realized (in the case of a sale, exchange, or involuntary conversion), or the fair market value of the farm land (in the case of any other disposition), over

(ii) the adjusted basis of such land,

shall be treated as ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle.

(2) Farm land

For purposes of this section, the term ''farm land'' means any land with respect to which deductions have been allowed under sections 175 (relating to soil and water conservation expenditures) or 182[2] (relating to expenditures by farmers for clearing land).

(3) Applicable percentage

For purposes of this section—

If the farm land is disposed of—	The applicable percentage is—
Within 5 years after the date it was acquired	100 percent.
Within the sixth year after it was acquired	80 percent.
Within the seventh year after it was acquired	60 percent.
Within the eighth year after it was acquired	40 percent.
Within the ninth year after it was acquired	20 percent.
10 years or more years after it was acquired	0 percent.

(b) Special rules

Under regulations prescribed by the Secretary, rules similar to the rules of section 1245 shall be applied for purposes of this section.

(Added Pub. L. 91–172, title II, § 214(a), Dec. 30, 1969, 83 Stat. 572; amended Pub. L. 94–455, title XIX, §§ 1901(b)(3)(K), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1793, 1834; Pub. L. 98–369, div. A, title IV, § 492(b)(5), July 18, 1984, 98 Stat. 854; Pub. L. 99–514, title IV, § 402(b)(2), Oct. 22, 1986, 100 Stat. 2221; Pub. L. 113–295, div. A, title II, § 221(a)(85), Dec. 19, 2014, 128 Stat. 4049.)

REFERENCES IN TEXT

Section 182, referred to in subsec. (a), was repealed by Pub. L. 99–514, title IV, § 402(a), Oct. 22, 1986, 100 Stat. 2221.

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (a)(1)(A), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

AMENDMENTS

2014—Subsec. (a)(1). Pub. L. 113–295, § 221(a)(85)(A), struck out ''after December 31, 1969'' after ''beginning'' in introductory provisions.

Subsec. (a)(1)(A). Pub. L. 113–295, § 221(a)(85)(B), struck out ''after December 31, 1969,'' after ''taxpayer''.

1986—Subsec. (a)(1)(A). Pub. L. 99–514 substituted ''(as in effect on the day before the date of the enactment of the Tax Reform Act of 1986)'' for ''(relating to expenditures by farmers for clearing land)''.

1984—Subsec. (a)(1). Pub. L. 98–369 struck out '', except that this section shall not apply to the extent section 1251 applies to such gain'' after ''of this subtitle'' in last sentence.

1976—Subsec. (a)(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''.

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

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 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to amounts paid or incurred after Dec. 31, 1985, in taxable years ending after such date, see section 402(c) of Pub. L. 99–514, set out as an Effective Date of Repeal note under former section 182 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 492(d) of Pub. L. 98–369, set out as a note under section 170 of this title.

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

Pub. L. 91–172, title II, § 214(c), Dec. 30, 1969, 83 Stat. 573, provided that: ''The amendments made by this sec-

[1] So in original.

[2] See References in Text note below.

tion [enacting this section] shall apply to taxable years beginning after December 31, 1969.''

§ 1253. Transfers of franchises, trademarks, and trade names

(a) General rule

A transfer of a franchise, trademark, or trade name shall not be treated as a sale or exchange of a capital asset if the transferor retains any significant power, right, or continuing interest with respect to the subject matter of the franchise, trademark, or trade name.

(b) Definitions

For purposes of this section—

(1) Franchise

The term ''franchise'' includes an agreement which gives one of the parties to the agreement the right to distribute, sell, or provide goods, services, or facilities, within a specified area.

(2) Significant power, right, or continuing interest

The term ''significant power, right, or continuing interest'' includes, but is not limited to, the following rights with respect to the interest transferred:

(A) A right to disapprove any assignment of such interest, or any part thereof.

(B) A right to terminate at will.

(C) A right to prescribe the standards of quality of products used or sold, or of services furnished, and of the equipment and facilities used to promote such products or services.

(D) A right to require that the transferee sell or advertise only products or services of the transferor.

(E) A right to require that the transferee purchase substantially all of his supplies and equipment from the transferor.

(F) A right to payments contingent on the productivity, use, or disposition of the subject matter of the interest transferred, if such payments constitute a substantial element under the transfer agreement.

(3) Transfer

The term ''transfer'' includes the renewal of a franchise, trademark, or trade name.

(c) Treatment of contingent payments by transferor

Amounts received or accrued on account of a transfer, sale, or other disposition of a franchise, trademark, or trade name which are contingent on the productivity, use, or disposition of the franchise, trademark, or trade name transferred shall be treated as amounts received or accrued from the sale or other disposition of property which is not a capital asset.

(d) Treatment of payments by transferee

(1) Contingent serial payments

(A) In general

Any amount described in subparagraph (B) which is paid or incurred during the taxable year on account of a transfer, sale, or other disposition of a franchise, trademark, or trade name shall be allowed as a deduction under section 162(a) (relating to trade or business expenses).

(B) Amounts to which paragraph applies

An amount is described in this subparagraph if it—

(i) is contingent on the productivity, use, or disposition of the franchise, trademark, or trade name, and

(ii) is paid as part of a series of payments—

(I) which are payable not less frequently than annually throughout the entire term of the transfer agreement, and

(II) which are substantially equal in amount (or payable under a fixed formula).

(2) Other payments

Any amount paid or incurred on account of a transfer, sale, or other disposition of a franchise, trademark, or trade name to which paragraph (1) does not apply shall be treated as an amount chargeable to capital account.

(3) Renewals, etc.

For purposes of determining the term of a transfer agreement under this section, there shall be taken into account all renewal options (and any other period for which the parties reasonably expect the agreement to be renewed).

(Added Pub. L. 91–172, title V, § 516(c)(1), Dec. 30, 1969, 83 Stat. 647; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 101–239, title VII, § 7622(a)–(c), Dec. 19, 1989, 103 Stat. 2377; Pub. L. 101–508, title XI, § 11701(i), Nov. 5, 1990, 104 Stat. 1388–508; Pub. L. 103–66, title XIII, § 13261(c), Aug. 10, 1993, 107 Stat. 539; Pub. L. 104–188, title I, § 1704(t)(47), Aug. 20, 1996, 110 Stat. 1889; Pub. L. 108–357, title VIII, § 886(b)(3), Oct. 22, 2004, 118 Stat. 1641.)

AMENDMENTS

2004—Subsec. (e). Pub. L. 108–357 struck out heading and text of subsec. (e). Text read as follows: ''This section shall not apply to the transfer of a franchise to engage in professional football, basketball, baseball, or other professional sport.''

1996—Subsec. (d)(4). Pub. L. 104–188 provided that section 11701(i) of Pub. L. 101–508 shall be applied as if ''subsection'' appeared instead of ''section'' in the material proposed to be stricken. See 1990 Amendment note below.

1993—Subsec. (d)(2) to (5). Pub. L. 103–66 added pars. (2) and (3) and struck out former pars. (2) relating to deduction of certain payments for transfer of a franchise, trademark, or trade name not treated as sale or exchange of capital asset, (3) relating to treatment of amounts paid or incurred on account of transfer, sale, or other disposition of a franchise, trademark, or trade name to which pars. (1) and (2) did not apply, (4) relating to renewals for purposes of determining term of transfer agreement under this section or period of amortization under this subtitle, and (5) relating to rules applicable to this subsection.

1990—Subsec. (d)(4). Pub. L. 101–508, § 11701(i), which directed the substitution of ''under this section or any period of amortization under this subtitle for any payment described in this section'' for ''or any period of amortization under this section'', was executed by making the substitution for ''or any period of amortization under this subsection''. See 1996 Amendment note above.

1989—Subsec. (d)(1). Pub. L. 101–239, §7622(a), substituted ''serial payments'' for ''payments'' in heading and amended text generally. Prior to amendment, text read as follows: ''Amounts paid or incurred during the taxable year on account of a transfer, sale, or other disposition of a franchise, trademark, or trade name which are contingent on the productivity, use, or disposition of the franchise, trademark, or trade name transferred shall be allowed as a deduction under section 162(a) (relating to trade or business expenses).''

Subsec. (d)(2). Pub. L. 101–239, §7622(b), designated existing provisions as subpar. (A), inserted subpar. heading, redesignated former subpars. (A) to (C) as cls. (i) to (iii), respectively, and former cls. (i) and (ii) of former subpar. (B) as subcls. (I) and (II), respectively, of cl. (ii), and added subpar. (B).

Subsec. (d)(3) to (5). Pub. L. 101–239, §7622(c), added pars. (3) to (5).

1976—Subsec. (d)(2)(C). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to property acquired after Oct. 22, 2004, see section 886(c)(1) of Pub. L. 108–357, set out as a note under section 197 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 OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective, except as otherwise provided, as if included in the provision of the Revenue Reconciliation Act of 1989, Pub. L. 101–239, title VII, to which such amendment relates, see section 11701(n) 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 applicable to transfers after Oct. 2, 1989, but not applicable to any transfer pursuant to a written binding contract in effect on Oct. 2, 1989, and at all times thereafter before the transfer, see section 7622(c)[(e)] of Pub. L. 101–239, set out as a note under section 167 of this title.

EFFECTIVE DATE

Section applicable to transfers after Dec. 31, 1969, except that subsec. (d)(1) shall, at the election of the taxpayer (made at such time and in such manner as the Secretary or his delegate may by regulations prescribe), apply to transfers before Jan. 1, 1970, but only with respect to payments made in taxable years ending after Dec. 31, 1969, and beginning before Jan. 1, 1980, see section 516(d)(3) of Pub. L. 91–172, set out as a note under section 1001 of this title.

§ 1254. Gain from disposition of interest in oil, gas, geothermal, or other mineral properties

(a) General rule

(1) Ordinary income

If any section 1254 property is disposed of, the lesser of—

(A) the aggregate amount of—

(i) expenditures which have been deducted by the taxpayer or any person under section 263, 616, or 617 with respect to such property and which, but for such deduction, would have been included in the adjusted basis of such property, and

(ii) the deductions for depletion under section 611 which reduced the adjusted basis of such property, or

(B) the excess of—

(i) in the case of—

(I) a sale, exchange, or involuntary conversion, the amount realized, or

(II) in the case of any other disposition, the fair market value of such property, over

(ii) the adjusted basis of such property,

shall be treated as gain which is 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 section 1254 property (other than an undivided interest), the entire amount of the aggregate expenditures or deductions described in paragraph (1)(A) with respect to such property shall be treated as allocable 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 section 1254 property (or a portion thereof), a proportionate part of the expenditures or deductions described in paragraph (1)(A) with respect to such property shall be treated as allocable 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 expenditures to the extent the taxpayer establishes to the satisfaction of the Secretary that such expenditures do not relate to the portion (or interest therein) disposed of.

(3) Section 1254 property

The term ''section 1254 property'' means any property (within the meaning of section 614) if—

(A) any expenditures described in paragraph (1)(A) are properly chargeable to such property, or

(B) the adjusted basis of such property includes adjustments for deductions for depletion under section 611.

(4) Adjustment for amounts included in gross income under section 617(b)(1)(A)

The amount of the expenditures referred to in paragraph (1)(A)(i) shall be properly adjusted for amounts included in gross income under section 617(b)(1)(A).

(b) Special rules under regulations

Under regulations prescribed by the Secretary—

(1) rules similar to the rule of subsection (g) of section 617 and to the rules of subsections (b) and (c) of section 1245 shall be applied for purposes of this section; and

(2) in the case of the sale or exchange of stock in an S corporation, rules similar to the rules of section 751 shall be applied to that portion of the excess of the amount realized over the adjusted basis of the stock which is attributable to expenditures referred to in subsection (a)(1)(A) of this section.

(Added Pub. L. 94–455, title II, §205(a), Oct. 4, 1976, 90 Stat. 1533; amended Pub. L. 95–618, title

IV, § 402(c)(1)–(3), Nov. 9, 1978, 92 Stat. 3202; Pub. L. 97–354, § 5(a)(37), Oct. 19, 1982, 96 Stat. 1696; Pub. L. 99–514, title IV, § 413(a), Oct. 22, 1986, 100 Stat. 2227; Pub. L. 100–647, title I, § 1004(c), Nov. 10, 1988, 102 Stat. 3387.)

AMENDMENTS

1988—Subsec. (a)(4). Pub. L. 100–647 added par. (4).

1986—Pub. L. 99–514 amended section generally, substituting ''geothermal, or other mineral properties'' for ''or geothermal property'' in section catchline, revising and restating subsec. (a), pars. (1) to (4) as pars. (1) to (3), and reenacting subsec. (b) without change except for substituting ''rule of subsection (g)'' for ''rules of subsection (g)'' in par. (1).

1982—Subsec. (b)(2). Pub. L. 97–354 substituted ''an S corporation'' for ''an electing small business corporation (as defined in section 1371(b))''.

1978—Pub. L. 95–618, § 402(c)(3), substituted ''oil, gas, or geothermal'' for ''oil or gas'' in section catchline.

Subsec. (a)(1), (2). Pub. L. 95–618, § 402(c)(1), substituted ''oil, gas, or geothermal property'' for ''oil or gas property'' wherever appearing.

Subsec. (a)(3). Pub. L. 95–618, § 402(c)(2), substituted ''Oil, gas, or geothermal'' for ''Oil or gas'' in heading and in text substituted ''The term 'oil, gas, or geothermal property' means'' for ''The term 'oil or gas property' means''.

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 IV, § 413(c), Oct. 22, 1986, 100 Stat. 2229, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 617 of this title] shall apply to any disposition of property which is placed in service by the taxpayer after December 31, 1986.

''(2) EXCEPTION FOR BINDING CONTRACTS.—The amendments made by this section shall not apply to any disposition of property placed in service after December 31, 1986, if such property was acquired pursuant to a written contract which was entered into before September 26, 1985, and which was binding at all times thereafter.''

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 1978 AMENDMENT

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.

EFFECTIVE DATE

Pub. L. 94–455, title II, § 205(e), Oct. 4, 1976, 90 Stat. 1535, provided that: ''The amendments made by this section [enacting this section and amending sections 163, 170, 301, 312, 341, 453, and 751 of this title] shall apply with respect to taxable years ending after December 31, 1975.''

§ 1255. Gain from disposition of section 126 property

(a) General rule

(1) Ordinary income

Except as otherwise provided in this section, if section 126 property is disposed of, the lower of—

(A) the applicable percentage of the aggregate payments, with respect to such property, excluded from gross income under section 126, or

(B) the excess of—

(i) the amount realized (in the case of a sale, exchange, or involuntary conversion), or the fair market value of such section 126 property (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, except that this section shall not apply to the extent such gain is recognized as ordinary income under any other provision of this part.

(2) Section 126 property

For purposes of this section, ''section 126 property'' means any property acquired, improved, or otherwise modified by the application of payments excluded from gross income under section 126.

(3) Applicable percentage

For purposes of this section, if section 126 property is disposed of less than 10 years after the date of receipt of payments excluded from gross income under section 126, the applicable percentage is 100 percent. If section 126 property is disposed of more than 10 years after such date, the applicable percentage is 100 percent reduced (but not below zero) by 10 percent for each year or part thereof in excess of 10 years such property was held after the date of receipt of the payments.

(b) Special rules

Under regulations prescribed by the Secretary—

(1) rules similar to the rules applicable under section 1245 shall be applied for purposes of this section, and

(2) for purposes of sections 170(e),[1] and 751(c), amounts treated as ordinary income under this section shall be treated in the same manner as amounts treated as ordinary income under section 1245.

(Added Pub. L. 95–600, title V, § 543(c)(1), Nov. 6, 1978, 92 Stat. 2890; amended Pub. L. 96–222, title I, § 105(a)(7)(B), (D), Apr. 1, 1980, 94 Stat. 221; Pub. L. 96–471, § 2(b)(6), Oct. 19, 1980, 94 Stat. 2254; Pub. L. 99–514, title V, § 511(d)(2)(A), title VI, § 631(e)(14), Oct. 22, 1986, 100 Stat. 2248, 2275; Pub. L. 100–647, title I, § 1005(c)(10), Nov. 10, 1988, 102 Stat. 3392; Pub. L. 108–27, title III, § 302(e)(4)(B)(ii), May 28, 2003, 117 Stat. 764.)

AMENDMENTS

2003—Subsec. (b)(2). Pub. L. 108–27 struck out '', 341(e)(12),'' after ''170(e)''.

[1] So in original. The comma probably should not appear.

1988—Subsec. (b)(2). Pub. L. 100–647 amended Pub. L. 99–514, § 511(d)(2)(A), see 1986 Amendment note below.

1986—Subsec. (b)(2). Pub. L. 99–514, § 511(d)(2)(A), as amended by Pub. L. 100–647, struck out ''163(d),'' after ''sections''.

Pub. L. 99–514, § 631(e)(14), struck out ''453B(d)(2)'' after ''341(e)(12),''.

1980—Subsec. (a)(1)(B). Pub. L. 96–222, § 105(a)(7)(B), inserted following cl. (ii) provisions requiring that such gain be recognized notwithstanding any other provision of this subtitle, except that this section shall not apply to the extent such gain is recognized as ordinary income under any other provision of this part.

Subsec. (b)(2). Pub. L. 96–471 substituted ''453B(d)(2)'' for ''453(d)(4)(B)''.

Pub. L. 96–222, § 105(a)(7)(D), inserted ''for purposes of sections 163(d), 170(e), 341(e)(12), 453(d)(4)(B), and 751(c)'' before ''amounts treated as''.

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 1986 AMENDMENT

Amendment by section 511(d)(2)(A) 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 631(e)(14) 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.

EFFECTIVE DATE OF 1980 AMENDMENTS

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.

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

Section effective with respect to grants made under the programs after Sept. 30, 1979, see section 543(d) of Pub. L. 95–600, set out as a note under section 126 of this title.

§ 1256. Section 1256 contracts marked to market

(a) General rule

For purposes of this subtitle—

(1) each section 1256 contract held by the taxpayer at the close of the taxable year shall be treated as sold for its fair market value on the last business day of such taxable year (and any gain or loss shall be taken into account for the taxable year),

(2) proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account by reason of paragraph (1),

(3) any gain or loss with respect to a section 1256 contract shall be treated as—

(A) short-term capital gain or loss, to the extent of 40 percent of such gain or loss, and

(B) long-term capital gain or loss, to the extent of 60 percent of such gain or loss, and

(4) if all the offsetting positions making up any straddle consist of section 1256 contracts to which this section applies (and such straddle is not part of a larger straddle), sections 1092 and 263(g) shall not apply with respect to such straddle.

(b) Section 1256 contract defined

(1) In general

For purposes of this section, the term ''section 1256 contract'' means—

(A) any regulated futures contract,

(B) any foreign currency contract,

(C) any nonequity option,

(D) any dealer equity option, and

(E) any dealer securities futures contract.

(2) Exceptions

The term ''section 1256 contract'' shall not include—

(A) any securities futures contract or option on such a contract unless such contract or option is a dealer securities futures contract, or

(B) any interest rate swap, currency swap, basis swap, interest rate cap, interest rate floor, commodity swap, equity swap, equity index swap, credit default swap, or similar agreement.

(c) Terminations, etc.

(1) In general

The rules of paragraphs (1), (2), and (3) of subsection (a) shall also apply to the termination (or transfer) during the taxable year of the taxpayer's obligation (or rights) with respect to a section 1256 contract by offsetting, by taking or making delivery, by exercise or being exercised, by assignment or being assigned, by lapse, or otherwise.

(2) Special rule where taxpayer takes delivery on or exercises part of straddle

If—

(A) 2 or more section 1256 contracts are part of a straddle (as defined in section 1092(c)), and

(B) the taxpayer takes delivery under or exercises any of such contracts,

then, for purposes of this section, each of the other such contracts shall be treated as terminated on the day on which the taxpayer took delivery.

(3) Fair market value taken into account

For purposes of this subsection, fair market value at the time of the termination (or transfer) shall be taken into account.

(d) Elections with respect to mixed straddles

(1) Election

The taxpayer may elect to have this section not to apply to all section 1256 contracts which are part of a mixed straddle.

(2) Time and manner

An election under paragraph (1) shall be made at such time and in such manner as the Secretary may by regulations prescribe.

(3) Election revocable only with consent

An election under paragraph (1) shall apply to the taxpayer's taxable year for which made and to all subsequent taxable years, unless the Secretary consents to a revocation of such election.

(4) Mixed straddle

For purposes of this subsection, the term ''mixed straddle'' means any straddle (as defined in section 1092(c))—

(A) at least 1 (but not all) of the positions of which are section 1256 contracts, and

(B) with respect to which each position forming part of such straddle is clearly identified, before the close of the day on which the first section 1256 contract forming part of the straddle is acquired (or such earlier time as the Secretary may prescribe by regulations), as being part of such straddle.

(e) Mark to market not to apply to hedging transactions

(1) Section not to apply

Subsection (a) shall not apply in the case of a hedging transaction.

(2) Definition of hedging transaction

For purposes of this subsection, the term ''hedging transaction'' means any hedging transaction (as defined in section 1221(b)(2)(A)) if, before the close of the day on which such transaction was entered into (or such earlier time as the Secretary may prescribe by regulations), the taxpayer clearly identifies such transaction as being a hedging transaction.

(3) Special rule for syndicates

(A) In general

Notwithstanding paragraph (2), the term ''hedging transaction'' shall not include any transaction entered into by or for a syndicate.

(B) Syndicate defined

For purposes of subparagraph (A), the term ''syndicate'' means any partnership or other entity (other than a corporation which is not an S corporation) if more than 35 percent of the losses of such entity during the taxable year are allocable to limited partners or limited entrepreneurs (within the meaning of section 464(e)(2)).[1]

(C) Holdings attributable to active management

For purposes of subparagraph (B), an interest in an entity shall not be treated as held by a limited partner or a limited entrepreneur (within the meaning of section 464(e)(2))—[1]

(i) for any period if during such period such interest is held by an individual who actively participates at all times during such period in the management of such entity,

(ii) for any period if during such period such interest is held by the spouse, children, grandchildren, and parents of an individual who actively participates at all times during such period in the management of such entity,

(iii) if such interest is held by an individual who actively participated in the management of such entity for a period of not less than 5 years,

(iv) if such interest is held by the estate of an individual who actively participated in the management of such entity or is held by the estate of an individual if with respect to such individual such interest was at any time described in clause (ii), or

(v) if the Secretary determines (by regulations or otherwise) that such interest should be treated as held by an individual who actively participates in the management of such entity, and that such entity and such interest are not used (or to be used) for tax–avoidance purposes.

For purposes of this subparagraph, a legally adopted child of an individual shall be treated as a child of such individual by blood.

(4) Limitation on losses from hedging transactions

(A) In general

(i) Limitation

Any hedging loss for a taxable year which is allocable to any limited partner or limited entrepreneur (within the meaning of paragraph (3)) shall be allowed only to the extent of the taxable income of such limited partner or entrepreneur for such taxable year attributable to the trade or business in which the hedging transactions were entered into. For purposes of the preceding sentence, taxable income shall be determined by not taking into account items attributable to hedging transactions.

(ii) Carryover of disallowed loss

Any hedging loss disallowed under clause (i) shall be treated as a deduction attributable to a hedging transaction allowable in the first succeeding taxable year.

(B) Exception where economic loss

Subparagraph (A)(i) shall not apply to any hedging loss to the extent that such loss exceeds the aggregate unrecognized gains from hedging transactions as of the close of the taxable year attributable to the trade or business in which the hedging transactions were entered into.

(C) Exception for certain hedging transactions

In the case of any hedging transaction relating to property other than stock or securities, this paragraph shall apply only in the case of a taxpayer described in section 465(a)(1).

(D) Hedging loss

The term ''hedging loss'' means the excess of—

(i) the deductions allowable under this chapter for the taxable year attributable

[1] See References in Text note below.

to hedging transactions (determined without regard to subparagraph (A)(i)), over

(ii) income received or accrued by the taxpayer during such taxable year from such transactions.

(E) Unrecognized gain

The term ''unrecognized gain'' has the meaning given to such term by section 1092(a)(3).

(f) Special rules

(1) Denial of capital gains treatment for property identified as part of a hedging transaction

For purposes of this title, gain from any property shall in no event be considered as gain from the sale or exchange of a capital asset if such property was at any time personal property (as defined in section 1092(d)(1)) identified under subsection (e)(2) by the taxpayer as being part of a hedging transaction.

(2) Subsection (a)(3) not to apply to ordinary income property

Paragraph (3) of subsection (a) shall not apply to any gain or loss which, but for such paragraph, would be ordinary income or loss.

(3) Capital gain treatment for traders in section 1256 contracts

(A) In general

For purposes of this title, gain or loss from trading of section 1256 contracts shall be treated as gain or loss from the sale or exchange of a capital asset.

(B) Exception for certain hedging transactions

Subparagraph (A) shall not apply to any section 1256 contract to the extent such contract is held for purposes of hedging property if any loss with respect to such property in the hands of the taxpayer would be ordinary loss.

(C) Treatment of underlying property

For purposes of determining whether gain or loss with respect to any property is ordinary income or loss, the fact that the taxpayer is actively engaged in dealing in or trading section 1256 contracts related to such property shall not be taken into account.

(4) Special rule for dealer equity options and dealer securities futures contracts of limited partners or limited entrepreneurs

In the case of any gain or loss with respect to dealer equity options, or dealer securities futures contracts, which are allocable to limited partners or limited entrepreneurs (within the meaning of subsection (e)(3))—

(A) paragraph (3) of subsection (a) shall not apply to any such gain or loss, and

(B) all such gains or losses shall be treated as short-term capital gains or losses, as the case may be.

(5) Special rule related to losses

Section 1091 (relating to loss from wash sales of stock or securities) shall not apply to any loss taken into account by reason of paragraph (1) of subsection (a).

(g) Definitions

For purposes of this section—

(1) Regulated futures contracts defined

The term ''regulated futures contract'' means a contract—

(A) with respect to which the amount required to be deposited and the amount which may be withdrawn depends on a system of marking to market, and

(B) which is traded on or subject to the rules of a qualified board or exchange.

(2) Foreign currency contract defined

(A) Foreign currency contract

The term ''foreign currency contract'' means a contract—

(i) which requires delivery of, or the settlement of which depends on the value of, a foreign currency which is a currency in which positions are also traded through regulated futures contracts,

(ii) which is traded in the interbank market, and

(iii) which is entered into at arm's length at a price determined by reference to the price in the interbank market.

(B) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of subparagraph (A), including regulations excluding from the application of subparagraph (A) any contract (or type of contract) if its application thereto would be inconsistent with such purposes.

(3) Nonequity option

The term ''nonequity option'' means any listed option which is not an equity option.

(4) Dealer equity option

The term ''dealer equity option'' means, with respect to an options dealer, any listed option which—

(A) is an equity option,

(B) is purchased or granted by such options dealer in the normal course of his activity of dealing in options, and

(C) is listed on the qualified board or exchange on which such options dealer is registered.

(5) Listed option

The term ''listed option'' means any option (other than a right to acquire stock from the issuer) which is traded on (or subject to the rules of) a qualified board or exchange.

(6) Equity option

The term ''equity option'' means any option—

(A) to buy or sell stock, or

(B) the value of which is determined directly or indirectly by reference to any stock or any narrow-based security index (as defined in section 3(a)(55) of the Securities Exchange Act of 1934, as in effect on the date of the enactment of this paragraph).

The term ''equity option'' includes such an option on a group of stocks only if such group meets the requirements for a narrow-based se-

curity index (as so defined). The Secretary may prescribe regulations regarding the status of options the values of which are determined directly or indirectly by reference to any index which becomes (or ceases to be) a narrow-based security index (as so defined).

(7) Qualified board or exchange

The term ''qualified board or exchange'' means—

(A) a national securities exchange which is registered with the Securities and Exchange Commission,

(B) a domestic board of trade designated as a contract market by the Commodity Futures Trading Commission, or

(C) any other exchange, board of trade, or other market which the Secretary determines has rules adequate to carry out the purposes of this section.

(8) Options dealer

(A) In general

The term ''options dealer'' means any person registered with an appropriate national securities exchange as a market maker or specialist in listed options.

(B) Persons trading in other markets

In any case in which the Secretary makes a determination under subparagraph (C) of paragraph (7), the term ''options dealer'' also includes any person whom the Secretary determines performs functions similar to the persons described in subparagraph (A). Such determinations shall be made to the extent appropriate to carry out the purposes of this section.

(9) Dealer securities futures contract

(A) In general

The term ''dealer securities futures contract'' means, with respect to any dealer, any securities futures contract, and any option on such a contract, which—

(i) is entered into by such dealer (or, in the case of an option, is purchased or granted by such dealer) in the normal course of his activity of dealing in such contracts or options, as the case may be, and

(ii) is traded on a qualified board or exchange.

(B) Dealer

For purposes of subparagraph (A), a person shall be treated as a dealer in securities futures contracts or options on such contracts if the Secretary determines that such person performs, with respect to such contracts or options, as the case may be, functions similar to the functions performed by persons described in paragraph (8)(A). Such determination shall be made to the extent appropriate to carry out the purposes of this section.

(C) Securities futures contract

The term ''securities futures contract'' has the meaning given to such term by section 1234B.

(Added Pub. L. 97–34, title V, § 503(a), Aug. 13, 1981, 95 Stat. 327; amended Pub. L. 97–354, § 5(a)(38), Oct. 19, 1982, 96 Stat. 1696; Pub. L. 97–448, title I, § 105(c)(1)–(3), (5)(A)–(C), Jan. 12, 1983, 96 Stat. 2385, 2386; Pub. L. 98–369, div. A, title I, §§ 102(a), (b), (e)(1), (5), 104(a), 107(c), (d), title VII, § 722(a)(2), July 18, 1984, 98 Stat. 620, 621, 623, 624, 628, 630, 972; Pub. L. 99–514, title XII, § 1261(c), Oct. 22, 1986, 100 Stat. 2591; Pub. L. 106–170, title V, § 532(b)(4), Dec. 17, 1999, 113 Stat. 1930; Pub. L. 106–554, § 1(a)(7) [title IV, § 401(g)(1)–(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–649, 2763A–650; Pub. L. 107–147, title IV, § 416(b)(1), Mar. 9, 2002, 116 Stat. 55; Pub. L. 108–311, title IV, § 405(a)(2), Oct. 4, 2004, 118 Stat. 1188; Pub. L. 109–135, title IV, § 412(*oo*), Dec. 21, 2005, 119 Stat. 2639; Pub. L. 111–203, title XVI, § 1601(a), July 21, 2010, 124 Stat. 2223.)

REFERENCES IN TEXT

Section 464(e)(2), referred to in subsec. (e)(3)(B), (C), was repealed by Pub. L. 113–295, div. A, title II, § 221(a)(58)(C)(i), Dec. 19, 2014, 128 Stat. 4047.

Section 3(a)(55) of the Securities Exchange Act of 1934, referred to in subsec. (g)(6)(B), is classified to section 78c(a)(55) of Title 15, Commerce and Trade.

The date of the enactment of this paragraph, referred to in subsec. (g)(6)(B), probably means the date of enactment of Pub. L. 106–554, which amended subsec. (g)(6) generally and which was approved Dec. 21, 2000.

AMENDMENTS

2010—Subsec. (b). Pub. L. 111–203 redesignated first sentence as par. (1), inserted heading, redesignated former pars. (1) to (5) as subpars. (A) to (E), respectively, of par. (1), added par. (2), and struck out concluding provisions which read as follows: ''The term 'section 1256 contract' shall not include any securities futures contract or option on such a contract unless such contract or option is a dealer securities futures contract.''

2005—Subsec. (f)(1). Pub. L. 109–135 substituted ''subsection (e)(2)'' for ''subsection (e)(2)(C)''.

2004—Subsec. (g)(6). Pub. L. 108–311 added at end of concluding provisions ''The Secretary may prescribe regulations regarding the status of options the values of which are determined directly or indirectly by reference to any index which becomes (or ceases to be) a narrow-based security index (as so defined).''

2002—Subsec. (f)(5). Pub. L. 107–147 added par. (5).

2000—Subsec. (b). Pub. L. 106–554, § 1(a)(7) [title IV, § 401(g)(1)(A)], added par. (5) and concluding provisions.

Subsec. (f)(4). Pub. L. 106–554, § 1(a)(7) [title IV, § 401(g)(2)], inserted ''and dealer securities futures contracts'' after ''dealer equity options'' in heading and '', or dealer securities futures contracts,'' after ''dealer equity options'' in introductory provisions.

Subsec. (g)(6). Pub. L. 106–554, § 1(a)(7) [title IV, § 401(g)(3)], amended heading and text of par. (6) generally. Prior to amendment, text read as follows:

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'equity option' means any option—

''(i) to buy or sell stock, or

''(ii) the value of which is determined directly or indirectly by reference to any stock (or group of stocks) or stock index.

''(B) EXCEPTION FOR CERTAIN OPTIONS REGULATED BY COMMODITIES FUTURES TRADING COMMISSION.—The term 'equity option' does not include any option with respect to any group of stocks or stock index if—

''(i) there is in effect a designation by the Commodities Futures Trading Commission of a contract market for a contract based on such group of stocks or index, or

''(ii) the Secretary determines that such option meets the requirements of law for such a designation.''

Subsec. (g)(9). Pub. L. 106–554, § 1(a)(7) [title IV, § 401(g)(1)(B)], added par. (9).

1999—Subsec. (e)(2). Pub. L. 106–170 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''For purposes of this subsection, the term 'hedging transaction' means any transaction if—

''(A) such transaction is entered into by the taxpayer in the normal course of the taxpayer's trade or business primarily—

''(i) to reduce risk of price change or currency fluctuations with respect to property which is held or to be held by the taxpayer, or

''(ii) to reduce risk of interest rate or price changes or currency fluctuations with respect to borrowings made or to be made, or obligations incurred or to be incurred, by the taxpayer,

''(B) the gain or loss on such transactions is treated as ordinary income or loss, and

''(C) before the close of the day on which such transaction was entered into (or such earlier time as the Secretary may prescribe by regulations), the taxpayer clearly identifies such transaction as being a hedging transaction.''

1986—Subsec. (e)(4), (5). Pub. L. 99–514 redesignated par. (5) as (4) and struck out former par. (4), special rule for banks, which read as follows: ''In the case of a bank (as defined in section 581), subparagraph (A) of paragraph (2) shall be applied without regard to clause (i) or (ii) thereof.''

1984—Pub. L. 98–369, §102(e)(5), substituted ''Section 1256 contracts'' for ''Regulated futures contracts'' in section catchline.

Subsec. (a)(1), (3), (4). Pub. L. 98–369, §102(a)(1), substituted ''section 1256 contract'' for ''regulated futures contract'' and ''section 1256 contracts'' for ''regulated futures contracts'' wherever appearing.

Subsec. (b). Pub. L. 98–369, §102(a)(2), in par. (1), substituted ''any regulated futures contract'' for ''with respect to which the amount required to be deposited and the amount which may be withdrawn depends on the system of marking to market; and'', in par. (2), substituted ''any foreign currency contract,'' for ''which is traded on or subject to the rules of a domestic board of trade designated as a contract market by the Commodity Futures Trading Commission or of any board of trade or exchange which the Secretary determines has rules adequate to carry out the purposes of this section. Such term includes any foreign currency contract.'', and added pars. (3) and (4).

Subsec. (c)(1). Pub. L. 98–369, §102(a)(1)(A), (e)(1)(A), substituted ''section 1256 contracts'' for ''regulated futures contracts'', and ''by taking or making delivery, by exercise or being exercised, by assignment or being assigned, by lapse,'' for ''by taking or making delivery,''.

Subsec. (c)(2). Pub. L. 98–369, §102(e)(1)(C), substituted ''takes delivery on or exercises'' for ''takes delivery on'' in heading.

Subsec. (c)(2)(A). Pub. L. 98–369, §102(a)(1)(B), substituted ''section 1256 contracts'' for ''regulated futures contracts''.

Subsec. (c)(2)(B). Pub. L. 98–369, §102(e)(1)(B), substituted ''takes delivery under or exercises'' for ''takes delivery under''.

Subsec. (d)(1), (4)(A). Pub. L. 98–369, §102(a)(1)(B), substituted ''section 1256 contracts'' for ''regulated futures contracts''.

Subsec. (d)(4)(B). Pub. L. 98–369, §102(a)(1)(A), substituted ''section 1256 contract'' for ''regulated futures contract''.

Pub. L. 98–369, §107(c), inserted ''(or such earlier time as the Secretary may prescribe by regulations)''.

Subsec. (e)(2)(C). Pub. L. 98–369, §107(d), inserted ''(or such earlier time as the Secretary may prescribe by regulations''.

Subsec. (e)(5). Pub. L. 98–369, §104(a), added par. (5).

Subsec. (f)(3), (4). Pub. L. 98–369, §102(b), added pars. (3) and (4).

Subsec. (g). Pub. L. 98–369, §102(a)(3), in amending subsec. (g) generally, inserted provisions relating to regulated futures contracts as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (2), and added pars. (3) to (8).

Subsec. (g)(1)(A). Pub. L. 98–369, §722(a)(2), inserted '', or the settlement of which depends on the value of,'' after ''delivery of''.

1983—Subsec. (b). Pub. L. 97–448, §105(c)(5)(A), (B), struck out par. (1) which related to contracts requiring delivery of personal property (as defined in section 1092(d)(1)) or an interest in such property, redesignated pars. (2) and (3) as (1) and (2), respectively, and inserted last sentence providing that such term includes any foreign currency contract.

Subsec. (c). Pub. L. 97–448, §105(c)(1), inserted '', etc.'' after ''Terminations'' in heading and, in text, designated existing first and second sentences as pars. (1) and (3), respectively, added par. (2), inserted ''(or transfer)'' after ''termination'' and ''(or rights)'' after ''obligation'' in par. (1) as so designated, and substituted ''this subsection'' for ''the preceding sentence'' and inserted ''(or transfer)'' after ''termination'' in par. (3) as so designated.

Subsec. (d)(4)(B). Pub. L. 97–448, §105(c)(2), substituted ''day on which the first regulated futures contract forming part of the straddle is acquired'' for ''day on which such position is acquired''.

Subsec. (e)(3)(C)(v). Pub. L. 97–448, §105(c)(3), inserted ''(by regulations or otherwise)'' after ''determines''.

Subsec. (g). Pub. L. 97–448, §105(c)(5)(C), added subsec. (g).

1982—Subsec. (e)(3)(B). Pub. L. 97–354 substituted ''an S corporation'' for ''an electing small business corporation within the meaning of section 1371(b)''.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of Title 12, Banks and Banking.

Pub. L. 111–203, title XVI, §1601(b), July 21, 2010, 124 Stat. 2223, 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 [July 21, 2010].''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 effective as if included in section 401 of the Community Renewal Tax Relief Act of 2000 [H.R. 5662, as enacted by Pub. L. 106–554], see section 405(b) of Pub. L. 108–311, set out as a note under section 1234B of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title IV, §416(b)(2), Mar. 9, 2002, 116 Stat. 55, provided that: ''The amendment made by this subsection [amending this section] shall take effect as if included in section 5075 of the Technical and Miscellaneous Revenue Act of 1988 [Pub. L. 100–647].''

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 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1261(e) of Pub. L. 99–514, set out as an Effective Date note under section 985 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §102(f)–(j), July 18, 1984, 98 Stat. 625, 627, as amended by Pub. L. 99–514, §2, title XVIII, §1808(a)(1), Oct. 22, 1986, 100 Stat. 2095, 2817, provided that:

''(f) EFFECTIVE DATES.—

''(1) IN GENERAL.—Except as otherwise provided in this subsection or subsection (g), the amendments made by this section [amending this section, sections 263, 1092, 1212, 1234A, 1362, 1374, and 1402 of this title, and section 411 of Title 42, The Public Health and Welfare, and enacting provisions set out as a note under section 1362 of this title] shall apply to positions established after the date of the enactment of this Act [July 18, 1984], in taxable years ending after such date.

''(2) SPECIAL RULE FOR OPTIONS ON REGULATED FUTURES CONTRACTS.—In the case of any option with respect to a regulated futures contract (within the meaning of section 1256 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]), the amendments made by this section shall apply to positions established after October 31, 1983, in taxable years ending after such date.

''(3) SPECIAL RULE FOR SELF-EMPLOYMENT TAX.—Except as provided in subsection (g)(2), the amendments made by subsection (c) [amending section 1402 of this title and section 411 of Title 42] shall apply to taxable years beginning after the date of the enactment of this Act [July 18, 1984].

''(4) GAINS OR LOSSES FROM CERTAIN TERMINATIONS.—The amendment made by subsection (d)(9) [probably means subsec. (e)(9), which amended section 1234A of this title] shall apply as if included in the amendment made by section 505(a) [probably means section 507(a)] of the Economic Recovery Tax Act of 1981 [Pub. L. 97–34], as amended by section 105(e) of the Technical Corrections Act of 1982 [Pub. L. 97–448].

''(g) ELECTIONS WITH RESPECT TO PROPERTY HELD ON OR BEFORE THE DATE OF THE ENACTMENT OF THIS ACT.—At the election of the taxpayer—

''(1) the amendments made by this section [amending this section, sections 263, 1092, 1212, 1234A, 1362, 1374, and 1402 of this title, and section 411 of Title 42, The Public Health and Welfare, and enacting provisions set out as a note under section 1362 of this title] shall apply to all section 1256 contracts held by the taxpayer on the date of the enactment of this Act [July 18, 1984], effective for periods after such date in taxable years ending after such date, or

''(2) in lieu of an election under paragraph (1), the amendments made by this section shall apply to all section 1256 contracts held by the taxpayer at any time during the taxable year of the taxpayer which includes the date of the enactment of this Act.

''(h) ELECTIONS FOR INSTALLMENT PAYMENT OF TAX ATTRIBUTABLE TO STOCK OPTIONS.—

''(1) IN GENERAL.—If the taxpayer makes an election under subsection (g)(2) and under this subsection—

''(A) the taxpayer may pay part or all the tax for the taxable year referred to in subsection (g)(2) in 2 or more (but not exceeding 5) equal installments, and

''(B) the maximum amount of tax which may be paid in installments under this subsection shall be the excess of—

''(i) the tax for such taxable year determined by taking into account subsection (g)(2), over

''(ii) the tax for such taxable year determined by taking into account subsection (g)(2) and by treating—

''(I) all section 1256 contracts which are stock options, and

''(II) any stock which was a part of a straddle including any such stock options,

as having been acquired for a purchase price equal to their fair market value on the last business day of the preceding taxable year. Stock options and stock shall be taken into account under subparagraph (B)(ii) only if such options or stock were held on the last day of the preceding taxable year and only if income on such options or stock would have been ordinary income if such options or stock were sold at a gain on such last day.

''(2) DATE FOR PAYMENT OF INSTALLMENT.—

''(A) If an election is made under this subsection, the first installment under paragraph (1) shall be paid on or before the due date for filing the return for the taxable year described in paragraph (1), and each succeeding installment shall be paid on or before the date which is 1 year after the date prescribed for payment of the preceding installment.

''(B) If a bankruptcy case or insolvency proceeding involving the taxpayer is commenced before the final installment is paid, the total amount of any unpaid installments shall be treated as due and payable on the day preceding the day on which such case or proceeding is commenced.

''(3) INTEREST IMPOSED.—For purposes of section 6601 of the Internal Revenue Code of 1986, the time for payment of any tax with respect to which an election is made under this subsection shall be determined without regard to this subsection.

''(4) FORM OF ELECTION.—An election under this subsection shall be made not later than the time for filing the return for the taxable year described in paragraph (1) and shall be made in the manner and form required by regulations prescribed by Secretary of the Treasury or his delegate. The election shall set forth—

''(A) the amount determined under paragraph (1)(B) and the number of installments elected by the taxpayer,

''(B) the property described in paragraph (1)(B)(ii), and the date on which such property was acquired,

''(C) the fair market value of the property described in paragraph (1)(B)(ii) on the last business day of the taxable year preceding the taxable year described in paragraph (1), and

''(D) such other information for purposes of carrying out the provisions of this subsection as may be required by such regulations.

''(5) DELAY OF IDENTIFICATION REQUIREMENT.—Section 1256(e)(2)(C) of the Internal Revenue Code of 1986 shall not apply to any stock option or stock acquired on or before the 60th day after the date of the enactment of this Act [July 18, 1984].

''(i) DEFINITIONS.—For purposes of subsections (g) and (h)—

''(1) SECTION 1256 CONTRACT.—The term 'section 1256 contract' has the meaning given to such term by section 1256(b) of the Internal Revenue Code of 1986 (as amended by this section).

''(2) STOCK OPTION.—The term 'stock option' means any option to buy or sell stock.

''(j) COORDINATION OF ELECTION UNDER SUBSECTION (d)(3) WITH ELECTIONS UNDER SUBSECTIONS (g) AND (h).—The Secretary of the Treasury or his delegate shall prescribe such regulations as may be necessary to coordinate the election provided by subsection (d)(3) with the elections provided by subsections (g) and (h).''

Pub. L. 98–369, div. A, title I, § 104(b), July 18, 1984, 98 Stat. 628, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1984.''

Amendment by section 107(c), (d) of Pub. L. 98–369 applicable to positions entered into after July 18, 1984, in taxable years ending after that date, see section 107(e) of Pub. L. 98–369 set out as a note under section 1092 of this title.

Amendment by section 722(a)(2) of Pub. L. 98–369 effective as if included in the provisions of the Technical Corrections Act of 1984, Pub. L. 97–448, to which such amendment relates, see section 722(a)(6) of Pub. L. 98–369, set out as a note under section 172 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.

Pub. L. 97–448, title I, § 105(c)(5)(D), Jan. 12, 1983, 96 Stat. 2386, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(i) IN GENERAL.—Except as provided in clauses (ii) and (iii), the amendments made by subparagraphs (B) and (C) [amending this section] shall apply only with respect to contracts entered into after May 11, 1982.

''(ii) ELECTION BY TAXPAYER OF RETROACTIVE APPLICATION.—

''(I) RETROACTIVE APPLICATION.—If the taxpayer so elects, the amendments made by subparagraphs (B) and (C) [amending this section] shall apply as if included within the amendments made by title V of the Economic Recovery Tax Act of 1981 [title V of Pub. L. 97–34].

''(II) ADDITIONAL CHOICES WITH RESPECT TO 1981.—If the taxpayer held a foreign currency contract after December 31, 1980, and before June 24, 1981, and such taxpayer makes an election under subclause (I), such taxpayer may revoke any election made under section 508(c) [set out as an Effective Date note under section 1092 of this title] or 509(a) [set out below] of such Act, and may make an election under section 508(c) or 509(a) of such Act.

''(III) ADDITIONAL CHOICES APPLY TO ALL REGULATED FUTURES CONTRACTS.—Except as provided in subclause (IV), in the case of any taxpayer who makes an election under subclause (I), any election under section 508(c) or 509(a) of such Act or any revocation of such an election shall apply to all regulated futures contracts (including foreign currency contracts).

''(IV) SECTION 509(a)(3) AND (4) NOT TO APPLY TO FOREIGN CURRENCY CONTRACTS.—Paragraphs (3) and (4) of section 509(a) of such Act shall not apply to any foreign currency contract.

''(V) TIME FOR MAKING ELECTION OR REVOCATION.—Any election under subclause (I) and any election or revocation under subclause (II) may be made only within the 90-day period beginning on the date of the enactment of this Act [Jan. 12, 1983]. Any such action, once taken, shall be irrevocable.

''(VI) DEFINITIONS.—For purposes of this clause, the terms 'regulated futures contract' and 'foreign currency contract' have the same respective meanings as when used in section 1256 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by this Act).

''(iii) ELECTION BY TAXPAYER WITH RESPECT TO POSITIONS HELD DURING TAXABLE YEARS ENDING AFTER MAY 11, 1982.—In lieu of the election under clause (ii), a taxpayer may elect to have the amendments made by subparagraphs (B) and (C) [amending subsec. (b) of this section to include foreign currency contracts and enacting subsec. (g) of this section, respectively] applied to all positions held in taxable years ending after May 11, 1982, except that the provisions of section 509(a)(3) and (4) of the Economic Recovery Tax Act of 1981 [set out below] shall not apply.''

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

Section (other than subsec. (e)(2)(C)) applicable to property acquired and positions established by the taxpayer after June 23, 1981, in taxable years ending after such date, subsec. (e)(2)(C) of this section applicable to property acquired and positions established by the taxpayer after Dec. 31, 1981, in taxable years ending after such date, and section applicable when so elected with respect to property held on June 23, 1981, see section 508 of Pub. L. 97–34, set out as a note under section 1092 of this title.

DEADLINE FOR DETERMINATION

Pub. L. 106–554, §1(a)(7) [title IV, §401(g)(4)], Dec. 21, 2000, 114 Stat. 2763, 2763A–650, provided that: ''The Secretary of the Treasury or his delegate shall make the determinations under section 1256(g)(9)(B) of the Internal Revenue Code of 1986, as added by this Act, not later than July 1, 2001.''

ELECTION FOR EXTENSION OF TIME FOR PAYMENT AND APPLICATION OF THIS SECTION FOR THE TAXABLE YEAR INCLUDING JUNE 23, 1981

Pub. L. 97–34, title V, §509, Aug. 13, 1981, 95 Stat. 333, as amended by Pub. L. 97–448, title I, §105(c)(6), Jan. 12, 1983, 96 Stat. 2387; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) ELECTION.—

''(1) IN GENERAL.—In the case of any taxable year beginning before June 23, 1981, and ending after June 22, 1981, the taxpayer may elect, in lieu of any election under section 508(c) [set out as an Effective Date note under section 1092 of this title], to have this section apply to all regulated futures contracts held during such taxable year.

''(2) APPLICATION OF SECTION 1256.—If a taxpayer elects to have the provisions of this section apply to the taxable year described in paragraph (1).—

''(A) the provisions of section 1256 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (other than section 1256(e)(2)(C)) shall apply to regulated futures contracts held by the taxpayer at any time during such taxable year, and

''(B) for purposes of determining the rate of tax applicable to gains and losses from regulated futures contracts held at any time during such year, such gains and losses shall be treated as gain or loss from a sale or exchange occurring in a taxable year beginning in 1982.

''(3) DETERMINATION OF DEFERRED TAX LIABILITY.—If the taxpayer makes an election under this subsection.—

''(A) the taxpayer may pay part or all of the tax for such year in two or more (but not exceeding five) equal installments;

''(B) the maximum amount of tax which may be paid in installments under this section shall be the excess of—

''(i) the tax for such year, determined by taking into account paragraph (2), over

''(ii) the tax for such year, determined by taking into account paragraph (2) and by treating all regulated futures contracts which were held by the taxpayer on the first day of the taxable year described in paragraph (1), and which were acquired before the first day of such taxable year, as having been acquired for a purchase price equal to their fair market value on the last business day of the preceding taxable year.

''(4) DATE FOR PAYMENT OF INSTALLMENT.—

''(A) If an election is made under this subsection, the first installment under subsection (a)(3)(A) shall be paid on or before the due date for filing the return for the taxable year described in paragraph (1), and each succeeding installment shall be paid on or before the date which is one year after the date prescribed for payment of the preceding installment.

''(B) If a bankruptcy case or insolvency proceeding involving the taxpayer is commenced before the final installment is paid, the total amount of any unpaid installments shall be treated as due and payable on the day preceding the day on which such case or proceeding is commenced.

''(5) INTEREST IMPOSED.—For purposes of section 6601 of the Internal Revenue Code of 1986, the time for payment of any tax with respect to which an election is made under this subsection shall be determined without regard to this subsection.

''(b) FORM OF ELECTION.—An election under this section shall be made not later than the time for filing the return for the taxable year described in subsection (a)(1) and shall be made in the manner and form required by regulations prescribed by the Secretary. The election shall set forth—

''(1) the amount determined under subsection (a)(3)(B) and the number of installments elected by the taxpayer,

''(2) each regulated futures contract held by the taxpayer on the first day of the taxable year described in subsection (a)(1), and the date such contract was acquired,

''(3) the fair market value on the last business day of the preceding taxable year for each regulated futures contract described in paragraph (2), and

''(4) such other information for purposes of carrying out the provisions of this section as may be required by such regulations.''

§ 1257. Disposition of converted wetlands or highly erodible croplands

(a) Gain treated as ordinary income

Any gain on the disposition of converted wetland or highly erodible cropland shall be treated as ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle, except that this section shall not apply to the extent such gain is recognized as ordinary income under any other provision of this part.

(b) Loss treated as long-term capital loss

Any loss recognized on the disposition of converted wetland or highly erodible cropland shall be treated as a long-term capital loss.

(c) Definitions

For purposes of this section—

(1) Converted wetland

The term ''converted wetland'' means any converted wetland (as defined in section 1201(4)[1] of the Food Security Act of 1985 (16 U.S.C. 3801(4))) held—

(A) by the person whose activities resulted in such land being converted wetland, or

(B) by any other person who at any time used such land for farming purposes.

(2) Highly erodible cropland

The term ''highly erodible cropland'' means any highly erodible cropland (as defined in section 1201(6)[1] of the Food Security Act of 1985 (16 U.S.C. 3801(6))), if at any time the taxpayer used such land for farming purposes (other than the grazing of animals).

(3) Treatment of successors

If any land is converted wetland or highly erodible cropland in the hands of any person, such land shall be treated as converted wetland or highly erodible cropland in the hands of any other person whose adjusted basis in such land is determined (in whole or in part) by reference to the adjusted basis of such land in the hands of such person.

(d) Special rules

Under regulations prescribed by the Secretary, rules similar to the rules applicable under section 1245 shall apply for purposes of subsection (a). For purposes of sections 170(e) and 751(c), amounts treated as ordinary income under subsection (a) shall be treated in the same manner as amounts treated as ordinary income under section 1245.

(Added Pub. L. 99–514, title IV, § 403(a), Oct. 22, 1986, 100 Stat. 2222; amended Pub. L. 108–27, title III, § 302(e)(4)(B)(ii), May 28, 2003, 117 Stat. 764.)

[1] See References in Text note below.

REFERENCES IN TEXT

Section 1201(4) of the Food Security Act of 1985 (16 U.S.C. 3801(4)) and section 1201(6) of the Food Security Act of 1985 (16 U.S.C. 3801(6)), referred to in subsec. (c)(1), (2), probably are references to section 1201(a)(4) and 1201(a)(6) of that Act (16 U.S.C. 3801(a)(4), (6)). Section 1201 of the Food Security Act of 1985 was subsequently amended, and subsecs. (a)(4) and (a)(6) of section 1201 no longer define the terms ''converted wetland'' and ''highly erodible cropland'', respectively. However, such terms are defined elsewhere in that section.

AMENDMENTS

2003—Subsec. (d). Pub. L. 108–27 struck out '', 341(e)(12),'' after ''170(e)''.

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

Pub. L. 99–514, title IV, § 403(c), Oct. 22, 1986, 100 Stat. 2222, provided that: ''The amendments made by this section [enacting this section] shall apply to dispositions of converted wetland or highly erodible cropland (as defined in section 1257(c) of the Internal Revenue Code of 1986 as added by this section) first used for farming after March 1, 1986, in taxable years ending after that date.''

§ 1258. Recharacterization of gain from certain financial transactions

(a) General rule

In the case of any gain—

(1) which (but for this section) would be treated as gain from the sale or exchange of a capital asset, and

(2) which is recognized on the disposition or other termination of any position which was held as part of a conversion transaction,

such gain (to the extent such gain does not exceed the applicable imputed income amount) shall be treated as ordinary income.

(b) Applicable imputed income amount

For purposes of subsection (a), the term ''applicable imputed income amount'' means, with respect to any disposition or other termination referred to in subsection (a), an amount equal to—

(1) the amount of interest which would have accrued on the taxpayer's net investment in the conversion transaction for the period ending on the date of such disposition or other termination (or, if earlier, the date on which the requirements of subsection (c) ceased to be satisfied) at a rate equal to 120 percent of the applicable rate, reduced by

(2) the amount treated as ordinary income under subsection (a) with respect to any prior disposition or other termination of a position which was held as a part of such transaction.

The Secretary shall by regulations provide for such reductions in the applicable imputed income amount as may be appropriate by reason of amounts capitalized under section 263(g), ordinary income received, or otherwise.

(c) Conversion transaction

For purposes of this section, the term ''conversion transaction'' means any transaction—

(1) substantially all of the taxpayer's expected return from which is attributable to the time value of the taxpayer's net investment in such transaction, and

(2) which is—

(A) the holding of any property (whether or not actively traded), and the entering into a contract to sell such property (or substantially identical property) at a price determined in accordance with such contract, but only if such property was acquired and such contract was entered into on a substantially contemporaneous basis,

(B) an applicable straddle,

(C) any other transaction which is marketed or sold as producing capital gains from a transaction described in paragraph (1), or

(D) any other transaction specified in regulations prescribed by the Secretary.

(d) Definitions and special rules

For purposes of this section—

(1) Applicable straddle

The term ''applicable straddle'' means any straddle (within the meaning of section 1092(c)).

(2) Applicable rate

The term ''applicable rate'' means—

(A) the applicable Federal rate determined under section 1274(d) (compounded semiannually) as if the conversion transaction were a debt instrument, or

(B) if the term of the conversion transaction is indefinite, the Federal short-term rates in effect under section 6621(b) during the period of the conversion transaction (compounded daily).

(3) Treatment of built-in losses

(A) In general

If any position with a built-in loss becomes part of a conversion transaction—

(i) for purposes of applying this subtitle to such position for periods after such position becomes part of such transaction, such position shall be taken into account at its fair market value as of the time it became part of such transaction, except that

(ii) upon the disposition or other termination of such position in a transaction in which gain or loss is recognized, such built-in loss shall be recognized and shall have a character determined without regard to this section.

(B) Built-in loss

For purposes of subparagraph (A), the term ''built-in loss'' means the loss (if any) which would have been realized if the position had been disposed of or otherwise terminated at its fair market value as of the time such position became part of the conversion transaction.

(4) Position taken into account at fair market value

In determining the taxpayer's net investment in any conversion transaction, there shall be included the fair market value of any position which becomes part of such transaction (determined as of the time such position became part of such transaction).

(5) Special rule for options dealers and commodities traders

(A) In general

Subsection (a) shall not apply to transactions—

(i) of an options dealer in the normal course of the dealer's trade or business of dealing in options, or

(ii) of a commodities trader in the normal course of the trader's trade or business of trading section 1256 contracts.

(B) Definitions

For purposes of this paragraph—

(i) Options dealer

The term ''options dealer'' has the meaning given such term by section 1256(g)(8).

(ii) Commodities trader

The term ''commodities trader'' means any person who is a member (or, except as otherwise provided in regulations, is entitled to trade as a member) of a domestic board of trade which is designated as a contract market by the Commodity Futures Trading Commission.

(C) Limited partners and limited entrepreneurs

In the case of any gain from a transaction recognized by an entity which is allocable to a limited partner or limited entrepreneur (within the meaning of section 464(e)(2)),[1] subparagraph (A) shall not apply if—

(i) substantially all of the limited partner's (or limited entrepreneur's) expected return from the entity is attributable to the time value of the partner's (or entrepreneur's) net investment in such entity,

(ii) the transaction (or the interest in the entity) was marketed or sold as producing capital gains treatment from a transaction described in subsection (c)(1), or

(iii) the transaction (or the interest in the entity) is a transaction (or interest) specified in regulations prescribed by the Secretary.

(Added Pub. L. 103–66, title XIII, §13206(a)(1), Aug. 10, 1993, 107 Stat. 462; amended Pub. L. 108–357, title VIII, §888(c)(2), Oct. 22, 2004, 118 Stat. 1643.)

REFERENCES IN TEXT

Section 464(e)(2), referred to in subsec. (d)(5)(C), was repealed by Pub. L. 113–295, div. A, title II, §221(a)(58)(C)(i), Dec. 19, 2014, 128 Stat. 4047.

AMENDMENTS

2004—Subsec. (d)(1). Pub. L. 108–357 struck out ''; except that the term 'personal property' shall include stock'' before period at end.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to positions established on or after Oct. 22, 2004, see section 888(e) of

[1] See References in Text note below.

Pub. L. 108–357, set out as a note under section 246 of this title.

EFFECTIVE DATE

Pub. L. 103–66, title XIII, § 13206(a)(3), Aug. 10, 1993, 107 Stat. 465, as amended by Pub. L. 104–188, title I, § 1703(n)(11), Aug. 20, 1996, 110 Stat. 1877, provided that: ''The amendments made by this subsection [enacting this section] shall apply to conversion transactions entered into after April 30, 1993.''

§ 1259. Constructive sales treatment for appreciated financial positions

(a) In general

If there is a constructive sale of an appreciated financial position—

(1) the taxpayer shall recognize gain as if such position were sold, assigned, or otherwise terminated at its fair market value on the date of such constructive sale (and any gain shall be taken into account for the taxable year which includes such date), and

(2) for purposes of applying this title for periods after the constructive sale—

(A) proper adjustment shall be made in the amount of any gain or loss subsequently realized with respect to such position for any gain taken into account by reason of paragraph (1), and

(B) the holding period of such position shall be determined as if such position were originally acquired on the date of such constructive sale.

(b) Appreciated financial position

For purposes of this section—

(1) In general

Except as provided in paragraph (2), the term ''appreciated financial position'' means any position with respect to any stock, debt instrument, or partnership interest if there would be gain were such position sold, assigned, or otherwise terminated at its fair market value.

(2) Exceptions

The term ''appreciated financial position'' shall not include—

(A) any position with respect to debt if—

(i) the position unconditionally entitles the holder to receive a specified principal amount,

(ii) the interest payments (or other similar amounts) with respect to such position meet the requirements of clause (i) of section 860G(a)(1)(B), and

(iii) such position is not convertible (directly or indirectly) into stock of the issuer or any related person,

(B) any hedge with respect to a position described in subparagraph (A), and

(C) any position which is marked to market under any provision of this title or the regulations thereunder.

(3) Position

The term ''position'' means an interest, including a futures or forward contract, short sale, or option.

(c) Constructive sale

For purposes of this section—

(1) In general

A taxpayer shall be treated as having made a constructive sale of an appreciated financial position if the taxpayer (or a related person)—

(A) enters into a short sale of the same or substantially identical property,

(B) enters into an offsetting notional principal contract with respect to the same or substantially identical property,

(C) enters into a futures or forward contract to deliver the same or substantially identical property,

(D) in the case of an appreciated financial position that is a short sale or a contract described in subparagraph (B) or (C) with respect to any property, acquires the same or substantially identical property, or

(E) to the extent prescribed by the Secretary in regulations, enters into 1 or more other transactions (or acquires 1 or more positions) that have substantially the same effect as a transaction described in any of the preceding subparagraphs.

(2) Exception for sales of nonpublicly traded property

A taxpayer shall not be treated as having made a constructive sale solely because the taxpayer enters into a contract for sale of any stock, debt instrument, or partnership interest which is not a marketable security (as defined in section 453(f)) if the contract settles within 1 year after the date such contract is entered into.

(3) Exception for certain closed transactions

(A) In general

In applying this section, there shall be disregarded any transaction (which would otherwise cause a constructive sale) during the taxable year if—

(i) such transaction is closed on or before the 30th day after the close of such taxable year,

(ii) the taxpayer holds the appreciated financial position throughout the 60-day period beginning on the date such transaction is closed, and

(iii) at no time during such 60-day period is the taxpayer's risk of loss with respect to such position reduced by reason of a circumstance which would be described in section 246(c)(4) if references to stock included references to such position.

(B) Treatment of certain closed transactions where risk of loss on appreciated financial position diminished

If—

(i) a transaction, which would otherwise cause a constructive sale of an appreciated financial position, is closed during the taxable year or during the 30 days thereafter, and

(ii) another transaction is entered into during the 60-day period beginning on the date the transaction referred to in clause (i) is closed—

(I) which would (but for this subparagraph) cause the requirement of subparagraph (A)(iii) not to be met with respect

to the transaction described in clause (i) of this subparagraph,

(II) which is closed on or before the 30th day after the close of the taxable year in which the transaction referred to in clause (i) occurs, and

(III) which meets the requirements of clauses (ii) and (iii) of subparagraph (A),

the transaction referred to in clause (ii) shall be disregarded for purposes of determining whether the requirements of subparagraph (A)(iii) are met with respect to the transaction described in clause (i).

(4) Related person

A person is related to another person with respect to a transaction if—

(A) the relationship is described in section 267(b) or 707(b), and

(B) such transaction is entered into with a view toward avoiding the purposes of this section.

(d) Other definitions

For purposes of this section—

(1) Forward contract

The term ''forward contract'' means a contract to deliver a substantially fixed amount of property (including cash) for a substantially fixed price.

(2) Offsetting notional principal contract

The term ''offsetting notional principal contract'' means, with respect to any property, an agreement which includes—

(A) a requirement to pay (or provide credit for) all or substantially all of the investment yield (including appreciation) on such property for a specified period, and

(B) a right to be reimbursed for (or receive credit for) all or substantially all of any decline in the value of such property.

(e) Special rules

(1) Treatment of subsequent sale of position which was deemed sold

If—

(A) there is a constructive sale of any appreciated financial position,

(B) such position is subsequently disposed of, and

(C) at the time of such disposition, the transaction resulting in the constructive sale of such position is open with respect to the taxpayer or any related person,

solely for purposes of determining whether the taxpayer has entered into a constructive sale of any other appreciated financial position held by the taxpayer, the taxpayer shall be treated as entering into such transaction immediately after such disposition. For purposes of the preceding sentence, an assignment or other termination shall be treated as a disposition.

(2) Certain trust instruments treated as stock

For purposes of this section, an interest in a trust which is actively traded (within the meaning of section 1092(d)(1)) shall be treated as stock unless substantially all (by value) of the property held by the trust is debt described in subsection (b)(2)(A).

(3) Multiple positions in property

If a taxpayer holds multiple positions in property, the determination of whether a specific transaction is a constructive sale and, if so, which appreciated financial position is deemed sold shall be made in the same manner as actual sales.

(f) Regulations

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

(Added Pub. L. 105–34, title X, §1001(a), Aug. 5, 1997, 111 Stat. 903; amended Pub. L. 105–206, title VI, §6010(a)(1), (2), July 22, 1998, 112 Stat. 812, 813; Pub. L. 108–311, title IV, §406(e), Oct. 4, 2004, 118 Stat. 1189.)

AMENDMENTS

2004—Subsec. (c)(2). Pub. L. 108–311, §406(e)(1), substituted ''A taxpayer shall not be treated as having made a constructive sale solely because the taxpayer enters into a contract'' for ''The term 'constructive sale' shall not include any contract''.

Subsec. (c)(3)(A). Pub. L. 108–311, §406(e)(2), substituted ''cause a constructive sale'' for ''be treated as a constructive sale'' in introductory provisions.

Subsec. (c)(3)(A)(i). Pub. L. 108–311, §406(e)(3), substituted ''on or before'' for ''before the end of''.

Subsec. (c)(3)(B). Pub. L. 108–311, §406(e)(7), substituted ''certain closed transactions where risk of loss on appreciated financial position diminished'' for ''positions which are reestablished'' in heading.

Subsec. (c)(3)(B)(i). Pub. L. 108–311, §406(e)(2), substituted ''cause a constructive sale'' for ''be treated as a constructive sale''.

Subsec. (c)(3)(B)(ii). Pub. L. 108–311, §406(e)(4), struck out ''substantially similar'' after ''another'' in introductory provisions.

Subsec. (c)(3)(B)(ii)(I). Pub. L. 108–311, §406(e)(5), amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: ''which also would otherwise be treated as a constructive sale of such position,''.

Subsec. (c)(3)(B)(ii)(II). Pub. L. 108–311, §406(e)(6), inserted ''on or'' before ''before the 30th day''.

1998—Subsec. (b)(2)(A)(i) to (iii). Pub. L. 105–206, §6010(a)(1)(A), substituted ''position'' for ''debt''.

Subsec. (b)(2)(B), (C). Pub. L. 105–206, §6010(a)(1)(B), (C), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (d)(1). Pub. L. 105–206, §6010(a)(2), inserted ''(including cash)'' after ''property''.

EFFECTIVE DATE OF 2004 AMENDMENT

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 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 any constructive sale after June 8, 1997, with certain exceptions, see section 1001(d) of Pub. L. 105–34, set out as an Effective Date of 1997 Amendment note under section 475 of this title.

§1260. Gains from constructive ownership transactions

(a) In general

If the taxpayer has gain from a constructive ownership transaction with respect to any finan-

cial asset and such gain would (without regard to this section) be treated as a long-term capital gain—

(1) such gain shall be treated as ordinary income to the extent that such gain exceeds the net underlying long-term capital gain, and

(2) to the extent such gain is treated as a long-term capital gain after the application of paragraph (1), the determination of the capital gain rate (or rates) applicable to such gain under section 1(h) shall be determined on the basis of the respective rate (or rates) that would have been applicable to the net underlying long-term capital gain.

(b) Interest charge on deferral of gain recognition

(1) In general

If any gain is treated as ordinary income for any taxable year by reason of subsection (a)(1), the tax imposed by this chapter for such taxable year shall be increased by the amount of interest determined under paragraph (2) with respect to each prior taxable year during any portion of which the constructive ownership transaction was open. Any amount payable under this paragraph shall be taken into account in computing the amount of any deduction allowable to the taxpayer for interest paid or accrued during such taxable year.

(2) Amount of interest

The amount of interest determined under this paragraph with respect to a prior taxable year is the amount of interest which would have been imposed under section 6601 on the underpayment of tax for such year which would have resulted if the gain (which is treated as ordinary income by reason of subsection (a)(1)) had been included in gross income in the taxable years in which it accrued (determined by treating the income as accruing at a constant rate equal to the applicable Federal rate as in effect on the day the transaction closed). The period during which such interest shall accrue shall end on the due date (without extensions) for the return of tax imposed by this chapter for the taxable year in which such transaction closed.

(3) Applicable Federal rate

For purposes of paragraph (2), the applicable Federal rate is the applicable Federal rate determined under section 1274(d) (compounded semiannually) which would apply to a debt instrument with a term equal to the period the transaction was open.

(4) No credits against increase in tax

Any increase in tax under paragraph (1) shall not be treated as tax imposed by this chapter for purposes of determining—

(A) the amount of any credit allowable under this chapter, or

(B) the amount of the tax imposed by section 55.

(c) Financial asset

For purposes of this section—

(1) In general

The term ''financial asset'' means—

(A) any equity interest in any pass-thru entity, and

(B) to the extent provided in regulations—

(i) any debt instrument, and

(ii) any stock in a corporation which is not a pass-thru entity.

(2) Pass-thru entity

For purposes of paragraph (1), the term ''pass-thru entity'' means—

(A) a regulated investment company,

(B) a real estate investment trust,

(C) an S corporation,

(D) a partnership,

(E) a trust,

(F) a common trust fund,

(G) a passive foreign investment company (as defined in section 1297 without regard to subsection (d) thereof), and

(H) a REMIC.

(d) Constructive ownership transaction

For purposes of this section—

(1) In general

The taxpayer shall be treated as having entered into a constructive ownership transaction with respect to any financial asset if the taxpayer—

(A) holds a long position under a notional principal contract with respect to the financial asset,

(B) enters into a forward or futures contract to acquire the financial asset,

(C) is the holder of a call option, and is the grantor of a put option, with respect to the financial asset and such options have substantially equal strike prices and substantially contemporaneous maturity dates, or

(D) to the extent provided in regulations prescribed by the Secretary, enters into one or more other transactions (or acquires one or more positions) that have substantially the same effect as a transaction described in any of the preceding subparagraphs.

(2) Exception for positions which are marked to market

This section shall not apply to any constructive ownership transaction if all of the positions which are part of such transaction are marked to market under any provision of this title or the regulations thereunder.

(3) Long position under notional principal contract

A person shall be treated as holding a long position under a notional principal contract with respect to any financial asset if such person—

(A) has the right to be paid (or receive credit for) all or substantially all of the investment yield (including appreciation) on such financial asset for a specified period, and

(B) is obligated to reimburse (or provide credit for) all or substantially all of any decline in the value of such financial asset.

(4) Forward contract

The term ''forward contract'' means any contract to acquire in the future (or provide or receive credit for the future value of) any financial asset.

(e) Net underlying long-term capital gain

For purposes of this section, in the case of any constructive ownership transaction with respect

to any financial asset, the term ''net underlying long-term capital gain'' means the aggregate net capital gain that the taxpayer would have had if—

(1) the financial asset had been acquired for fair market value on the date such transaction was opened and sold for fair market value on the date such transaction was closed, and

(2) only gains and losses that would have resulted from the deemed ownership under paragraph (1) were taken into account.

The amount of the net underlying long-term capital gain with respect to any financial asset shall be treated as zero unless the amount thereof is established by clear and convincing evidence.

(f) Special rule where taxpayer takes delivery

Except as provided in regulations prescribed by the Secretary, if a constructive ownership transaction is closed by reason of taking delivery, this section shall be applied as if the taxpayer had sold all the contracts, options, or other positions which are part of such transaction for fair market value on the closing date. The amount of gain recognized under the preceding sentence shall not exceed the amount of gain treated as ordinary income under subsection (a). Proper adjustments shall be made in the amount of any gain or loss subsequently realized for gain recognized and treated as ordinary income under this subsection.

(g) Regulations

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

(1) to permit taxpayers to mark to market constructive ownership transactions in lieu of applying this section, and

(2) to exclude certain forward contracts which do not convey substantially all of the economic return with respect to a financial asset.

(Added Pub. L. 106–170, title V, §534(a), Dec. 17, 1999, 113 Stat. 1931; amended Pub. L. 108–357, title IV, §413(c)(23), Oct. 22, 2004, 118 Stat. 1509; Pub. L. 110–172, §11(a)(23), (24)(B), Dec. 29, 2007, 121 Stat. 2486.)

AMENDMENTS

2007—Subsec. (c)(2)(G). Pub. L. 110–172 substituted ''subsection (d)'' for ''subsection (e)'' and inserted ''and'' at end.

2004—Subsec. (c)(2)(H) to (J). Pub. L. 108–357 redesignated subpar. (J) as (H) and struck out former subpars. (H) and (I), which included foreign personal holding company and foreign investment company (as defined in section 1246(b)) within definition of ''pass-thru entity''.

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. 106–170, title V, §534(c), Dec. 17, 1999, 113 Stat. 1934, provided that: ''The amendments made by this section [enacting this section] shall apply to transactions entered into after July 11, 1999.''

PART V—SPECIAL RULES FOR BONDS AND OTHER DEBT INSTRUMENTS

AMENDMENTS

1986—Pub. L. 99–514, title XVIII, §1899A(72), Oct. 22, 1986, 100 Stat. 2963, inserted ''on bonds'' after ''discount'' in item for subpart B.

SUBPART A—ORIGINAL ISSUE DISCOUNT

AMENDMENTS

1985—Pub. L. 99–121, title I, §102(d), Oct. 11, 1985, 99 Stat. 509, added item 1274A.

§ 1271. Treatment of amounts received on retirement or sale or exchange of debt instruments

(a) General rule

For purposes of this title—

(1) Retirement

Amounts received by the holder on retirement of any debt instrument shall be considered as amounts received in exchange therefor.

(2) Ordinary income on sale or exchange where intention to call before maturity

(A) In general

If at the time of original issue there was an intention to call a debt instrument before maturity, any gain realized on the sale or exchange thereof which does not exceed an amount equal to—

(i) the original issue discount, reduced by

(ii) the portion of original issue discount previously includible in the gross income of any holder (without regard to subsection (a)(7) or (b)(4) of section 1272 (or the corresponding provisions of prior law)),

shall be treated as ordinary income.

(B) Exceptions

This paragraph (and paragraph (2) of subsection (c)) shall not apply to—

(i) any tax-exempt obligation, or

(ii) any holder who has purchased the debt instrument at a premium.

(3) Certain short-term Government obligations

(A) In general

On the sale or exchange of any short-term Government obligation, any gain realized

which does not exceed an amount equal to the ratable share of the acquisition discount shall be treated as ordinary income.

(B) Short-term Government obligation

For purposes of this paragraph, the term ''short-term Government obligation'' means any obligation of the United States or any of its possessions, or of a State or any political subdivision thereof, or of the District of Columbia, which has a fixed maturity date not more than 1 year from the date of issue. Such term does not include any tax-exempt obligation.

(C) Acquisition discount

For purposes of this paragraph, the term ''acquisition discount'' means the excess of the stated redemption price at maturity over the taxpayer's basis for the obligation.

(D) Ratable share

For purposes of this paragraph, except as provided in subparagraph (E), the ratable share of the acquisition discount is an amount which bears the same ratio to such discount as—

(i) the number of days which the taxpayer held the obligation, bears to

(ii) the number of days after the date the taxpayer acquired the obligation and up to (and including) the date of its maturity.

(E) Election of accrual on basis of constant interest rate

At the election of the taxpayer with respect to any obligation, the ratable share of the acquisition discount is the portion of the acquisition discount accruing while the taxpayer held the obligation determined (under regulations prescribed by the Secretary) on the basis of—

(i) the taxpayer's yield to maturity based on the taxpayer's cost of acquiring the obligation, and

(ii) compounding daily.

An election under this subparagraph, once made with respect to any obligation, shall be irrevocable.

(4) Certain short-term nongovernment obligations

(A) In general

On the sale or exchange of any short-term nongovernment obligation, any gain realized which does not exceed an amount equal to the ratable share of the original issue discount shall be treated as ordinary income.

(B) Short-term nongovernment obligation

For purposes of this paragraph, the term ''short-term nongovernment obligation'' means any obligation which—

(i) has a fixed maturity date not more than 1 year from the date of the issue, and

(ii) is not a short-term Government obligation (as defined in paragraph (3)(B) without regard to the last sentence thereof).

(C) Ratable share

For purposes of this paragraph, except as provided in subparagraph (D), the ratable share of the original issue discount is an amount which bears the same ratio to such discount as—

(i) the number of days which the taxpayer held the obligation, bears to

(ii) the number of days after the date of original issue and up to (and including) the date of its maturity.

(D) Election of accrual on basis of constant interest rate

At the election of the taxpayer with respect to any obligation, the ratable share of the original issue discount is the portion of the original issue discount accruing while the taxpayer held the obligation determined (under regulations prescribed by the Secretary) on the basis of—

(i) the yield to maturity based on the issue price of the obligation, and

(ii) compounding daily.

Any election under this subparagraph, once made with respect to any obligation, shall be irrevocable.

(b) Exception for certain obligations

(1) In general

This section shall not apply to—

(A) any obligation issued by a natural person before June 9, 1997, and

(B) any obligation issued before July 2, 1982, by an issuer which is not a corporation and is not a government or political subdivision thereof.

(2) Termination

Paragraph (1) shall not apply to any obligation purchased (within the meaning of section 1272(d)(1)) after June 8, 1997.

(c) Special rule for certain obligations with respect to which original issue discount not currently includible

(1) In general

On the sale or exchange of debt instruments issued by a government or political subdivision thereof after December 31, 1954, and before July 2, 1982, or by a corporation after December 31, 1954, and on or before May 27, 1969, any gain realized which does not exceed—

(A) an amount equal to the original issue discount, or

(B) if at the time of original issue there was no intention to call the debt instrument before maturity, an amount which bears the same ratio to the original issue discount as the number of complete months that the debt instrument was held by the taxpayer bears to the number of complete months from the date of original issue to the date of maturity, shall be considered as ordinary income.

(2) Subsection (a)(2)(A) not to apply

Subsection (a)(2)(A) shall not apply to any debt instrument referred to in paragraph (1) of this subsection.

(3) Cross reference

For current inclusion of original issue discount, see section 1272.

(d) Double inclusion in income not required

This section and sections 1272 and 1286 shall not require the inclusion of any amount previously includible in gross income.

(Added Pub. L. 98–369, div. A, title I, § 41(a), July 18, 1984, 98 Stat. 531; amended Pub. L. 99–514, title XVIII, § 1803(a)(1)(A), (2), (3), Oct. 22, 1986, 100 Stat. 2791, 2792; Pub. L. 100–647, title I, § 1006(u)(4), Nov. 10, 1988, 102 Stat. 3427; Pub. L. 105–34, title X, § 1003(c)(1), Aug. 5, 1997, 111 Stat. 910; Pub. L. 113–295, div. A, title II, § 221(a)(86), Dec. 19, 2014, 128 Stat. 4049.)

AMENDMENTS

2014—Subsec. (c). Pub. L. 113–295 amended subsec. (c) generally. Prior to amendment, subsec. (c) related to transition rules, including special rules for certain obligations issued before Jan. 1, 1955, and for certain obligations with respect to which original issue discount was not currently includible.

1997—Subsec. (b). Pub. L. 105–34 amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: ''This section shall not apply to—

''(1) NATURAL PERSONS.—Any obligation issued by a natural person.

''(2) OBLIGATIONS ISSUED BEFORE JULY 2, 1982, BY CERTAIN ISSUERS.—Any obligation issued before July 2, 1982, by an issuer which—

''(A) is not a corporation, and

''(B) is not a government or political subdivision thereof.''

1988—Subsec. (a)(2)(A)(ii). Pub. L. 100–647 substituted ''subsection (a)(7)'' for ''subsection (a)(6)''.

1986—Subsec. (a)(3)(B). Pub. L. 99–514, § 1803(a)(3), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''For purposes of this paragraph, the term 'short-term Government obligation' means any obligation of the United States or any of its possessions, or of a State or any political subdivision thereof, or of the District of Columbia which is—

''(i) issued on a discount basis, and

''(ii) payable without interest at a fixed maturity date not more than 1 year from the date of issue.

Such term does not include any tax-exempt obligation.''

Subsec. (a)(3)(D). Pub. L. 99–514, § 1803(a)(2)(B), inserted ''except as provided in subparagraph (E),''.

Subsec. (a)(3)(E). Pub. L. 99–514, § 1803(a)(2)(A), added subpar. (E).

Subsec. (a)(4). Pub. L. 99–514, § 1803(a)(1)(A), added par. (4).

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 1997 AMENDMENT

Pub. L. 105–34, title X, § 1003(c)(2), Aug. 5, 1997, 111 Stat. 911, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to sales, exchanges, and retirements after 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 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

Pub. L. 98–369, div. A, title I, § 44, July 18, 1984, 98 Stat. 559, as amended by Pub. L. 98–612, § 2, Oct. 31, 1984, 98 Stat. 3182; Pub. L. 99–514, § 2, title XVIII, § 1803(b), Oct. 22, 1986, 100 Stat. 2095, 2797, provided that:

''(a) GENERAL RULE.—Except as otherwise provided in this section, the amendments made by this subtitle [subtitle C (§§ 41–44) of title I of div. A of Pub. L. 98–369, enacting this section and sections 1272 to 1288 and 6706, amending sections 103A, 163, 165, 249, 341, 405, 409, 453B, 483, 751, 811, 871, 881, 1016, 1037, 1351, 1441, 6049, 7701, and 7805, and repealing sections 1232, 1232A, and 1232B of this title] shall apply to taxable years ending after the date of the enactment of this Act [July 18, 1984].

''(b) TREATMENT OF DEBT INSTRUMENTS RECEIVED IN EXCHANGE FOR PROPERTY.—

''(1) IN GENERAL.—

''(A) Except as otherwise provided in this subsection, section 1274 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by section 41) and the amendment made by section 41(b) (relating to amendment of section 483) shall apply to sales or exchanges after December 31, 1984.

''(B) Section 1274 of such Code and the amendment made by section 41(b) shall not apply to any sale or exchange pursuant to a written contract which was binding on March 1, 1984, and at all times thereafter before the sale or exchange.

''(2) REVISION OF SECTION 482 REGULATIONS.—Not later than 180 days after the date of the enactment of this Act [July 18, 1984], the Secretary of the Treasury or his delegate shall modify the safe harbor interest rates applicable under the regulations prescribed under section 482 of the Internal Revenue Code of 1986 so that such rates are consistent with the rates applicable under section 483 of such Code by reason of the amendments made by section 41.

''(3) CLARIFICATION OF INTEREST ACCRUAL; FAIR MARKET VALUE RULE IN CASE OF POTENTIALLY ABUSIVE SITUATIONS.—

''(A) IN GENERAL.—

''(i) CLARIFICATION OF INTEREST ACCRUAL.—In the case of any sale or exchange—

''(I) after March 1, 1984, nothing in section 483 of the Internal Revenue Code of 1986 shall permit any interest to be deductible before the period to which such interest is properly allocable, or

''(II) after June 8, 1984, notwithstanding section 483 of the Internal Revenue Code of 1986 or any other provision of law, no interest shall be deductible before the period to which such interest is properly allocable.

''(ii) FAIR MARKET RULE.—In the case of any sale or exchange after March 1, 1984, such section 483 shall be treated as including provisions similar to the provisions of section 1274(b)(3) of such Code (as added by section 41).

''(B) EXCEPTION FOR BINDING CONTRACTS.—

''(i) Subparagraph (A)(i)(I) shall not apply to any sale or exchange pursuant to a written contract which was binding on March 1, 1984, and at all times thereafter before the sale or exchange.

''(ii) Subparagraph (A)(i)(II) shall not apply to any sale or exchange pursuant to a written contract which was binding on June 8, 1984, and at all times thereafter before the sale or exchange.

''(C) INTEREST ACCRUAL RULE NOT TO APPLY WHERE SUBSTANTIALLY EQUAL ANNUAL PAYMENTS.—Clause (i) of subparagraph (A) shall not apply to any debt instrument with substantially equal annual payments.

''(4) SPECIAL RULES FOR SALES AFTER DECEMBER 31, 1984, AND BEFORE JULY 1, 1985.—

''(A) IN GENERAL.—In the case of any sale or exchange after December 31, 1984, and before July 1, 1985, of property other than new section 38 property—

''(i) sections 483(c)(1)(B) and 1274(c)(3) of the Internal Revenue Code of 1986 shall be applied by substituting the testing rate determined under subparagraph (B) for 110 percent of the applicable Federal rate determined under section 1274(d) of such Code, and

''(ii) sections 483(b) and 1274(b) of such Code shall be applied by substituting the imputation rate determined under subparagraph (C) for 120 percent of the applicable Federal rate determined under section 1274(d) of such Code.

''(B) TESTING RATE.—For purposes of this paragraph—

''(i) IN GENERAL.—The testing rate determined under this subparagraph is the sum of—

''(I) 9 percent, plus

''(II) if the borrowed amount exceeds $2,000,000, the excess determined under clause (ii) multiplied by a fraction the numerator of which is the borrowed amount to the extent it exceeds $2,000,000, and the denominator of which is the borrowed amount.

''(ii) EXCESS.—For purposes of clause (i), the excess determined under this clause is the excess of 110 percent of the applicable Federal rate determined under section 1274(d) of such Code over 9 percent.

''(C) IMPUTATION RATE.—For purposes of this paragraph—

''(i) IN GENERAL.—The imputation rate determined under this subparagraph is the sum of—

''(I) 10 percent, plus

''(II) if the borrowed amount exceeds $2,000,000, the excess determined under clause (ii) multiplied by a fraction the numerator of which is the borrowed amount to the extent it exceeds $2,000,000, and the denominator of which is the borrowed amount.

''(ii) EXCESS.—For purposes of clause (i), the excess determined under this clause is the excess of 120 percent of the applicable Federal rate determined under section 1274(d) of such Code over 10 percent.

''(D) BORROWED AMOUNT.—For purposes of this paragraph, the term 'borrowed amount' means the stated principal amount.

''(E) AGGREGATION RULES.—For purposes of this paragraph—

''(i) all sales or exchanges which are part of the same transaction (or a series of related transactions) shall be treated as one sale or exchange, and

''(ii) all debt instruments arising from the same transaction (or a series of related transactions) shall be treated as one debt instrument.

''(F) CASH METHOD OF ACCOUNTING.—In the case of any sale or exchange before July 1, 1985, of property (other than new section 38 property) used in the active business of farming and in which the borrowed amount does not exceed $2,000,000—

''(i) section 1274 of the Internal Revenue Code of 1986 shall not apply, and

''(ii) interest on the obligation issued in connection with such sale or exchange shall be taken into account by both buyer and seller on the cash receipts and disbursements method of accounting.

The Secretary of the Treasury or his delegate may by regulation prescribe rules to prevent the mismatching of interest income and interest deductions in connection with obligations on which interest is computed on the cash receipts and disbursements method of accounting.

''(G) CLARIFICATION OF APPLICATION OF THIS PARAGRAPH, ETC.—This paragraph and paragraphs (5), (6), and (7) shall apply only in the case of sales or exchanges to which section 1274 or 483 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by section 41) applies.

''(5) GENERAL RULE FOR ASSUMPTIONS OF LOANS.—Except as provided in paragraphs (6) and (7), if any person—

''(A) assumes, in connection with the sale or exchange of property, any debt obligation, or

''(B) acquires any property subject to any debt obligation,

sections 1274 and 483 of the Internal Revenue Code of 1986 shall apply to such debt obligation by reason of such assumption (or such acquisition).

''(6) EXCEPTION FOR ASSUMPTIONS OF LOANS MADE ON OR BEFORE OCTOBER 15, 1984.—

''(A) IN GENERAL.—If any person—

''(i) assumes, in connection with the sale or exchange of property, any debt obligation described in subparagraph (B) and issued on or before October 15, 1984, or

''(ii) acquires any property subject to any such debt obligation issued on or before October 15, 1984,

sections 1274 and 483 of the Internal Revenue Code of 1986 shall not be applied to such debt obligation by reason of such assumption (or such acquisition) unless the terms and conditions of such debt obligation are modified in connection with the assumption (or acquisition).

''(B) OBLIGATIONS DESCRIBED IN THIS SUBPARAGRAPH.—A debt obligation is described in this subparagraph if such obligation—

''(i) was issued on or before October 15, 1984, and

''(ii) was assumed (or property was taken subject to such obligation) in connection with the sale or exchange of property (including a deemed sale under section 338 (a)) the sales price of which is not greater than $100,000,000.

''(C) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to effect the purpose of this paragraph and paragraph (5), including regulations relating to tax-exempt obligations, government subsidized loans, or other instruments.

''(D) CERTAIN EXEMPT TRANSACTIONS.—The Secretary shall prescribe regulations under which any transaction shall be exempt from the application of this paragraph if such exemption is not likely to significantly reduce the tax liability of the purchaser by reason of the overstatement of the adjusted basis of the acquired asset.

''(7) EXCEPTION FOR ASSUMPTIONS OF LOANS WITH RESPECT TO CERTAIN PROPERTY.—

''(A) IN GENERAL.—If any person—

''(i) assumes, in connection with the sale or exchange of property described in subparagraph (B), any debt obligation, or

''(ii) acquires any such property subject to any such debt obligation,

sections 1274 and 483 of the Internal Revenue Code of 1986 shall not be applied to such debt obligation by reason of such assumption (or such acquisition) unless the terms and conditions of such debt obligation are modified in connection with the assumption (or acquisition).

''(B) SALES OR EXCHANGES TO WHICH THIS PARAGRAPH APPLIES.—This paragraph shall apply to any of the following sales or exchanges:

''(i) RESIDENCES.—Any sale or exchange of a residence by an individual, an estate, or a testamentary trust, but only if—

''(I) either—

''(aa) such residence on the date of such sale or exchange (or in the case of an estate or testamentary trust, on the date of death of the decedent) was the principal residence (within the meaning of section 1034) of the individual or decedent, or

''(bb) during the 2-year period ending on such date, no substantial portion of such residence was of a character subject to an allowance under this title [probably means the Internal Revenue Code of 1986] for depreciation (or amortization in lieu thereof) in the hands of such individual or decedent, and

''(II) such residence was not at any time, in the hands of such individual, estate, testamentary trust, or decedent, described in section 1221(1) (relating to inventory, etc.).

''(ii) FARMS.—Any sale or exchange by a qualified person of—

''(I) real property which was used as a farm (within the meaning of section 6420(c)(2)) at all

times during the 3-year period ending on the date of such sale or exchange, or

''(II) tangible personal property which was used in the active conduct of the trade or business of farming on such farm and is sold in connection with the sale of such farm,

but only if such property is sold or exchanged for use in the active conduct of the trade or business of farming by the transferee of such property.

''(iii) TRADES OR BUSINESSES.—

''(I) IN GENERAL.—Any sale or exchange by a qualified person of any trade or business.

''(II) APPLICATION WITH SUBPARAGRAPH (B).—This subparagraph shall not apply to any sale or exchange of any property described in subparagraph (B).

''(III) NEW SECTION 38 PROPERTY.—This subparagraph shall not apply to the sale or exchange of any property which, in the hands of the transferee, is new section 38 property.

''(iv) SALE OF BUSINESS REAL ESTATE.—Any sale or exchange of any real property used in an active trade or business by a person who would be a qualified person if he disposed of his entire interest.

This subparagraph shall not apply to any transaction described in the last sentence of paragraph (6)(B) (relating to transaction in excess of $100,000,000).

''(C) DEFINITIONS.—For purposes of this paragraph—

''(i) QUALIFIED PERSON DEFINED.—The term 'qualified person' means—

''(I) a person who—

''(aa) is an individual, estate, or testamentary trust,

''(bb) is a corporation which immediately prior to the date of the sale or exchange has 35 or fewer shareholders, or

''(cc) is a partnership which immediately prior to the date of the sale or exchange has 35 or fewer partners,

''(II) is a 10-percent owner of a farm or a trade or business,

''(III) pursuant to a plan, disposes of—

''(aa) an interest in a farm or farm property, or

''(bb) his entire interest in a trade or business and all substantially similar trades or businesses, and

''(IV) the ownership interest of whom may be readily established by reason of qualified allocations (of the type described in section 168(j)(9)(B), one class of stock, or the like).

''(ii) 10-PERCENT OWNER DEFINED.—The term '10-percent owner' means a person having at least a 10-percent ownership interest, applying the attribution rules of section 318 (other than subsection (a)(4)).

''(iii) TRADE OR BUSINESS DEFINED.—

''(I) IN GENERAL.—The term 'trade or business' means any trade or business, including any line of business, qualifying as an active trade or business within the meaning of section 355.

''(II) RENTAL OF REAL PROPERTY.—For purposes of this clause, the holding of real property for rental shall not be treated as an active trade or business.

''(c) MARKET DISCOUNT RULES.—

''(1) ORDINARY INCOME TREATMENT.—Section 1276 of the Internal Revenue Code of 1986 (as added by section 41) shall apply to obligations issued after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.

''(2) INTEREST DEFERRAL RULES.—Section 1277 of such Code (as added by section 41) shall apply to obligations acquired after the date of the enactment of this Act in taxable years ending after such date.

''(d) RULES RELATING TO DISCOUNT ON SHORT-TERM OBLIGATIONS.—Subpart C of part V of subchapter P of chapter 1 of such Code (as added by section 41) shall apply to obligations acquired after the date of the enactment of this Act [July 18, 1984].

''(e) 5-YEAR SPREAD OF ADJUSTMENTS REQUIRED BY REASON OF ACCRUAL OF DISCOUNT ON CERTAIN SHORT-TERM OBLIGATIONS.—

''(1) ELECTION TO HAVE SECTION 1281 APPLY TO ALL OBLIGATIONS HELD DURING TAXABLE YEAR.—A taxpayer may elect for his first taxable year ending after the date of the enactment of this Act [July 18, 1984] to have section 1281 of the Internal Revenue Code of 1986 apply to all short-term obligations described in subsection (b) of such section which were held by the taxpayer at any time during such first taxable year.

''(2) 5-YEAR SPREAD.—

''(A) IN GENERAL.—In the case of any taxpayer who makes an election under paragraph (1)—

''(i) the provisions of section 1281 of the Internal Revenue Code of 1986 (as added by section 41) shall be treated as a change in the method of accounting of the taxpayer,

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

''(iii) the net amount of the adjustments required by section 481(a) of such Code to be taken into account by the taxpayer in computing taxable income (hereinafter in this paragraph referred to as the 'net adjustments') shall be taken into account during the spread period with the amount taken into account in each taxable year in such period determined under subparagraph (B).

''(B) AMOUNT TAKEN INTO ACCOUNT DURING EACH YEAR OF SPREAD PERIOD.—

''(i) FIRST YEAR.—The amount taken into account for the first taxable year in the spread period shall be the sum of—

''(I) one-fifth of the net adjustments, and

''(II) the excess (if any) of—

''(a) the cash basis income over the accrual basis income, over

''(b) one-fifth of the net adjustments.

''(ii) FOR SUBSEQUENT YEARS IN SPREAD PERIOD.—The amount taken into account in the second or any succeeding taxable year in the spread period shall be the sum of—

''(I) the portion of the net adjustments not taken into account in the preceding taxable year of the spread period divided by the number of remaining taxable years in the spread period (including the year for which the determination is being made), and

''(II) the excess (if any) of—

''(a) the excess of the cash basis income over the accrual basis income, over

''(b) one-fifth of the net adjustments, multiplied by 5 minus the number of years remaining in the spread period (not including the current year).

The excess described in subparagraph (B)(ii)(II)(a) shall be reduced by any amount taken into account under this subclause or clause (i)(II) in any prior year.

''(C) SPREAD PERIOD.—For purposes of this paragraph, the term 'spread period' means the period consisting of the 5 taxable years beginning with the year for which the election is made under paragraph (1).

''(D) CASH BASIS INCOME.—For purposes of this paragraph, the term 'cash basis income' means for any taxable year the aggregate amount which would be includible in the gross income of the taxpayer with respect to short-term obligations described in subsection (b) of section 1281 of such Code if the provisions of section 1281 of such Code did not apply to such taxable year and all prior taxable years within the spread period.

''(E) ACCRUAL BASIS INCOME.—For purposes of this paragraph, the term 'accrual basis income' means for any taxable year the aggregate amount includ-

ible in gross income under section 1281(a) of such Code for such a taxable year and all prior taxable years within the spread period.

''(f) TREATMENT OF ORIGINAL ISSUE DISCOUNT ON TAX-EXEMPT OBLIGATIONS.—Section 1288 of such Code (as added by section 41) shall apply to obligations issued after September 3, 1982, and acquired after March 1, 1984.

''(g) REPEAL OF CAPITAL ASSET REQUIREMENT.—Section 1272 of such Code (as added by section 41) shall not apply to any obligation issued on or before December 31, 1984, which is not a capital asset in the hands of the taxpayer.

''(h) REPORTING REQUIREMENTS.—Section 1275(c) of such Code (as added by section 41) and the amendments made by section 41(c) [enacting section 6706 of this title] shall take effect on the day 30 days after the date of the enactment of this Act [July 18, 1984].

''(i) OTHER MISCELLANEOUS CHANGES.—

''(1) ACCRUAL PERIOD.—In the case of any obligation issued after July 1, 1982, and before January 1, 1985, the accrual period, for purposes of section 1272(a) of the Internal Revenue Code of 1986 (as amended by section 41(a)), shall be a 1-year period (or shorter period to maturity) beginning on the day in the calendar year which corresponds to the date of original issue of the obligation.

''(2) CHANGE IN REDUCTION FOR PURCHASE AFTER ORIGINAL ISSUE.—Section 1272(a)(6) of such Code (as so amended) shall not apply to any purchase on or before the date of the enactment of this Act [July 18, 1984], and the rules of section 1232A(a)(6) of such Code (as in effect on the day before the date of the enactment of this Act) shall continue to apply to such purchase.

''(j) CLARIFICATION THAT PRIOR EFFECTIVE DATE RULES NOT AFFECTED.—Nothing in the amendment made by section 41(a) shall affect the application of any effective date provision (including any transitional rule) for any provision which was a predecessor to any provision contained in part V of subchapter P of chapter 1 of the Internal Revenue Code of 1954 (as added by section 41).''

[Amendment of section 44 of Pub. L. 98–369, set out above, by Pub. L. 98–612 (which added pars. (4) to (7) to subsec. (b)) not 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 an Effective Date of 1985 Amendment note under section 1274 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.

§ 1272. Current inclusion in income of original issue discount

(a) Original issue discount on debt instruments issued after July 1, 1982, included in income on basis of constant interest rate

(1) General rule

For purposes of this title, there shall be included in the gross income of the holder of any debt instrument having original issue discount issued after July 1, 1982, an amount equal to the sum of the daily portions of the original issue discount for each day during the taxable year on which such holder held such debt instrument.

(2) Exceptions

Paragraph (1) shall not apply to—

(A) Tax-exempt obligations

Any tax-exempt obligation.

(B) United States savings bonds

Any United States savings bond.

(C) Short-term obligations

Any debt instrument which has a fixed maturity date not more than 1 year from the date of issue.

(D) Obligations issued by natural persons before March 2, 1984

Any obligation issued by a natural person before March 2, 1984.

(E) Loans between natural persons

(i) In general

Any loan made by a natural person to another natural person if—

(I) such loan is not made in the course of a trade or business of the lender, and

(II) the amount of such loan (when increased by the outstanding amount of prior loans by such natural person to such other natural person) does not exceed $10,000.

(ii) Clause (i) not to apply where tax avoidance a principal purpose

Clause (i) shall not apply if the loan has as 1 of its principal purposes the avoidance of any Federal tax.

(iii) Treatment of husband and wife

For purposes of this subparagraph, a husband and wife shall be treated as 1 person. The preceding sentence shall not apply where the spouses lived apart at all times during the taxable year in which the loan is made.

(3) Determination of daily portions

For purposes of paragraph (1), the daily portion of the original issue discount on any debt instrument shall be determined by allocating to each day in any accrual period its ratable portion of the increase during such accrual period in the adjusted issue price of the debt instrument. For purposes of the preceding sentence, the increase in the adjusted issue price for any accrual period shall be an amount equal to the excess (if any) of—

(A) the product of—

(i) the adjusted issue price of the debt instrument at the beginning of such accrual period, and

(ii) the yield to maturity (determined on the basis of compounding at the close of each accrual period and properly adjusted for the length of the accrual period), over

(B) the sum of the amounts payable as interest on such debt instrument during such accrual period.

(4) Adjusted issue price

For purposes of this subsection, the adjusted issue price of any debt instrument at the beginning of any accrual period is the sum of—

(A) the issue price of such debt instrument, plus

(B) the adjustments under this subsection to such issue price for all periods before the first day of such accrual period.

(5) Accrual period

Except as otherwise provided in regulations prescribed by the Secretary, the term ''accrual period'' means a 6-month period (or shorter period from the date of original issue of the debt instrument) which ends on a day in the calendar year corresponding to the maturity date of the debt instrument or the date 6 months before such maturity date.

(6) Determination of daily portions where principal subject to acceleration

(A) In general

In the case of any debt instrument to which this paragraph applies, the daily portion of the original issue discount shall be determined by allocating to each day in any accrual period its ratable portion of the excess (if any) of—

(i) the sum of (I) the present value determined under subparagraph (B) of all remaining payments under the debt instrument as of the close of such period, and (II) the payments during the accrual period of amounts included in the stated redemption price of the debt instrument, over

(ii) the adjusted issue price of such debt instrument at the beginning of such period.

(B) Determination of present value

For purposes of subparagraph (A), the present value shall be determined on the basis of—

(i) the original yield to maturity (determined on the basis of compounding at the close of each accrual period and properly adjusted for the length of the accrual period),

(ii) events which have occurred before the close of the accrual period, and

(iii) a prepayment assumption determined in the manner prescribed by regulations.

(C) Debt instruments to which paragraph applies

This paragraph applies to—

(i) any regular interest in a REMIC or qualified mortgage held by a REMIC,

(ii) any other debt instrument if payments under such debt instrument may be accelerated by reason of prepayments of other obligations securing such debt instrument (or, to the extent provided in regulations, by reason of other events), or

(iii) any pool of debt instruments the yield on which may be affected by reason of prepayments (or to the extent provided in regulations, by reason of other events).

To the extent provided in regulations prescribed by the Secretary, in the case of a small business engaged in the trade or business of selling tangible personal property at retail, clause (iii) shall not apply to debt instruments incurred in the ordinary course of such trade or business while held by such business.

(7) Reduction where subsequent holder pays acquisition premium

(A) Reduction

For purposes of this subsection, in the case of any purchase after its original issue of a debt instrument to which this subsection applies, the daily portion for any day shall be reduced by an amount equal to the amount which would be the daily portion for such day (without regard to this paragraph) multiplied by the fraction determined under subparagraph (B).

(B) Determination of fraction

For purposes of subparagraph (A), the fraction determined under this subparagraph is a fraction—

(i) the numerator of which is the excess (if any) of—

(I) the cost of such debt instrument incurred by the purchaser, over

(II) the issue price of such debt instrument, increased by the portion of original issue discount previously includible in the gross income of any holder (computed without regard to this paragraph), and

(ii) the denominator of which is the sum of the daily portions for such debt instrument for all days after the date of such purchase and ending on the stated maturity date (computed without regard to this paragraph).

(b) Ratable inclusion retained for corporate debt instruments issued before July 2, 1982

(1) General rule

There shall be included in the gross income of the holder of any debt instrument issued by a corporation after May 27, 1969, and before July 2, 1982—

(A) the ratable monthly portion of original issue discount, multiplied by

(B) the number of complete months (plus any fractional part of a month determined under paragraph (3)) such holder held such debt instrument during the taxable year.

(2) Determination of ratable monthly portion

Except as provided in paragraph (4), the ratable monthly portion of original issue discount shall equal—

(A) the original issue discount, divided by

(B) the number of complete months from the date of original issue to the stated maturity date of the debt instrument.

(3) Month defined

For purposes of this subsection—

(A) Complete month

A complete month commences with the date of original issue and the corresponding day of each succeeding calendar month (or the last day of a calendar month in which there is no corresponding day).

(B) Transfers during month

In any case where a debt instrument is acquired on any day other than a day determined under subparagraph (A), the ratable monthly portion of original issue discount

for the complete month (or partial month) in which such acquisition occurs shall be allocated between the transferor and the transferee in accordance with the number of days in such complete (or partial) month each held the debt instrument.

(4) Reduction where subsequent holder pays acquisition premium

(A) Reduction

For purposes of this subsection, the ratable monthly portion of original issue discount shall not include its share of the acquisition premium.

(B) Share of acquisition premium

For purposes of subparagraph (A), any month's share of the acquisition premium is an amount (determined at the time of the purchase) equal to—

(i) the excess of—

(I) the cost of such debt instrument incurred by the holder, over

(II) the issue price of such debt instrument, increased by the portion of original issue discount previously includible in the gross income of any holder (computed without regard to this paragraph),

(ii) divided by the number of complete months (plus any fractional part of a month) from the date of such purchase to the stated maturity date of such debt instrument.

(c) Exceptions

This section shall not apply to any holder—

(1) who has purchased the debt instrument at a premium, or

(2) which is a life insurance company to which section 811(b) applies.

(d) Definition and special rule

(1) Purchase defined

For purposes of this section, the term ''purchase'' means—

(A) any acquisition of a debt instrument, where

(B) the basis of the debt instrument is not determined in whole or in part by reference to the adjusted basis of such debt instrument in the hands of the person from whom acquired.

(2) Basis adjustment

The basis of any debt instrument in the hands of the holder thereof shall be increased by the amount included in his gross income pursuant to this section.

(Added Pub. L. 98–369, div. A, title I, § 41(a), July 18, 1984, 98 Stat. 533; amended Pub. L. 99–514, title VI, § 672, Oct. 22, 1986, 100 Stat. 2318; Pub. L. 105–34, title X, § 1004(a), Aug. 5, 1997, 111 Stat. 911.)

AMENDMENTS

1997—Subsec. (a)(6)(C). Pub. L. 105–34 added cl. (iii) and concluding provisions.

1986—Subsec. (a)(6), (7). Pub. L. 99–514 added par. (6) and redesignated former par. (6) as (7).

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title X, § 1004(b)(1), Aug. 5, 1997, 111 Stat. 911, 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. 5, 1997].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to debt instruments issued after Dec. 31, 1986, in taxable years ending after such date, see section 675(b) of Pub. L. 99–514, set out as an Effective Date note under section 860A of this title.

EFFECTIVE DATE

Section applicable to taxable years ending after July 18, 1984, but not applicable to any obligation issued on or before Dec. 31, 1984, which is not a capital asset in the hands of the taxpayer, and subsec. (a)(6) of this section not applicable to any purchase on or before July 18, 1984, see section 44 of Pub. L. 98–369, as amended, set out as a note under section 1271 of this title.

CHANGE IN METHOD OF ACCOUNTING

Pub. L. 105–34, title X, § 1004(b)(2), Aug. 5, 1997, 111 Stat. 911, provided that: ''In the case of any taxpayer required by this section [amending this section and enacting provisions set out as a note above] to change its method of accounting for its first taxable year beginning after the date of the enactment of this Act [Aug. 5, 1997]—

''(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.''

§ 1273. Determination of amount of original issue discount

(a) General rule

For purposes of this subpart—

(1) In general

The term ''original issue discount'' means the excess (if any) of—

(A) the stated redemption price at maturity, over

(B) the issue price.

(2) Stated redemption price at maturity

The term ''stated redemption price at maturity'' means the amount fixed by the last modification of the purchase agreement and includes interest and other amounts payable at that time (other than any interest based on a fixed rate, and payable unconditionally at fixed periodic intervals of 1 year or less during the entire term of the debt instrument).

(3) ¼ of 1 percent de minimis rule

If the original issue discount determined under paragraph (1) is less than—

(A) ¼ of 1 percent of the stated redemption price at maturity, multiplied by

(B) the number of complete years to maturity,

then the original issue discount shall be treated as zero.

(b) Issue price

For purposes of this subpart—

(1) Publicly offered debt instruments not issued for property

In the case of any issue of debt instruments—

(A) publicly offered, and
(B) not issued for property,

the issue price is the initial offering price to the public (excluding bond houses and brokers) at which price a substantial amount of such debt instruments was sold.

(2) Other debt instruments not issued for property

In the case of any issue of debt instruments not issued for property and not publicly offered, the issue price of each such instrument is the price paid by the first buyer of such debt instrument.

(3) Debt instruments issued for property where there is public trading

In the case of a debt instrument which is issued for property and which—

(A) is part of an issue a portion of which is traded on an established securities market, or

(B)(i) is issued for stock or securities which are traded on an established securities market, or

(ii) to the extent provided in regulations, is issued for property (other than stock or securities) of a kind regularly traded on an established market,

the issue price of such debt instrument shall be the fair market value of such property.

(4) Other cases

Except in any case—

(A) to which paragraph (1), (2), or (3) of this subsection applies, or

(B) to which section 1274 applies,

the issue price of a debt instrument which is issued for property shall be the stated redemption price at maturity.

(5) Property

In applying this subsection, the term ''property'' includes services and the right to use property, but such term does not include money.

(c) Special rules for applying subsection (b)

For purposes of subsection (b)—

(1) Initial offering price; price paid by the first buyer

The terms ''initial offering price'' and ''price paid by the first buyer'' include the aggregate payments made by the purchaser under the purchase agreement, including modifications thereof.

(2) Treatment of investment units

In the case of any debt instrument and an option, security, or other property issued together as an investment unit—

(A) the issue price for such unit shall be determined in accordance with the rules of this subsection and subsection (b) as if it were a debt instrument,

(B) the issue price determined for such unit shall be allocated to each element of such unit on the basis of the relationship of the fair market value of such element to the fair market value of all elements in such unit, and

(C) the issue price of any debt instrument included in such unit shall be the portion of the issue price of the unit allocated to the debt instrument under subparagraph (B).

(Added Pub. L. 98–369, div. A, title I, § 41(a), July 18, 1984, 98 Stat. 536; amended Pub. L. 99–514, title XVIII, § 1803(a)(10), Oct. 22, 1986, 100 Stat. 2794.)

AMENDMENTS

1986—Subsec. (b)(3)(B). Pub. L. 99–514 amended subpar. (B) generally, designating existing provisions as cl. (i) and adding cl. (ii).

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 ending after July 18, 1984, except as otherwise provided, see section 44 of Pub. L. 98–369, set out as a note under section 1271 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.

§ 1274. Determination of issue price in the case of certain debt instruments issued for property

(a) In general

In the case of any debt instrument to which this section applies, for purposes of this subpart, the issue price shall be—

(1) where there is adequate stated interest, the stated principal amount, or

(2) in any other case, the imputed principal amount.

(b) Imputed principal amount

For purposes of this section—

(1) In general

Except as provided in paragraph (3), the imputed principal amount of any debt instrument shall be equal to the sum of the present values of all payments due under such debt instrument.

(2) Determination of present value

For purposes of paragraph (1), the present value of a payment shall be determined in the manner provided by regulations prescribed by the Secretary—

(A) as of the date of the sale or exchange, and

(B) by using a discount rate equal to the applicable Federal rate, compounded semiannually.

(3) Fair market value rule in potentially abusive situations

(A) In general

In the case of any potentially abusive situation, the imputed principal amount of any

debt instrument received in exchange for property shall be the fair market value of such property adjusted to take into account other consideration involved in the transaction.

(B) Potentially abusive situation defined

For purposes of subparagraph (A), the term ''potentially abusive situation'' means—

(i) a tax shelter (as defined in section 6662(d)(2)(C)(iii)),[1] and

(ii) any other situation which, by reason of—

(I) recent sales transactions,

(II) nonrecourse financing,

(III) financing with a term in excess of the economic life of the property, or

(IV) other circumstances,

is of a type which the Secretary specifies by regulations as having potential for tax avoidance.

(c) Debt instruments to which section applies

(1) In general

Except as otherwise provided in this subsection, this section shall apply to any debt instrument given in consideration for the sale or exchange of property if—

(A) the stated redemption price at maturity for such debt instrument exceeds—

(i) where there is adequate stated interest, the stated principal amount, or

(ii) in any other case, the imputed principal amount of such debt instrument determined under subsection (b), and

(B) some or all of the payments due under such debt instrument are due more than 6 months after the date of such sale or exchange.

(2) Adequate stated interest

For purposes of this section, there is adequate stated interest with respect to any debt instrument if the stated principal amount for such debt instrument is less than or equal to the imputed principal amount of such debt instrument determined under subsection (b).

(3) Exceptions

This section shall not apply to—

(A) Sales for $1,000,000 or less of farms by individuals or small businesses

(i) In general

Any debt instrument arising from the sale or exchange of a farm (within the meaning of section 6420(c)(2))—

(I) by an individual, estate, or testamentary trust,

(II) by a corporation which as of the date of the sale or exchange is a small business corporation (as defined in section 1244(c)(3)), or

(III) by a partnership which as of the date of the sale or exchange meets requirements similar to those of section 1244(c)(3).

(ii) $1,000,000 limitation

Clause (i) shall apply only if it can be determined at the time of the sale or exchange that the sales price cannot exceed $1,000,000. For purposes of the preceding sentence, all sales and exchanges which are part of the same transaction (or a series of related transactions) shall be treated as 1 sale or exchange.

(B) Sales of principal residences

Any debt instrument arising from the sale or exchange by an individual of his principal residence (within the meaning of section 121).

(C) Sales involving total payments of $250,000 or less

(i) In general

Any debt instrument arising from the sale or exchange of property if the sum of the following amounts does not exceed $250,000:

(I) the aggregate amount of the payments due under such debt instrument and all other debt instruments received as consideration for the sale or exchange, and

(II) the aggregate amount of any other consideration to be received for the sale or exchange.

(ii) Consideration other than debt instrument taken into account at fair market value

For purposes of clause (i), any consideration (other than a debt instrument) shall be taken into account at its fair market value.

(iii) Aggregation of transactions

For purposes of this subparagraph, all sales and exchanges which are part of the same transaction (or a series of related transactions) shall be treated as 1 sale or exchange.

(D) Debt instruments which are publicly traded or issued for publicly traded property

Any debt instrument to which section 1273(b)(3) applies.

(E) Certain sales of patents

In the case of any transfer described in section 1235(a) (relating to sale or exchange of patents), any amount contingent on the productivity, use, or disposition of the property transferred.

(F) Sales or exchanges to which section 483(e) applies

Any debt instrument to the extent section 483(e) (relating to certain land transfers between related persons) applies to such instrument.

(4) Exception for assumptions

If any person—

(A) in connection with the sale or exchange of property, assumes any debt instrument, or

(B) acquires any property subject to any debt instrument,

in determining whether this section or section 483 applies to such debt instrument, such as-

[1] See References in Text note below.

sumption (or such acquisition) shall not be taken into account unless the terms and conditions of such debt instrument are modified (or the nature of the transaction is changed) in connection with the assumption (or acquisition).

(d) Determination of applicable Federal rate

For purposes of this section—

(1) Applicable Federal rate

(A) In general

In the case of a debt instrument with a term of:	The applicable Federal rate is:
Not over 3 years	The Federal short-term rate.
Over 3 years but not over 9 years	The Federal mid-term rate.
Over 9 years	The Federal long-term rate.

(B) Determination of rates

During each calendar month, the Secretary shall determine the Federal short-term rate, mid-term rate, and long-term rate which shall apply during the following calendar month.

(C) Federal rate for any calendar month

For purposes of this paragraph—

(i) Federal short-term rate

The Federal short-term rate shall be the rate determined by the Secretary based on the average market yield (during any 1-month period selected by the Secretary and ending in the calendar month in which the determination is made) on outstanding marketable obligations of the United States with remaining periods to maturity of 3 years or less.

(ii) Federal mid-term and long-term rates

The Federal mid-term and long-term rate shall be determined in accordance with the principles of clause (i).

(D) Lower rate permitted in certain cases

The Secretary may by regulations permit a rate to be used with respect to any debt instrument which is lower than the applicable Federal rate if the taxpayer establishes to the satisfaction of the Secretary that such lower rate is based on the same principles as the applicable Federal rate and is appropriate for the term of such instrument.

(2) Lowest 3-month rate applicable to any sale or exchange

(A) In general

In the case of any sale or exchange, the applicable Federal rate shall be the lowest 3-month rate.

(B) Lowest 3-month rate

For purposes of subparagraph (A), the term ''lowest 3-month rate'' means the lowest of the applicable Federal rates in effect for any month in the 3-calendar-month period ending with the 1st calendar month in which there is a binding contract in writing for such sale or exchange.

(3) Term of debt instrument

In determining the term of a debt instrument for purposes of this subsection, under regulations prescribed by the Secretary, there shall be taken into account options to renew or extend.

(e) 110 Percent rate where sale-leaseback involved

(1) In general

In the case of any debt instrument to which this subsection applies, the discount rate used under subsection (b)(2)(B) or section 483(b) shall be 110 percent of the applicable Federal rate, compounded semiannually.

(2) Lower discount rates shall not apply

Section 1274A shall not apply to any debt instrument to which this subsection applies.

(3) Debt instruments to which this subsection applies

This subsection shall apply to any debt instrument given in consideration for the sale or exchange of any property if, pursuant to a plan, the transferor or any related person leases a portion of such property after such sale or exchange.

(Added Pub. L. 98–369, div. A, title I, §41(a), July 18, 1984, 98 Stat. 538; amended Pub. L. 99–121, title I, §§101(a)(1), (b), (c), 102(b), Oct. 11, 1985, 99 Stat. 505, 506, 508; Pub. L. 99–514, title XVIII, §1803(a)(14)(A), Oct. 22, 1986, 100 Stat. 2797; Pub. L. 101–239, title VII, §7721(c)(11), Dec. 19, 1989, 103 Stat. 2400; Pub. L. 104–188, title I, §1704(t)(78), Aug. 20, 1996, 110 Stat. 1891; Pub. L. 105–34, title III, §312(d)(1), Aug. 5, 1997, 111 Stat. 839.)

REFERENCES IN TEXT

Section 6662(d)(2)(C), referred to in subsec. (b)(3)(B)(i), was subsequently amended and cl. (iii) no longer defines the term ''tax shelter''. However, such term is defined elsewhere in that section.

AMENDMENTS

1997—Subsec. (c)(3)(B). Pub. L. 105–34 substituted ''section 121'' for ''section 1034''.

1996—Subsec. (b)(3)(B)(i). Pub. L. 104–188 substituted ''section 6662(d)(2)(C)(iii)'' for ''section 6662(d)(2)(C)(ii)''.

1989—Subsec. (b)(3)(B)(i). Pub. L. 101–239 substituted ''section 6662(d)(2)(C)(ii)'' for ''section 6661(b)(2)(C)(ii)''.

1986—Subsec. (c)(3)(A). Pub. L. 99–514 substituted ''for $1,000,000 or less'' for ''for less than $1,000,000'' in heading of subsec. (c)(4)(A) as so designated prior to its redesignation as subsec. (c)(3)(A) by Pub. L. 99–121, §101(a)(1)(D), see 1985 Amendment note below.

1985—Subsec. (b)(2)(B). Pub. L. 99–121, §101(a)(1)(A), struck out ''120 percent of'' after ''rate equal to''.

Subsec. (c)(1)(A)(ii). Pub. L. 99–121, §101(a)(1)(B), amended cl. (ii) generally, substituting ''the imputed principal amount of such debt instrument determined under subsection (b)'' for ''the testing amount''.

Subsec. (c)(2). Pub. L. 99–121, §101(a)(1)(C), substituted ''the imputed principal amount of such debt instrument determined under subsection (b)'' for ''the testing amount''.

Subsec. (c)(3). Pub. L. 99–121, §101(a)(1)(D), redesignated par. (4) as (3). Former par. (3), defining ''testing amount'', was struck out.

Subsec. (c)(4). Pub. L. 99–121, §102(b), added par. (4). Former par. (4) redesignated (3).

Subsec. (d)(1)(B) to (D). Pub. L. 99–121, §101(b)(1), amended subpars. (B) to (D) generally, in subpar. (B) substituting provisions setting a monthly schedule for the determination of Federal rates for provisions which had formerly set a semi-annual schedule for the determination of such rates, in subpar. (C) substituting provisions setting a monthly schedule for the determina-

tion of Federal short-term, mid-term, and long-term rates based on the average market yield during any 1-month period ending in the month in which the determination is made for former provisions which had directed that the Federal rate determined under subpar. (A) apply during the appropriate 6-month period, and in subpar. (D) substituting provisions allowing a lower rate in certain cases for provisions relating to the setting of the Federal rate for any 6-month period.

Subsec. (d)(2). Pub. L. 99–121, § 101(b)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''In the case of any sale or exchange, the determination of the applicable Federal rate shall be made as of the first day on which there is a binding contract in writing for the sale or exchange.''

Subsec. (e). Pub. L. 99–121, § 101(c), added subsec. (e).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105–34, set out as a note under section 121 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1989, see section 7721(d) of Pub. L. 101–239, set out as a note under section 461 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 1985 AMENDMENT

Pub. L. 99–121, title I, § 105(a), Oct. 11, 1985, 99 Stat. 510, 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 sections 101 and 102 [enacting section 1274A and amending this section and sections 280G and 483 of this title] shall apply to sales and exchanges after June 30, 1985, in taxable years ending after such date. The amendment made by section 2 of Public Law 98–612 [amending section 44(b) of Pub. L. 98–369, set out as a note under section 1271 of this title] shall not apply to sales and exchanges after June 30, 1985, in taxable years ending after such date.

''(2) REGULATORY AUTHORITY TO ESTABLISH LOWER RATE.—Section 1274(d)(1)(D) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as added by section 101(b), shall apply as if included in the amendments made by section 41 of the Tax Reform Act of 1984 [Pub. L. 98–369, see Effective Date note set out under section 1271 of this title].''

EFFECTIVE DATE

Section 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 a note under section 1271 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 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.

§ 1274A. Special rules for certain transactions where stated principal amount does not exceed $2,800,000

(a) Lower discount rate

In the case of any qualified debt instrument, the discount rate used for purposes of sections 483 and 1274 shall not exceed 9 percent, compounded semiannually.

(b) Qualified debt instrument defined

For purposes of this section, the term ''qualified debt instrument'' means any debt instrument given in consideration for the sale or exchange of property (other than new section 38 property within the meaning of section 48(b), as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) if the stated principal amount of such instrument does not exceed $2,800,000.

(c) Election to use cash method where stated principal amount does not exceed $2,000,000

(1) In general

In the case of any cash method debt instrument—

(A) section 1274 shall not apply, and

(B) interest on such debt instrument shall be taken into account by both the borrower and the lender under the cash receipts and disbursements method of accounting.

(2) Cash method debt instrument

For purposes of paragraph (1), the term ''cash method debt instrument'' means any qualified debt instrument if—

(A) the stated principal amount does not exceed $2,000,000,

(B) the lender does not use an accrual method of accounting and is not a dealer with respect to the property sold or exchanged,

(C) section 1274 would have applied to such instrument but for an election under this subsection, and

(D) an election under this subsection is jointly made with respect to such debt instrument by the borrower and lender.

(3) Successors bound by election

(A) In general

Except as provided in subparagraph (B), paragraph (1) shall apply to any successor to the borrower or lender with respect to a cash method debt instrument.

(B) Exception where lender transfers debt instrument to accrual method taxpayer

If the lender (or any successor) transfers any cash method debt instrument to a taxpayer who uses an accrual method of ac-

counting, this paragraph shall not apply with respect to such instrument for periods after such transfer.

(4) Fair market value rule in potentially abusive situations

In the case of any cash method debt instrument, section 483 shall be applied as if it included provisions similar to the provisions of section 1274(b)(3).

(d) Other special rules

(1) Aggregation rules

For purposes of this section—

(A) all sales or exchanges which are part of the same transaction (or a series of related transactions) shall be treated as 1 sale or exchange, and

(B) all debt instruments arising from the same transaction (or a series of related transactions) shall be treated as 1 debt instrument.

(2) Adjustment for inflation

In the case of any debt instrument arising out of a sale or exchange during any calendar year after 1989, each dollar amount contained in the preceding provisions of this section shall be increased by an amount equal to—

(A) such amount, 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 1988'' for ''calendar year 2016'' in subparagraph (A)(ii) thereof.

Any increase under the preceding sentence shall be rounded to the nearest multiple of $100 (or, if such increase is a multiple of $50, such increase shall be increased to the nearest multiple of $100).

(e) Regulations

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

(1) regulations coordinating the provisions of this section with other provisions of this title,

(2) regulations necessary to prevent the avoidance of tax through the abuse of the provisions of subsection (c), and

(3) regulations relating to the treatment of transfers of cash method debt instruments.

(Added Pub. L. 99–121, title I, §102(a), Oct. 11, 1985, 99 Stat. 506; amended Pub. L. 101–508, title XI, §11813(b)(22), Nov. 5, 1990, 104 Stat. 1388–555; Pub. L. 104–188, title I, §1704(t)(62), Aug. 20, 1996, 110 Stat. 1890; Pub. L. 115–97, title I, §11002(d)(10), Dec. 22, 2017, 131 Stat. 2062.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Rulings listed in a table below.

REFERENCES IN TEXT

The date of the enactment of the Revenue Reconciliation Act of 1990, referred to in subsec. (b), is the date of enactment of Pub. L. 101–508, which was approved Nov. 5, 1990.

AMENDMENTS

2017—Subsec. (d)(2). Pub. L. 115–97 amended par. (2) generally. Prior to amendment, text read as follows:

''(A) IN GENERAL.—In the case of any debt instrument arising out of a sale or exchange during any calendar year after 1989, each dollar amount contained in the preceding provisions of this section shall be increased by the inflation adjustment for such calendar year. Any increase under the preceding sentence shall be rounded to the nearest multiple of $100 (or, if such increase is a multiple of $50, such increase shall be increased to the nearest multiple of $100).

''(B) INFLATION ADJUSTMENT.—For purposes of subparagraph (A), the inflation adjustment for any calendar year is the percentage (if any) by which—

''(i) the CPI for the preceding calendar year exceeds

''(ii) the CPI for calendar year 1988.

For purposes of the preceding sentence, the CPI for any calendar year is the average of the Consumer Price Index as of the close of the 12-month period ending on September 30 of such calendar year.''

1996—Subsec. (c)(1)(B). Pub. L. 104–188 substituted ''instrument'' for ''instument''.

1990—Subsec. (b). Pub. L. 101–508 inserted '', as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990'' after ''section 48(b)''.

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 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

Section 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 an Effective Date of 1985 Amendment note under section 1274 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.

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

Provisions relating to inflation adjustment of items in this section for certain years were contained in the following:

2017—Revenue Ruling 2016–30.
2016—Revenue Ruling 2015–24.
2015—Revenue Ruling 2014–30.
2014—Revenue Ruling 2013–23.
2013—Revenue Ruling 2012–33.
2012—Revenue Ruling 2011–27.
2011—Revenue Ruling 2010–30.
2010—Revenue Ruling 2010–2.
2009—Revenue Ruling 2008–52.
2008—Revenue Ruling 2008–3.
2007—Revenue Ruling 2007–4.
2006—Revenue Ruling 2005–76.
2005—Revenue Ruling 2004–107.
2004—Revenue Ruling 2003–119.
2003—Revenue Ruling 2002–79.

2002—Revenue Ruling 2001–65.
2001—Revenue Ruling 2000–55.
2000—Revenue Ruling 99–50.
1999—Revenue Ruling 98–58.
1998—Revenue Ruling 97–56.
1997—Revenue Ruling 96–63.
1996—Revenue Ruling 96–4.

§ 1275. Other definitions and special rules

(a) Definitions

For purposes of this subpart—

(1) Debt instrument

(A) In general

Except as provided in subparagraph (B), the term ''debt instrument'' means a bond, debenture, note, or certificate or other evidence of indebtedness.

(B) Exception for certain annuity contracts

The term ''debt instrument'' shall not include any annuity contract to which section 72 applies and which—

(i) depends (in whole or in substantial part) on the life expectancy of 1 or more individuals, or

(ii) is issued by an insurance company subject to tax under subchapter L (or by an entity described in section 501(c) and exempt from tax under section 501(a) which would be subject to tax under subchapter L were it not so exempt)—

(I) in a transaction in which there is no consideration other than cash or another annuity contract meeting the requirements of this clause,

(II) pursuant to the exercise of an election under an insurance contract by a beneficiary thereof on the death of the insured party under such contract, or

(III) in a transaction involving a qualified pension or employee benefit plan.

(2) Issue date

(A) Publicly offered debt instruments

In the case of any debt instrument which is publicly offered, the term ''date of original issue'' means the date on which the issue was first issued to the public.

(B) Issues not publicly offered and not issued for property

In the case of any debt instrument to which section 1273(b)(2) applies, the term ''date of original issue'' means the date on which the debt instrument was sold by the issuer.

(C) Other debt instruments

In the case of any debt instrument not described in subparagraph (A) or (B), the term ''date of original issue'' means the date on which the debt instrument was issued in a sale or exchange.

(3) Tax-exempt obligation

The term ''tax-exempt obligation'' means any obligation if—

(A) the interest on such obligation is not includible in gross income under section 103, or

(B) the interest on such obligation is exempt from tax (without regard to the identity of the holder) under any other provision of law.

(4) Treatment of obligations distributed by corporations

Any debt obligation of a corporation distributed by such corporation with respect to its stock shall be treated as if it had been issued by such corporation for property.

(b) Treatment of borrower in the case of certain loans for personal use

(1) Sections 1274 and 483 not to apply

In the case of the obligor under any debt instrument given in consideration for the sale or exchange of property, sections 1274 and 483 shall not apply if such property is personal use property.

(2) Original issue discount deducted on cash basis in certain cases

In the case of any debt instrument, if—

(A) such instrument—

(i) is incurred in connection with the acquisition or carrying of personal use property, and

(ii) has original issue discount (determined after the application of paragraph (1)), and

(B) the obligor under such instrument uses the cash receipts and disbursements method of accounting,

notwithstanding section 163(e), the original issue discount on such instrument shall be deductible only when paid.

(3) Personal use property

For purposes of this subsection, the term ''personal use property'' means any property substantially all of the use of which by the taxpayer is not in connection with a trade or business of the taxpayer or an activity described in section 212. The determination of whether property is described in the preceding sentence shall be made as of the time of issuance of the debt instrument.

(c) Information requirements

(1) Information required to be set forth on instrument

(A) In general

In the case of any debt instrument having original issue discount, the Secretary may by regulations require that—

(i) the amount of the original issue discount, and

(ii) the issue date,

be set forth on such instrument.

(B) Special rule for instruments not publicly offered

In the case of any issue of debt instruments not publicly offered, the regulations prescribed under subparagraph (A) shall not require the information to be set forth on the debt instrument before any disposition of such instrument by the first buyer.

(2) Information required to be submitted to Secretary

In the case of any issue of publicly offered debt instruments having original issue dis-

count, the issuer shall (at such time and in such manner as the Secretary shall by regulation prescribe) furnish the Secretary the following information:

(A) The amount of the original issue discount.

(B) The issue date.

(C) Such other information with respect to the issue as the Secretary may by regulations require.

For purposes of the preceding sentence, any person who makes a public offering of stripped bonds (or stripped coupons) shall be treated as the issuer of a publicly offered debt instrument having original issue discount.

(3) Exceptions

This subsection shall not apply to any obligation referred to in section 1272(a)(2) (relating to exceptions from current inclusion of original issue discount).

(4) Cross reference

For civil penalty for failure to meet requirements of this subsection, see section 6706.

(d) Regulation authority

The Secretary may prescribe regulations providing that where, by reason of varying rates of interest, put or call options, indefinite maturities, contingent payments, assumptions of debt instruments, or other circumstances, the tax treatment under this subpart (or section 163(e)) does not carry out the purposes of this subpart (or section 163(e)), such treatment shall be modified to the extent appropriate to carry out the purposes of this subpart (or section 163(e)).

(Added and amended Pub. L. 98–369, div. A, title I, §§ 41(a), 61(c)(2), July 18, 1984, 98 Stat. 540, 581; Pub. L. 99–514, title XVIII, § 1804(f)(2)(A), Oct. 22, 1986, 100 Stat. 2805; Pub. L. 100–647, title I, § 1006(u)(4), Nov. 10, 1988, 102 Stat. 3427; Pub. L. 101–508, title XI, § 11325(a)(2), Nov. 5, 1990, 104 Stat. 1388–466; Pub. L. 106–554, § 1(a)(7) [title III, § 318(c)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–645.)

AMENDMENTS

2000—Subsec. (a)(1)(B)(ii). Pub. L. 106–554, in introductory provisions, substituted ''subchapter L (or by an entity described in section 501(c) and exempt from tax under section 501(a) which would be subject to tax under subchapter L were it not so exempt)'' for ''subchapter L''.

1990—Subsec. (a)(4), (5). Pub. L. 101–508 redesignated par. (5) as (4) and struck out former par. (4) which related to a special rule for determination of issue price in case of exchange of debt instruments in reorganization.

1988—Subsec. (a)(4)(B)(ii)(I). Pub. L. 100–647 substituted ''subsection (a)(7)'' for ''subsection (a)(6)''.

1986—Subsec. (a)(4), (5). Pub. L. 99–514 redesignated par. (4), relating to treatment of obligations distributed to corporations, as (5), and substituted ''by corporations'' for ''to corporations'' in heading.

1984—Subsec. (a)(4). Pub. L. 98–369, § 61(c)(2), added par. (4) relating to treatment of obligations distributed to corporations.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(7) [title III, § 318(c)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–645, provided that: ''The amendment made by this subsection [amending this section] shall take effect as if included in the amendments made by section 41 of the Tax Reform Act of 1984 [Pub. L. 98–369, div. A].''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable, with certain exceptions, to debt instruments issued and stock transferred after Oct. 1, 1990, in satisfaction of any indebtedness, see section 11325(c) of Pub. L. 101–508, 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 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 with respect to distributions declared Mar. 15, 1984, in taxable years ending after that date, see section 61(e)(3) of Pub. L. 98–369, set out as a note under section 312 of this title.

EFFECTIVE DATE

Section applicable to taxable years ending after July 18, 1984, but subsec. (c) of this section effective on the day 30 days after July 18, 1984, see section 44 of Pub. L. 98–369, set out as a note under section 1271 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.

SUBPART B—MARKET DISCOUNT ON BONDS

Sec.

§ 1276. Disposition gain representing accrued market discount treated as ordinary income

(a) Ordinary income

(1) In general

Except as otherwise provided in this section, gain on the disposition of any market discount bond shall be treated as ordinary income to the extent it does not exceed the accrued market discount on such bond. Such gain shall be recognized notwithstanding any other provision of this subtitle.

(2) Dispositions other than sales, etc.

For purposes of paragraph (1), a person disposing of any market discount bond in any transaction other than a sale, exchange, or involuntary conversion shall be treated as realizing an amount equal to the fair market value of the bond.

(3) Treatment of partial principal payments

(A) In general

Any partial principal payment on a market discount bond shall be included in gross

income as ordinary income to the extent such payment does not exceed the accrued market discount on such bond.

(B) Adjustment

If subparagraph (A) applies to any partial principal payment on any market discount bond, for purposes of applying this section to any disposition of (or subsequent partial principal payment on) such bond, the amount of accrued market discount shall be reduced by the amount of such partial principal payment included in gross income under subparagraph (A).

(4) Gain treated as interest for certain purposes

Except for purposes of sections 103, 871(a),,[1] 881, 1441, 1442, and 6049 (and such other provisions as may be specified in regulations), any amount treated as ordinary income under paragraph (1) or (3) shall be treated as interest for purposes of this title.

(b) Accrued market discount

For purposes of this section—

(1) Ratable accrual

Except as otherwise provided in this subsection or subsection (c), the accrued market discount on any bond shall be an amount which bears the same ratio to the market discount on such bond as—

(A) the number of days which the taxpayer held the bond, bears to

(B) the number of days after the date the taxpayer acquired the bond and up to (and including) the date of its maturity.

(2) Election of accrual on basis of constant interest rate (in lieu of ratable accrual)

(A) In general

At the election of the taxpayer with respect to any bond, the accrued market discount on such bond shall be the aggregate amount which would have been includible in the gross income of the taxpayer under section 1272(a) (determined without regard to paragraph (2) thereof) with respect to such bond for all periods during which the bond was held by the taxpayer if such bond had been—

(i) originally issued on the date on which such bond was acquired by the taxpayer,

(ii) for an issue price equal to the basis of the taxpayer in such bond immediately after its acquisition.

(B) Coordination where bond has original issue discount

In the case of any bond having original issue discount, for purposes of applying subparagraph (A)—

(i) the stated redemption price at maturity of such bond shall be treated as equal to its revised issue price, and

(ii) the determination of the portion of the original issue discount which would have been includible in the gross income of the taxpayer under section 1272(a) shall be made under regulations prescribed by the Secretary.

(C) Election irrevocable

An election under subparagraph (A), once made with respect to any bond, shall be irrevocable.

(3) Special rule where partial principal payments

In the case of a bond the principal of which may be paid in 2 or more payments, the amount of accrued market discount shall be determined under regulations prescribed by the Secretary.

(c) Treatment of nonrecognition transactions

Under regulations prescribed by the Secretary—

(1) Transferred basis property

If a market discount bond is transferred in a nonrecognition transaction and such bond is transferred basis property in the hands of the transferee, for purposes of determining the amount of the accrued market discount with respect to the transferee—

(A) the transferee shall be treated as having acquired the bond on the date on which it was acquired by the transferor for an amount equal to the basis of the transferor, and

(B) proper adjustments shall be made for gain recognized by the transferor on such transfer (and for any original issue discount or market discount included in the gross income of the transferor).

(2) Exchanged basis property

If any market discount bond is disposed of by the taxpayer in a nonrecognition transaction and paragraph (1) does not apply to such transaction, any accrued market discount determined with respect to the property disposed of to the extent not theretofore treated as ordinary income under subsection (a)—

(A) shall be treated as accrued market discount with respect to the exchanged basis property received by the taxpayer in such transaction if such property is a market discount bond, and

(B) shall be treated as ordinary income on the disposition of the exchanged basis property received by the taxpayer in such exchange if such property is not a market discount bond.

(3) Paragraph (1) to apply to certain distributions by corporations or partnerships

For purposes of paragraph (1), if the basis of any market discount bond in the hands of a transferee is determined under section 732(a), or 732(b), such property shall be treated as transferred basis property in the hands of such transferee.

(d) Special rules

Under regulations prescribed by the Secretary—

(1) rules similar to the rules of subsection (b) of section 1245 shall apply for purposes of this section; except that—

(A) paragraph (1) of such subsection shall not apply,

(B) an exchange qualifying under section 354(a), 355(a), or 356(a) (determined without

[1] So in original.

regard to subsection (a) of this section) shall be treated as an exchange described in paragraph (3) of such subsection, and

(C) paragraph (3) of section 1245(b) shall be applied as if it did not contain a reference to section 351, and

(2) appropriate adjustments shall be made to the basis of any property to reflect gain recognized under subsection (a).

(Added Pub. L. 98–369, div. A, title I, §41(a), July 18, 1984, 98 Stat. 543; amended Pub. L. 99–514, title VI, §631(e)(15), title XVIII, §§1803(a)(5), (13)(A), 1899A(28), Oct. 22, 1986, 100 Stat. 2275, 2793, 2796, 2960; Pub. L. 100–647, title I, §1018(u)(46), Nov. 10, 1988, 102 Stat. 3592; Pub. L. 103–66, title XIII, §13206(b)(1)(A), (2)(B)(i), Aug. 10, 1993, 107 Stat. 465.)

AMENDMENTS

1993—Subsec. (a)(4). Pub. L. 103–66, §13206(b)(2)(B)(i), substituted ''sections 103, 871(a),'' for ''sections 871(a)''.

Subsec. (e). Pub. L. 103–66, §13206(b)(1)(A), struck out heading and text of subsec. (e). Text read as follows: ''This section shall not apply to any market discount bond issued on or before July 18, 1984.''

1988—Subsec. (b)(3). Pub. L. 100–647 designated paragraph relating to special rule where there are partial principal payments as par. (3) and inserted period at end.

1986—Subsec. (a)(3). Pub. L. 99–514, §1803(a)(13)(A)(i), added par. (3). Former par. (3) redesignated (4).

Subsec. (a)(4). Pub. L. 99–514, §1803(a)(13)(A)(i), (ii), redesignated par. (3) as (4) and substituted ''under paragraph (1) or (3)'' for ''under paragraph (1)''.

Subsec. (b). Pub. L. 99–514, §1803(a)(13)(A)(iii), added undesignated par. at end relating to special rule where partial principal payments.

Subsec. (c)(3). Pub. L. 99–514, §631(e)(15), struck out reference to section 334(c).

Subsec. (d)(1)(C). Pub. L. 99–514, §1803(a)(5), added subpar. (C).

Subsec. (e). Pub. L. 99–514, §1899A(28), substituted ''July 18, 1984'' for ''the date of the enactment of this section''.

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13206(b)(3), Aug. 10, 1993, 107 Stat. 465, provided that: ''The amendments made by this section [probably should be ''subsection'', which amended this section and sections 1277 and 1278 of this title] shall apply to obligations purchased (within the meaning of section 1272(d)(1) of the Internal Revenue Code of 1986) after April 30, 1993.''

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)(15) 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 1803(a)(5) 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, §1803(a)(13)(C), Oct. 22, 1986, 100 Stat. 2797, provided that: ''The amendments made by this paragraph [amending this section and section 1286 of this title] shall apply to obligations acquired after the date of the enactment of this Act [Oct. 22, 1986].''

EFFECTIVE DATE

Section applicable to taxable years ending after July 18, 1984, and applicable to obligations issued after July 18, 1984, in taxable years ending after such date, see section 44 of Pub. L. 98–369, set out as a note under section 1271 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.

§ 1277. Deferral of interest deduction allocable to accrued market discount

(a) General rule

Except as otherwise provided in this section, the net direct interest expense with respect to any market discount bond shall be allowed as a deduction for the taxable year only to the extent that such expense exceeds the portion of the market discount allocable to the days during the taxable year on which such bond was held by the taxpayer (as determined under the rules of section 1276(b)).

(b) Disallowed deduction allowed for later years

(1) Election to take into account in later year where net interest income from bond

(A) In general

If—

(i) there is net interest income for any taxable year with respect to any market discount bond, and

(ii) the taxpayer makes an election under this subparagraph with respect to such bond,

any disallowed interest expense with respect to such bond shall be treated as interest paid or accrued by the taxpayer during such taxable year to the extent such disallowed interest expense does not exceed the net interest income with respect to such bond.

(B) Determination of disallowed interest expense

For purposes of subparagraph (A), the amount of the disallowed interest expense—

(i) shall be determined as of the close of the preceding taxable year, and

(ii) shall not include any amount previously taken into account under subparagraph (A).

(C) Net interest income

For purposes of this paragraph, the term ''net interest income'' means the excess of the amount determined under paragraph (2)

of subsection (c) over the amount determined under paragraph (1) of subsection (c).

(2) Remainder of disallowed interest expense allowed for year of disposition

(A) In general

Except as otherwise provided in this paragraph, the amount of the disallowed interest expense with respect to any market discount bond shall be treated as interest paid or accrued by the taxpayer in the taxable year in which such bond is disposed of.

(B) Nonrecognition transactions

If any market discount bond is disposed of in a nonrecognition transaction—

(i) the disallowed interest expense with respect to such bond shall be treated as interest paid or accrued in the year of disposition only to the extent of the amount of gain recognized on such disposition, and

(ii) the disallowed interest expense with respect to such property (to the extent not so treated) shall be treated as disallowed interest expense—

(I) in the case of a transaction described in section 1276(c)(1), of the transferee with respect to the transferred basis property, or

(II) in the case of a transaction described in section 1276(c)(2), with respect to the exchanged basis property.

(C) Disallowed interest expense reduced for amounts previously taken into account under paragraph (1)

For purposes of this paragraph, the amount of the disallowed interest expense shall not include any amount previously taken into account under paragraph (1).

(3) Disallowed interest expense

For purposes of this subsection, the term ''disallowed interest expense'' means the aggregate amount disallowed under subsection (a) with respect to the market discount bond.

(c) Net direct interest expense

For purposes of this section, the term ''net direct interest expense'' means, with respect to any market discount bond, the excess (if any) of—

(1) the amount of interest paid or accrued during the taxable year on indebtedness which is incurred or continued to purchase or carry such bond, over

(2) the aggregate amount of interest (including original issue discount) includible in gross income for the taxable year with respect to such bond.

In the case of any financial institution which is a bank (as defined in section 585(a)(2)), the determination of whether interest is described in paragraph (1) shall be made under principles similar to the principles of section 291(e)(1)(B)(ii). Under rules similar to the rules of section 265(a)(5), short sale expenses shall be treated as interest for purposes of determining net direct interest expense.

(Added Pub. L. 98–369, div. A, title I, § 41(a), July 18, 1984, 98 Stat. 545; amended Pub. L. 99–514, title IX, §§ 901(d)(4)(F), § 902(e)(2), title XVIII, § 1899A(29)–(31), Oct. 22, 1986, 100 Stat. 2380, 2382, 2960; Pub. L. 100–647, title I, § 1018(u)(31), Nov. 10, 1988, 102 Stat. 3592; Pub. L. 103–66, title XIII, § 13206(b)(1)(B), Aug. 10, 1993, 107 Stat. 465; Pub. L. 104–188, title I, § 1616(b)(14), Aug. 20, 1996, 110 Stat. 1857.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–188 struck out ''or to which section 593 applies'' after ''585(a)(2))'' in closing provisions.

1993—Subsec. (d). Pub. L. 103–66 struck out heading and text of subsec. (d). Text read as follows: ''In the case of a market discount bond issued on or before July 18, 1984, any gain recognized by the taxpayer on any disposition of such bond shall be treated as ordinary income to the extent the amount of such gain does not exceed the amount allowable with respect to such bond under subsection (b)(2) for the taxable year in which such bond is disposed of.''

1988—Subsec. (c). Pub. L. 100–647 inserted a closing parenthesis after ''section 585(a)(2)''.

1986—Subsec. (b)(1)(C). Pub. L. 99–514, § 1899A(29), substituted ''this paragraph'' for ''this paragaph''.

Subsec. (b)(2)(C). Pub. L. 99–514, § 1899A(30), substituted ''paragraph (1)'' for ''paragraph 1'' in heading.

Subsec. (c). Pub. L. 99–514, § 901(d)(4)(F), substituted ''which is a bank (as defined in section 585(a)(2) or to which section 593 applies'' for ''to which section 585 or 593 applies''.

Pub. L. 99–514, § 902(e)(2), substituted ''section 265(a)(5)'' for ''section 265(5)''.

Subsec. (d). Pub. L. 99–514, § 1899A(31), substituted ''July 18, 1984'' for ''the date of the enactment of this section''.

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 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to obligations purchased (within the meaning of section 1272(d)(1) of this title) after Apr. 30, 1993, see section 13206(b)(3) of Pub. L. 103–66, set out as a note under section 1276 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 901(d)(4)(F) 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.

Amendment by section 902(e)(2) of Pub. L. 99–514 applicable to taxable years ending after Dec. 31, 1986, with certain exceptions and qualifications, see section 902(f) of Pub. L. 99–514, set out as a note under section 265 of this title.

EFFECTIVE DATE

Section applicable to taxable years ending after July 18, 1984, and applicable to obligations acquired after July 18, 1984, in taxable years ending after such date, see section 44 of Pub. L. 98–369, set out as a note under section 1271 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.

§ 1278. Definitions and special rules

(a) In general

For purposes of this part—

(1) Market discount bond

(A) In general

Except as provided in subparagraph (B), the term ''market discount bond'' means any bond having market discount.

(B) Exceptions

The term ''market discount bond'' shall not include—

(i) Short-term obligations

Any obligation with a fixed maturity date not exceeding 1 year from the date of issue.

(ii) United States savings bonds

Any United States savings bond.

(iii) Installment obligations

Any installment obligation to which section 453B applies.

(C) Section 1277 not applicable to tax-exempt obligations

For purposes of section 1277, the term ''market discount bond'' shall not include any tax-exempt obligation (as defined in section 1275(a)(3)).

(D) Treatment of bonds acquired at original issue

(i) In general

Except as otherwise provided in this subparagraph or in regulations, the term ''market discount bond'' shall not include any bond acquired by the taxpayer at its original issue.

(ii) Treatment of bonds acquired for less than issue price

Clause (i) shall not apply to any bond if—

(I) the basis of the taxpayer in such bond is determined under section 1012, and

(II) such basis is less than the issue price of such bond determined under subpart A of this part.

(iii) Bonds acquired in certain reorganizations

Clause (i) shall not apply to any bond issued pursuant to a plan of reorganization (within the meaning of section 368(a)(1)) in exchange for another bond having market discount. Solely for purposes of section 1276, the preceding sentence shall not apply if such other bond was issued on or before July 18, 1984 (the date of the enactment of section 1276) and if the bond issued pursuant to such plan of reorganization has the same term and the same interest rate as such other bond had.

(iv) Treatment of certain transferred basis property

For purposes of clause (i), if the adjusted basis of any bond in the hands of the taxpayer is determined by reference to the adjusted basis of such bond in the hands of a person who acquired such bond at its original issue, such bond shall be treated as acquired by the taxpayer at its original issue.

(2) Market discount

(A) In general

The term ''market discount'' means the excess (if any) of—

(i) the stated redemption price of the bond at maturity, over

(ii) the basis of such bond immediately after its acquisition by the taxpayer.

(B) Coordination where bond has original issue discount

In the case of any bond having original issue discount, for purposes of subparagraph (A), the stated redemption price of such bond at maturity shall be treated as equal to its revised issue price.

(C) De minimis rule

If the market discount is less than ¼ of 1 percent of the stated redemption price of the bond at maturity multiplied by the number of complete years to maturity (after the taxpayer acquired the bond), then the market discount shall be considered to be zero.

(3) Bond

The term ''bond'' means any bond, debenture, note, certificate, or other evidence of indebtedness.

(4) Revised issue price

The term ''revised issue price'' means the sum of—

(A) the issue price of the bond, and

(B) the aggregate amount of the original issue discount includible in the gross income of all holders for periods before the acquisition of the bond by the taxpayer (determined without regard to section 1272(a)(7) or (b)(4)) or, in the case of a tax-exempt obligation, the aggregate amount of the original issue discount which accrued in the manner provided by section 1272(a) (determined without regard to paragraph (7) thereof) during periods before the acquisition of the bond by the taxpayer.

(5) Original issue discount, etc.

The terms ''original issue discount'', ''stated redemption price at maturity'', and ''issue price'' have the respective meanings given such terms by subpart A of this part.

(b) Election to include market discount currently

(1) In general

If the taxpayer makes an election under this subsection—

(A) sections 1276 and 1277 shall not apply, and

(B) market discount on any market discount bond shall be included in the gross in-

come of the taxpayer for the taxable years to which it is attributable (as determined under the rules of subsection (b) of section 1276).

Except for purposes of sections 103, 871(a),,[1] 881, 1441, 1442, and 6049 (and such other provisions as may be specified in regulations), any amount included in gross income under subparagraph (B) shall be treated as interest for purposes of this title.

(2) Scope of election

An election under this subsection shall apply to all market discount bonds acquired by the taxpayer on or after the 1st day of the 1st taxable year to which such election applies.

(3) Period to which election applies

An election under this subsection shall apply to the taxable year for which it is made and for all subsequent taxable years, unless the taxpayer secures the consent of the Secretary to the revocation of such election.

(4) Basis adjustment

The basis of any bond in the hands of the taxpayer shall be increased by the amount included in gross income pursuant to this subsection.

(c) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subpart, including regulations providing proper adjustments in the case of a bond the principal of which may be paid in 2 or more payments.

(Added and amended Pub. L. 98–369, div. A, title I, § 41(a), title X, § 1001(b)(24), July 18, 1984, 98 Stat. 547; Pub. L. 99–514, title XVIII, §§ 1803(a)(6), 1878(a), 1899A(32), Oct. 22, 1986, 100 Stat. 2793, 2903, 2960; Pub. L. 100–647, title I, §§ 1006(u)(2), 1018(c)(2), (3), Nov. 10, 1988, 102 Stat. 3427, 3578; Pub. L. 103–66, title XIII, § 13206(b)(2), Aug. 10, 1993, 107 Stat. 465.)

AMENDMENTS

1993—Subsec. (a)(1)(B)(ii)–(iv). Pub. L. 103–66, § 13206(b)(2)(A)(i), redesignated cls. (iii) and (iv) as (ii) and (iii), respectively, and struck out heading and text of former cl. (ii). Text read as follows: ''Any tax-exempt obligation (as defined in section 1275(a)(3)).''

Subsec. (a)(1)(C), (D). Pub. L. 103–66, § 13206(b)(2)(A)(ii), (iii), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (a)(4)(B). Pub. L. 103–66, § 13206(b)(2)(B)(ii), inserted before period at end ''or, in the case of a tax-exempt obligation, the aggregate amount of the original issue discount which accrued in the manner provided by section 1272(a) (determined without regard to paragraph (7) thereof) during periods before the acquisition of the bond by the taxpayer''.

Subsec. (b)(1). Pub. L. 103–66, § 13206(b)(2)(B)(i), substituted ''sections 103, 871(a),'' for ''sections 871(a)'' in last sentence.

1988—Subsec. (a)(4)(B). Pub. L. 100–647, § 1006(u)(2), substituted ''section 1272(a)(7)'' for ''section 1272(a)(6)''.

Subsec. (b)(4). Pub. L. 100–647, § 1018(c)(3), added par. (4).

Subsec. (c). Pub. L. 100–647, § 1018(c)(2), inserted before period at end '', including regulations providing proper adjustments in the case of a bond the principal of which may be paid in 2 or more payments''.

1986—Subsec. (a)(1)(B)(i). Pub. L. 99–514, § 1878(a), amended Pub. L. 98–369, § 1001(b), by adding a par. (24), effective as if included in Pub. L. 98–369. See 1984 Amendment note below.

Subsec. (a)(1)(C). Pub. L. 99–514, § 1803(a)(6), added subpar. (C).

Subsec. (a)(4). Pub. L. 99–514, § 1899A(32), substituted ''means'' for ''means of'' in introductory provisions.

1984—Subsec. (a)(1)(B)(i). Pub. L. 98–369, § 1001(b)(24), as added by Pub. L. 99–514, § 1878(a), 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.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendments by Pub. L. 103–66 applicable to obligations purchased (within the meaning of section 1272(d)(1) of this title) after Apr. 30, 1993, see section 13206(b)(3) of Pub. L. 103–66, set out as a note under section 1276 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 sections 1803(a)(6) and 1878(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

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

Section applicable to taxable years ending after July 18, 1984, except as otherwise provided, see section 44 of Pub. L. 98–369, set out as a note under section 1271 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.

SUBPART C—DISCOUNT ON SHORT-TERM OBLIGATIONS

Sec.
1281. Current inclusion in income of discount on certain short-term obligations.
1282. Deferral of interest deduction allocable to accrued discount.
1283. Definitions and special rules.

§ 1281. Current inclusion in income of discount on certain short-term obligations

(a) General rule

In the case of any short-term obligation to which this section applies, for purposes of this title—

[1] So in original.

(1) there shall be included in the gross income of the holder an amount equal to the sum of the daily portions of the acquisition discount for each day during the taxable year on which such holder held such obligation, and

(2) any interest payable on the obligation (other than interest taken into account in determining the amount of the acquisition discount) shall be included in gross income as it accrues.

(b) Short-term obligations to which section applies

(1) In general

This section shall apply to any short-term obligation which—

(A) is held by a taxpayer using an accrual method of accounting,

(B) is held primarily for sale to customers in the ordinary course of the taxpayer's trade or business,

(C) is held by a bank (as defined in section 581),

(D) is held by a regulated investment company or a common trust fund,

(E) is identified by the taxpayer under section 1256(e)(2) as being part of a hedging transaction, or

(F) is a stripped bond or stripped coupon held by the person who stripped the bond or coupon (or by any other person whose basis is determined by reference to the basis in the hands of such person).

(2) Treatment of obligations held by pass-thru entities

(A) In general

This section shall apply also to—

(i) any short-term obligation which is held by a pass-thru entity which is formed or availed of for purposes of avoiding the provisions of this section, and

(ii) any short-term obligation which is acquired by a pass-thru entity (not described in clause (i)) during the required accrual period.

(B) Required accrual period

For purposes of subparagraph (A), the term ''required accrual period'' means the period—

(i) which begins with the first taxable year for which the ownership test of subparagraph (C) is met with respect to the pass-thru entity (or a predecessor), and

(ii) which ends with the first taxable year after the taxable year referred to in clause (i) for which the ownership test of subparagraph (C) is not met and with respect to which the Secretary consents to the termination of the required accrual period.

(C) Ownership test

The ownership test of this subparagraph is met for any taxable year if, on at least 90 days during the taxable year, 20 percent or more of the value of the interests in the pass-thru entity are held by persons described in paragraph (1) or by other pass-thru entities to which subparagraph (A) applies.

(D) Pass-thru entity

The term ''pass-thru entity'' means any partnership, S corporation, trust, or other pass-thru entity.

(c) Cross reference

For special rules limiting the application of this section to original issue discount in the case of nongovernmental obligations, see section 1283(c).

(Added Pub. L. 98–369, div. A, title I, §41(a), July 18, 1984, 98 Stat. 548; amended Pub. L. 99–514, title XVIII, §1803(a)(7), (8)(A), Oct. 22, 1986, 100 Stat. 2793, 2794.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–514, §1803(a)(8), amended subsec. (a) generally, designating existing provisions as par. (1) and adding par. (2).

Subsec. (b)(1)(F). Pub. L. 99–514, §1803(a)(7), added subpar. (F).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1803(a)(7) 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.

Section 1803(a)(8)(A) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1018(c)(1), Nov. 10, 1988, 102 Stat. 3578, provided that the amendment made by section 1803(a)(8)(A) of Pub. L. 99–514 is effective with respect to obligations acquired after Dec. 31, 1985.

EFFECTIVE DATE

Section applicable to taxable years ending after July 18, 1984, and applicable to obligations acquired after that date, with certain elections available, see section 44 of Pub. L. 98–369, set out as a note under section 1271 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.

§ 1282. Deferral of interest deduction allocable to accrued discount

(a) General rule

Except as otherwise provided in this section, the net direct interest expense with respect to any short-term obligation shall be allowed as a deduction for the taxable year only to the extent such expense exceeds the sum of—

(1) the daily portions of the acquisition discount for each day during the taxable year on which the taxpayer held such obligation, and

(2) the amount of any interest payable on the obligation (other than interest taken into account in determining the amount of the acquisition discount) which accrues during the taxable year while the taxpayer held such obligation (and is not included in the gross income of the taxpayer for such taxable year by reason of the taxpayer's method of accounting).

(b) Section not to apply to obligations to which section 1281 applies

(1) In general

This section shall not apply to any short-term obligation to which section 1281 applies.

(2) Election to have section 1281 apply to all obligations

(A) In general

A taxpayer may make an election under this paragraph to have section 1281 apply to all short-term obligations acquired by the taxpayer on or after the 1st day of the 1st taxable year to which such election applies.

(B) Period to which election applies

An election under this paragraph shall apply to the taxable year for which it is made and for all subsequent taxable years, unless the taxpayer secures the consent of the Secretary to the revocation of such election.

(c) Certain rules made applicable

Rules similar to the rules of subsections (b) and (c) of section 1277 shall apply for purposes of this section.

(d) Cross reference

For special rules limiting the application of this section to original issue discount in the case of nongovernmental obligations, see section 1283(c).

(Added Pub. L. 98–369, div. A, title I, § 41(a), July 18, 1984, 98 Stat. 549; amended Pub. L. 99–514, title XVIII, § 1803(a)(8)(B), Oct. 22, 1986, 100 Stat. 2794.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–514 amended subsec. (a) generally, designating existing provisions as par. (1) and adding par. (2).

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 ending after July 18, 1984, and to obligations acquired after that date, see section 44 of Pub. L. 98–369, set out as a note under section 1271 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.

§ 1283. Definitions and special rules

(a) Definitions

For purposes of this subpart—

(1) Short-term obligation

(A) In general

Except as provided in subparagraph (B), the term ''short-term obligation'' means any bond, debenture, note, certificate, or other evidence of indebtedness which has a fixed maturity date not more than 1 year from the date of issue.

(B) Exceptions for tax-exempt obligations

The term ''short-term obligation'' shall not include any tax-exempt obligation (as defined in section 1275(a)(3)).

(2) Acquisition discount

The term ''acquisition discount'' means the excess of—

(A) the stated redemption price at maturity (as defined in section 1273), over

(B) the taxpayer's basis for the obligation.

(b) Daily portion

For purposes of this subpart—

(1) Ratable accrual

Except as otherwise provided in this subsection, the daily portion of the acquisition discount is an amount equal to—

(A) the amount of such discount, divided by

(B) the number of days after the day on which the taxpayer acquired the obligation and up to (and including) the day of its maturity.

(2) Election of accrual on basis of constant interest rate (in lieu of ratable accrual)

(A) In general

At the election of the taxpayer with respect to any obligation, the daily portion of the acquisition discount for any day is the portion of the acquisition discount accruing on such day determined (under regulations prescribed by the Secretary) on the basis of—

(i) the taxpayer's yield to maturity based on the taxpayer's cost of acquiring the obligation, and

(ii) compounding daily.

(B) Election irrevocable

An election under subparagraph (A), once made with respect to any obligation, shall be irrevocable.

(c) Special rules for nongovernmental obligations

(1) In general

In the case of any short-term obligation which is not a short-term Government obligation (as defined in section 1271(a)(3)(B))—

(A) sections 1281 and 1282 shall be applied by taking into account original issue discount in lieu of acquisition discount, and

(B) appropriate adjustments shall be made in the application of subsection (b) of this section.

(2) Election to have paragraph (1) not apply

(A) In general

A taxpayer may make an election under this paragraph to have paragraph (1) not apply to all obligations acquired by the taxpayer on or after the first day of the first taxable year to which such election applies.

(B) Period to which election applies

An election under this paragraph shall apply to the taxable year for which it is

made and for all subsequent taxable years, unless the taxpayer secures the consent of the Secretary to the revocation of such election.

(d) Other special rules

(1) Basis adjustments

The basis of any short-term obligation in the hands of the holder thereof shall be increased by the amount included in his gross income pursuant to section 1281.

(2) Double inclusion in income not required

Section 1281 shall not require the inclusion of any amount previously includible in gross income.

(3) Coordination with other provisions

Section 454(b) and paragraphs (3) and (4) of section 1271(a) shall not apply to any short-term obligation to which section 1281 applies.

(Added Pub. L. 98–369, div. A, title I, § 41(a), July 18, 1984, 98 Stat. 549; amended Pub. L. 99–514, title XVIII, § 1803(a)(1)(B), Oct. 22, 1986, 100 Stat. 2792.)

AMENDMENTS

1986—Subsec. (d)(3). Pub. L. 99–514 substituted ''paragraphs (3) and (4) of section 1271(a)'' for ''section 1271(a)(3)''.

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 ending after July 18, 1984, and to obligations acquired after that date, see section 44 of Pub. L. 98–369, set out as a note under section 1271 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.

SUBPART D—MISCELLANEOUS PROVISIONS

Sec.

§ 1286. Tax treatment of stripped bonds

(a) Inclusion in income as if bond and coupons were original issue discount bonds

If any person purchases after July 1, 1982, a stripped bond or a stripped coupon, then such bond or coupon while held by such purchaser (or by any other person whose basis is determined by reference to the basis in the hands of such purchaser) shall be treated for purposes of this part as a bond originally issued on the purchase date and having an original issue discount equal to the excess (if any) of—

(1) the stated redemption price at maturity (or, in the case of coupon, the amount payable on the due date of such coupon), over

(2) such bond's or coupon's ratable share of the purchase price.

For purposes of paragraph (2), ratable shares shall be determined on the basis of their respective fair market values on the date of purchase.

(b) Tax treatment of person stripping bond

For purposes of this subtitle, if any person strips 1 or more coupons from a bond and after July 1, 1982, disposes of the bond or such coupon—

(1) such person shall include in gross income an amount equal to the sum of—

(A) the interest accrued on such bond while held by such person and before the time such coupon or bond was disposed of (to the extent such interest has not theretofore been included in such person's gross income), and

(B) the accrued market discount on such bond determined as of the time such coupon or bond was disposed of (to the extent such discount has not theretofore been included in such person's gross income),

(2) the basis of the bond and coupons shall be increased by the amount included in gross income under paragraph (1),

(3) the basis of the bond and coupons immediately before the disposition (as adjusted pursuant to paragraph (2)) shall be allocated among the items retained by such person and the items disposed of by such person on the basis of their respective fair market values, and

(4) for purposes of subsection (a), such person shall be treated as having purchased on the date of such disposition each such item which he retains for an amount equal to the basis allocated to such item under paragraph (3).

A rule similar to the rule of paragraph (4) shall apply in the case of any person whose basis in any bond or coupon is determined by reference to the basis of the person described in the preceding sentence.

(c) Retention of existing law for stripped bonds purchased before July 2, 1982

If a bond issued at any time with interest coupons—

(1) is purchased after August 16, 1954, and before January 1, 1958, and the purchaser does not receive all the coupons which first become payable more than 12 months after the date of the purchase, or

(2) is purchased after December 31, 1957, and before July 2, 1982, and the purchaser does not receive all the coupons which first become payable after the date of the purchase,

then the gain on the sale or other disposition of such bond by such purchaser (or by a person whose basis is determined by reference to the basis in the hands of such purchaser) shall be considered as ordinary income to the extent that the fair market value (determined as of the time of the purchase) of the bond with coupons

attached exceeds the purchase price. If this subsection and section 1271(a)(2)(A) apply with respect to gain realized on the sale or exchange of any evidence of indebtedness, then section 1271(a)(2)(A) shall apply with respect to that part of the gain to which this subsection does not apply.

(d) Special rules for tax-exempt obligations

(1) In general

In the case of any tax-exempt obligation (as defined in section 1275(a)(3)) from which 1 or more coupons have been stripped—

(A) the amount of the original issue discount determined under subsection (a) with respect to any stripped bond or stripped coupon—

(i) shall be treated as original issue discount on a tax-exempt obligation to the extent such discount does not exceed the tax-exempt portion of such discount, and

(ii) shall be treated as original issue discount on an obligation which is not a tax-exempt obligation to the extent such discount exceeds the tax-exempt portion of such discount,

(B) subsection (b)(1)(A) shall not apply, and

(C) subsection (b)(2) shall be applied by increasing the basis of the bond or coupon by the sum of—

(i) the interest accrued but not paid before such bond or coupon was disposed of (and not previously reflected in basis), plus

(ii) the amount included in gross income under subsection (b)(1)(B).

(2) Tax-exempt portion

For purposes of paragraph (1), the tax-exempt portion of the original issue discount determined under subsection (a) is the excess of—

(A) the amount referred to in subsection (a)(1), over

(B) an issue price which would produce a yield to maturity as of the purchase date equal to the lower of—

(i) the coupon rate of interest on the obligation from which the coupons were separated, or

(ii) the yield to maturity (on the basis of the purchase price) of the stripped obligation or coupon.

The purchaser of any stripped obligation or coupon may elect to apply clause (i) by substituting ''original yield to maturity of'' for ''coupon rate of interest on''.

(e) Definitions and special rules

For purposes of this section—

(1) Bond

The term ''bond'' means a bond, debenture, note, or certificate or other evidence of indebtedness.

(2) Stripped bond

The term ''stripped bond'' means a bond issued at any time with interest coupons where there is a separation in ownership between the bond and any coupon which has not yet become payable.

(3) Stripped coupon

The term ''stripped coupon'' means any coupon relating to a stripped bond.

(4) Stated redemption price at maturity

The term ''stated redemption price at maturity'' has the meaning given such term by section 1273(a)(2).

(5) Coupon

The term ''coupon'' includes any right to receive interest on a bond (whether or not evidenced by a coupon). This paragraph shall apply for purposes of subsection (c) only in the case of purchases after July 1, 1982.

(6) Purchase

The term ''purchase'' has the meaning given such term by section 1272(d)(1).

(f) Treatment of stripped interests in bond and preferred stock funds, etc.

In the case of an account or entity substantially all of the assets of which consist of bonds, preferred stock, or a combination thereof, the Secretary may by regulations provide that rules similar to the rules of this section and 305(e),[1] as appropriate, shall apply to interests in such account or entity to which (but for this subsection) this section or section 305(e), as the case may be, would not apply.

(g) Regulation authority

The Secretary may prescribe regulations providing that where, by reason of varying rates of interest, put or call options, or other circumstances, the tax treatment under this section does not accurately reflect the income of the holder of a stripped coupon or stripped bond, or of the person disposing of such bond or coupon, as the case may be, for any period, such treatment shall be modified to require that the proper amount of income be included for such period.

(Added Pub. L. 98–369, div. A, title I, § 41(a), July 18, 1984, 98 Stat. 551; amended Pub. L. 99–514, title XVIII, §§ 1803(a)(13)(B), 1879(s)(1), Oct. 22, 1986, 100 Stat. 2796, 2912; Pub. L. 100–647, title I, § 1018(q)(4)(A), Nov. 10, 1988, 102 Stat. 3585; Pub. L. 108–357, title VIII, § 831(a), Oct. 22, 2004, 118 Stat. 1587.)

AMENDMENTS

2004—Subsecs. (f), (g). Pub. L. 108–357 added subsec. (f) and redesignated former subsec. (f) as (g).

1988—Subsec. (d). Pub. L. 100–647 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''In the case of any tax-exempt obligation (as defined in section 1275(a)(3)) from which 1 or more coupons have been stripped—

''(1) the amount of original issue discount determined under subsection (a) with respect to any stripped bond or stripped coupon from such obligation shall be the amount which produces a yield to maturity (as of the purchase date) equal to the lower of—

''(A) the coupon rate of interest on such obligation before the separation of coupons, or

''(B) the yield to maturity (on the basis of purchase price) of the stripped obligation or coupon,

''(2) the amount of original issue discount determined under paragraph (1) shall be taken into account in determining the adjusted basis of the holder under section 1288,

[1] So in original. Probably should be ''section 305(e),''.

''(3) subsection (b)(1) shall not apply, and

''(4) subsection (b)(2) shall be applied by increasing the basis of the bond or coupon by the interest accrued but not paid before the time such bond or coupon was disposed of (and not previously reflected in basis).''

1986—Subsec. (b)(1). Pub. L. 99–514, § 1803(a)(13)(B)(i), amended par. (1) generally, designating existing provisions as subpar. (A) and adding subpar. (B).

Subsec. (b)(2). Pub. L. 99–514, § 1803(a)(13)(B)(ii), substituted ''the amount included in gross income under paragraph (1)'' for ''the amount of the accrued interest described in paragraph (1)''.

Subsec. (d). Pub. L. 99–514, § 1879(s)(1), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''In the case of any tax-exempt obligation (as defined in section 1275(a)(3))—

''(1) subsections (a) and (b)(1) shall not apply,

''(2) the rules of subsection (b)(4) shall apply for purposes of subsection (c), and

''(3) subsection (c) shall be applied without regard to the requirement that the bond be purchased before July 2, 1982.''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to purchases and dispositions after Oct. 22, 2004, see section 831(c) of Pub. L. 108–357, set out as a note under section 305 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, § 1018(q)(4)(B), Nov. 10, 1988, 102 Stat. 3586, provided that:

''(i) Except as provided in clause (ii), the amendment made by subparagraph (A) [amending this section] shall apply to any purchase or sale after June 10, 1987, of any stripped tax-exempt obligation or stripped coupon from such an obligation.

''(ii) If—

''(I) any person held any obligation or coupon in stripped form on June 10, 1987, and

''(II) such obligation or coupon was held by such person on such date for sale in the ordinary course of such person's trade or business,

the amendment made by subparagraph (A) shall not apply to any sale of such obligation or coupon by such person and shall not apply to any such obligation or coupon while held by another person who purchased such obligation or coupon from the person referred to in subclause (I).''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1803(a)(13)(B) of Pub. L. 99–514 applicable to obligations acquired after Oct. 22, 1986, see section 1803(a)(13)(C) of Pub. L. 99–514, set out as a note under section 1276 of this title.

Pub. L. 99–514, title XVIII, § 1879(s)(2), Oct. 22, 1986, 100 Stat. 2913, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to any purchase or sale of any stripped tax-exempt obligation or stripped coupon from such an obligation after the date of the enactment of this Act [Oct. 22, 1986].''

EFFECTIVE DATE

Section applicable to taxable years ending after July 18, 1984, except as otherwise provided, see section 44 of Pub. L. 98–369, set out as a note under section 1271 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.

§ 1287. Denial of capital gain treatment for gains on certain obligations not in registered form

(a) In general

If any registration-required obligation is not in registered form, any gain on the sale or other disposition of such obligation shall be treated as ordinary income (unless the issuance of such obligation was subject to tax under section 4701).

(b) Definitions

For purposes of subsection (a)—

(1) Registration-required obligation

The term ''registration-required obligation'' has the meaning given to such term by section 163(f)(2).

(2) Registered form

The term ''registered form'' has the same meaning as when used in section 163(f).

(Added Pub. L. 98–369, div. A, title I, § 41(a), July 18, 1984, 98 Stat. 552; amended Pub. L. 111–147, title V, § 502(a)(2)(D), Mar. 18, 2010, 124 Stat. 107.)

AMENDMENTS

2010—Subsec. (b)(1). Pub. L. 111–147 struck out ''except that clause (iv) of subparagraph (A), and subparagraph (B), of such section shall not apply'' before period.

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

Section applicable to taxable years ending after July 18, 1984, except as otherwise provided, see section 44 of Pub. L. 98–369, set out as a note under section 1271 of this title.

§ 1288. Treatment of original issue discount on tax-exempt obligations

(a) General rule

Original issue discount on any tax-exempt obligation shall be treated as accruing—

(1) for purposes of section 163, in the manner provided by section 1272(a) (determined without regard to paragraph (7) thereof), and

(2) for purposes of determining the adjusted basis of the holder, in the manner provided by section 1272(a) (determined with regard to paragraph (7) thereof).

(b) Definitions and special rules

For purposes of this section—

(1) Original issue discount

The term ''original issue discount'' has the meaning given to such term by section 1273(a) without regard to paragraph (3) thereof. In applying section 483 or 1274, under regulations prescribed by the Secretary, appropriate adjustments shall be made to the applicable Federal rate to take into account the tax exemption for interest on the obligation.

(2) Tax-exempt obligation

The term ''tax-exempt obligation'' has the meaning given to such term by section 1275(a)(3).

(3) Short-term obligations

In applying this section to obligations with maturity of 1 year or less, rules similar to the rules of section 1283(b) shall apply.

(Added Pub. L. 98–369, div. A, title I, § 41(a), July 18, 1984, 98 Stat. 553; amended Pub. L. 100–647, title I, § 1006(u)(3), Nov. 10, 1988, 102 Stat. 3427.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–647 substituted ''paragraph (7)'' for ''paragraph (6)'' in pars. (1) and (2).

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 ending after July 18, 1984, and applicable to obligations issued after Sept. 3, 1982, and acquired after Mar. 1, 1984, see section 44 of Pub. L. 98–369, set out as a note under section 1271 of this title.

PART VI—TREATMENT OF CERTAIN PASSIVE FOREIGN INVESTMENT COMPANIES

AMENDMENTS

1997—Pub. L. 105–34, title XI, § 1122(d)(6), Aug. 5, 1997, 111 Stat. 977, added items for subparts C and D and struck out former item for subpart C ''General provisions''.

SUBPART A—INTEREST ON TAX DEFERRAL

§ 1291. Interest on tax deferral

(a) Treatment of distributions and stock dispositions

(1) Distributions

If a United States person receives an excess distribution in respect of stock in a passive foreign investment company, then—

(A) the amount of the excess distribution shall be allocated ratably to each day in the taxpayer's holding period for the stock,

(B) with respect to such excess distribution, the taxpayer's gross income for the current year shall include (as ordinary income) only the amounts allocated under subparagraph (A) to—

(i) the current year, or

(ii) any period in the taxpayer's holding period before the 1st day of the 1st taxable year of the company which begins after December 31, 1986, and for which it was a passive foreign investment company, and

(C) the tax imposed by this chapter for the current year shall be increased by the deferred tax amount (determined under subsection (c)).

(2) Dispositions

If the taxpayer disposes of stock in a passive foreign investment company, then the rules of paragraph (1) shall apply to any gain recognized on such disposition in the same manner as if such gain were an excess distribution.

(3) Definitions

For purposes of this section—

(A) Holding period

The taxpayer's holding period shall be determined under section 1223; except that—

(i) for purposes of applying this section to an excess distribution, such holding period shall be treated as ending on the date of such distribution, and

(ii) if section 1296 applied to such stock with respect to the taxpayer for any prior taxable year, such holding period shall be treated as beginning on the first day of the first taxable year beginning after the last taxable year for which section 1296 so applied.

(B) Current year

The term ''current year'' means the taxable year in which the excess distribution or disposition occurs.

(b) Excess distribution

(1) In general

For purposes of this section, the term ''excess distribution'' means any distribution in respect of stock received during any taxable year to the extent such distribution does not exceed its ratable portion of the total excess distribution (if any) for such taxable year.

(2) Total excess distribution

For purposes of this subsection—

(A) In general

The term ''total excess distribution'' means the excess (if any) of—

(i) the amount of the distributions in respect of the stock received by the taxpayer during the taxable year, over

(ii) 125 percent of the average amount received in respect of such stock by the taxpayer during the 3 preceding taxable years (or, if shorter, the portion of the taxpayer's holding period before the taxable year).

For purposes of clause (ii), any excess distribution received during such 3-year period shall be taken into account only to the extent it was included in gross income under subsection (a)(1)(B).

(B) No excess for 1st year

The total excess distributions with respect to any stock shall be zero for the taxable year in which the taxpayer's holding period in such stock begins.

(3) Adjustments

Under regulations prescribed by the Secretary—

(A) determinations under this subsection shall be made on a share-by-share basis, except that shares with the same holding period may be aggregated,

(B) proper adjustments shall be made for stock splits and stock dividends,

(C) if the taxpayer does not hold the stock during the entire taxable year, distributions

received during such year shall be annualized,

(D) if the taxpayer's holding period includes periods during which the stock was held by another person, distributions received by such other person shall be taken into account as if received by the taxpayer,

(E) if the distributions are received in a foreign currency, determinations under this subsection shall be made in such currency and the amount of any excess distribution determined in such currency shall be translated into dollars,

(F) proper adjustment shall be made for amounts not includible in gross income by reason of section 959(a) or 1293(c), and

(G) if a charitable deduction was allowable under section 642(c) to a trust for any distribution of its income, proper adjustments shall be made for the deduction so allowable to the extent allocable to distributions or gain in respect of stock in a passive foreign investment company.

(c) Deferred tax amount

For purposes of this section—

(1) In general

The term ''deferred tax amount'' means, with respect to any distribution or disposition to which subsection (a) applies, an amount equal to the sum of—

(A) the aggregate increases in taxes described in paragraph (2), plus

(B) the aggregate amount of interest (determined in the manner provided under paragraph (3)) on such increases in tax.

Any increase in the tax imposed by this chapter for the current year under subsection (a) to the extent attributable to the amount referred to in subparagraph (B) shall be treated as interest paid under section 6601 on the due date for the current year.

(2) Aggregate increases in taxes

For purposes of paragraph (1)(A), the aggregate increases in taxes shall be determined by multiplying each amount allocated under subsection (a)(1)(A) to any taxable year (other than any taxable year referred to in subsection (a)(1)(B)) by the highest rate of tax in effect for such taxable year under section 1 or 11, whichever applies.

(3) Computation of interest

(A) In general

The amount of interest referred to in paragraph (1)(B) on any increase determined under paragraph (2) for any taxable year shall be determined for the period—

(i) beginning on the due date for such taxable year, and

(ii) ending on the due date for the taxable year with or within which the distribution or disposition occurs,

by using the rates and method applicable under section 6621 for underpayments of tax for such period.

(B) Due date

For purposes of this subsection, the term ''due date'' means the date prescribed by law (determined without regard to extensions) for filing the return of the tax imposed by this chapter for the taxable year.

(d) Coordination with subparts B and C

(1) In general

This section shall not apply with respect to any distribution paid by a passive foreign investment company, or any disposition of stock in a passive foreign investment company, if such company is a qualified electing fund with respect to the taxpayer for each of its taxable years—

(A) which begins after December 31, 1986, and for which such company is a passive foreign investment company, and

(B) which includes any portion of the taxpayer's holding period.

Except as provided in section 1296(j), this section also shall not apply if an election under section 1296(k) is in effect for the taxpayer's taxable year. In the case of stock which is marked to market under section 475 or any other provision of this chapter, this section shall not apply, except that rules similar to the rules of section 1296(j) shall apply.

(2) Election to recognize gain where company becomes qualified electing fund

(A) In general

If—

(i) a passive foreign investment company becomes a qualified electing fund with respect to the taxpayer for a taxable year which begins after December 31, 1986,

(ii) the taxpayer holds stock in such company on the first day of such taxable year, and

(iii) the taxpayer establishes to the satisfaction of the Secretary the fair market value of such stock on such first day,

the taxpayer may elect to recognize gain as if he sold such stock on such first day for such fair market value.

(B) Additional election for shareholder of controlled foreign corporations

(i) In general

If—

(I) a passive foreign investment company becomes a qualified electing fund with respect to the taxpayer for a taxable year which begins after December 31, 1986,

(II) the taxpayer holds stock in such company on the first day of such taxable year, and

(III) such company is a controlled foreign corporation (as defined in section 957(a)),

the taxpayer may elect to include in gross income as a dividend received on such first day an amount equal to the portion of the post-1986 earnings and profits of such company attributable (under regulations prescribed by the Secretary) to the stock in such company held by the taxpayer on such first day. The amount treated as a dividend under the preceding sentence shall be treated as an excess distribution

and shall be allocated under subsection (a)(1)(A) only to days during periods taken into account in determining the post-1986 earnings and profits so attributable.

(ii) Post-1986 earnings and profits

For purposes of clause (i), the term ''post-1986 earnings and profits'' means earnings and profits which were accumulated in taxable years of such company beginning after December 31, 1986, and during the period or periods the stock was held by the taxpayer while the company was a passive foreign investment company.

(iii) Coordination with section 959(e)

For purposes of section 959(e), any amount included in gross income under this subparagraph shall be treated as included in gross income under section 1248(a).

(C) Adjustments

In the case of any stock to which subparagraph (A) or (B) applies—

(i) the adjusted basis of such stock shall be increased by the gain recognized under subparagraph (A) or the amount treated as a dividend under subparagraph (B), as the case may be, and

(ii) the taxpayer's holding period in such stock shall be treated as beginning on the first day referred to in such subparagraph.

(e) Certain basis, etc., rules made applicable

Except to the extent inconsistent with the regulations prescribed under subsection (f), rules similar to the rules of subsections (c) and (d)(e),[1] of section 1246 (as in effect on the day before the date of the enactment of the American Jobs Creation Act of 2004) shall apply for purposes of this section; except that—

(1) the reduction under subsection (e) of such section shall be the excess of the basis determined under section 1014 over the adjusted basis of the stock immediately before the decedent's death, and

(2) such a reduction shall not apply in the case of a decedent who was a nonresident alien at all times during his holding period in the stock.

(f) Recognition of gain

To the extent provided in regulations, in the case of any transfer of stock in a passive foreign investment company where (but for this subsection) there is not full recognition of gain, the excess (if any) of—

(1) the fair market value of such stock, over

(2) its adjusted basis,

shall be treated as gain from the sale or exchange of such stock and shall be recognized notwithstanding any provision of law. Proper adjustment shall be made to the basis of any such stock for gain recognized under the preceding sentence.

(g) Coordination with foreign tax credit rules

(1) In general

If there are creditable foreign taxes with respect to any distribution in respect of stock in a passive foreign investment company—

(A) the amount of such distribution shall be determined for purposes of this section with regard to section 78,

(B) the excess distribution taxes shall be allocated ratably to each day in the taxpayer's holding period for the stock, and

(C) to the extent—

(i) that such excess distribution taxes are allocated to a taxable year referred to in subsection (a)(1)(B), such taxes shall be taken into account under section 901 for the current year, and

(ii) that such excess distribution taxes are allocated to any other taxable year, such taxes shall reduce (subject to the principles of section 904(d) and not below zero) the increase in tax determined under subsection (c)(2) for such taxable year by reason of such distribution (but such taxes shall not be taken into account under section 901).

(2) Definitions

For purposes of this subsection—

(A) Creditable foreign taxes

The term ''creditable foreign taxes'' means, with respect to any distribution, any withholding tax imposed with respect to such distribution, but only if the taxpayer chooses the benefits of section 901 and such taxes are creditable under section 901 (determined without regard to paragraph (1)(C)(ii)).

(B) Excess distribution taxes

The term ''excess distribution taxes'' means, with respect to any distribution, the portion of the creditable foreign taxes with respect to such distribution which is attributable (on a pro rata basis) to the portion of such distribution which is an excess distribution.

(C) Section 1248 gain

The rules of this subsection also shall apply in the case of any gain which but for this section would be includible in gross income as a dividend under section 1248.

(Added Pub. L. 99–514, title XII, § 1235(a), Oct. 22, 1986, 100 Stat. 2566; amended Pub. L. 100–647, title I, § 1012(p)(1), (3), (6), (7), (9), (12)–(14), (28), (31), (33), title VI, § 6127(b), Nov. 10, 1988, 102 Stat. 3515–3517, 3520, 3521, 3715; Pub. L. 105–34, title XI, § 1122(b), Aug. 5, 1997, 111 Stat. 976; Pub. L. 105–206, title VI, § 6011(c)(2), July 22, 1998, 112 Stat. 818; Pub. L. 107–16, title V, § 542(e)(5)(B), June 7, 2001, 115 Stat. 85; Pub. L. 108–357, title IV, § 413(c)(24), Oct. 22, 2004, 118 Stat. 1509; Pub. L. 111–147, title V, § 521(b), Mar. 18, 2010, 124 Stat. 112; Pub. L. 111–312, title III, § 301(a), Dec. 17, 2010, 124 Stat. 3300; Pub. L. 115–97, title I, § 14301(c)(34), Dec. 22, 2017, 131 Stat. 2224.)

REFERENCES IN TEXT

The date of the enactment of the American Jobs Creation Act of 2004, referred to in subsec. (e), is the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

AMENDMENTS

2017—Subsec. (g)(2)(A). Pub. L. 115–97 substituted ''any distribution, any withholding tax imposed with

[1] So in original. See 2010 Amendment notes below.

respect to such distribution, but only if'' for ''any distribution—

''(i) any foreign taxes deemed paid under section 902 with respect to such distribution, and

''(ii) any withholding tax imposed with respect to such distribution,

but only if''.

2010—Subsec. (e). Pub. L. 111–312, which directed that subsec. (e) be amended to read as if amendment by Pub. L. 107–16, §542(e)(5)(B), had never been enacted, was executed by inserting ''(e),'' after ''subsections (c) and (d)'' and substituting ''; except that—'' and pars. (1) and (2) for the period at end. See 2001 Amendment note below.

Pub. L. 111–147 substituted ''and (d)'' for '', (d), and (f)''.

2004—Subsec. (b)(3)(F). Pub. L. 108–357, §413(c)(24)(A), substituted ''959(a)'' for ''551(d), 959(a),''.

Subsec. (e). Pub. L. 108–357, §413(c)(24)(B), inserted ''(as in effect on the day before the date of the enactment of the American Jobs Creation Act of 2004)'' after ''section 1246'' in introductory provisions.

2001—Subsec. (e). Pub. L. 107–16, §542(e)(5)(B), struck out ''(e),'' after ''subsections (c), (d),'' and substituted period at end for ''; except that—

''(1) the reduction under subsection (e) of such section shall be the excess of the basis determined under section 1014 over the adjusted basis of the stock immediately before the decedent's death, and

''(2) such a reduction shall not apply in the case of a decedent who was a nonresident alien at all times during his holding period in the stock.''

1998—Subsec. (d)(1). Pub. L. 105–206 inserted at end ''In the case of stock which is marked to market under section 475 or any other provision of this chapter, this section shall not apply, except that rules similar to the rules of section 1296(j) shall apply.''

1997—Subsec. (a)(3)(A). Pub. L. 105–34, §1122(b)(3), amended heading and text of subpar. (A) generally. Prior to amendment, text read as follows: ''The taxpayer's holding period shall be determined under section 1223; except that, for purposes of applying this section to an excess distribution, such holding period shall be treated as ending on the date of such distribution.''

Subsec. (d). Pub. L. 105–34, §1122(b)(2), substituted ''subparts B and C'' for ''subpart B'' in heading.

Subsec. (d)(1). Pub. L. 105–34, §1122(b)(1), inserted concluding provisions.

1988—Subsec. (a)(1)(B)(ii). Pub. L. 100–647, §1012(p)(12), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''any period in the taxpayer's holding period before the 1st day of the 1st taxable year of the company for which it was a passive foreign investment company (or, if later, January 1, 1987), and''.

Subsec. (a)(3)(A). Pub. L. 100–647, §1012(p)(14), substituted ''for purposes of applying this section to'' for ''in the case of''.

Subsec. (a)(4), (5). Pub. L. 100–647, §1012(p)(7)(A), struck out par. (4) which related to coordination with section 904, and par. (5) which related to section 902 not applying.

Subsec. (b)(2)(A). Pub. L. 100–647, §1012(p)(13), inserted at end ''For purposes of clause (ii), any excess distribution received during such 3-year period shall be taken into account only to the extent it was included in gross income under subsection (a)(1)(B).''

Subsec. (b)(3)(F). Pub. L. 100–647, §1012(p)(3), added subpar. (F).

Subsec. (b)(3)(G). Pub. L. 100–647, §1012(p)(33), added subpar. (G).

Subsec. (c)(1). Pub. L. 100–647, §1012(p)(31), inserted at end ''Any increase in the tax imposed by this chapter for the current year under subsection (a) to the extent attributable to the amount referred to in subparagraph (B) shall be treated as interest paid under section 6601 on the due date for the current year.''

Subsec. (d)(1). Pub. L. 100–647, §6127(b)(1), inserted ''with respect to the taxpayer'' after ''qualified electing fund''.

Pub. L. 100–647, §1012(p)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''This section shall not apply with respect to—

''(A) any distribution paid by a passive foreign investment company during a taxable year for which such company is a qualified electing fund, and

''(B) any disposition of stock in a passive foreign investment company if such company is a qualified electing fund for each of its taxable years—

''(i) which begins after December 31, 1986, and for which such company is a passive foreign investment company, and

''(ii) which includes any portion of the taxpayer's holding period.''

Subsec. (d)(2)(A)(i). Pub. L. 100–647, §6127(b)(2), inserted ''with respect to the taxpayer'' after ''qualified electing fund''.

Subsec. (d)(2)(B). Pub. L. 100–647, §1012(p)(28), added subpar. (B) and struck out former subpar. (B) which related to adjustments to basis of stock to which subpar. (A) applies.

Subsec. (d)(2)(B)(i)(I). Pub. L. 100–647, §6127(b)(2), inserted ''with respect to the taxpayer'' after ''qualified electing fund''.

Subsec. (d)(2)(C). Pub. L. 100–647, §1012(p)(28), added subpar. (C).

Subsec. (e). Pub. L. 100–647, §1012(p)(6)(B), substituted ''Except to the extent inconsistent with the regulations prescribed under subsection (f), rules similar''.

Subsec. (e)(2). Pub. L. 100–647, §1012(p)(9), struck out ''not'' before ''a nonresident''.

Subsec. (f). Pub. L. 100–647, §1012(p)(6)(A), amended subsec. (f) generally. Prior to amendment, subsec. (f), ''Nonrecognition provisions'', read as follows: ''To the extent provided in regulations, gain shall be recognized on any disposition of stock in a passive foreign investment company.''

Subsec. (g). Pub. L. 100–647, §1012(p)(7)(B), added subsec. (g).

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

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.

Pub. L. 111–147, title V, §521(c), Mar. 18, 2010, 124 Stat. 112, provided that: ''The amendments made by this section [amending this section and section 1298 of this title] take effect on the date of the enactment of this Act [Mar. 18, 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 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to estates of decedents dying after Dec. 31, 2009, see section 542(f)(1) of Pub. L. 107–16, set out as a note under section 121 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 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 1988 AMENDMENT

Amendment by section 1012(p)(1), (3), (6), (7), (9), (12)–(14), (28), (31), (33) 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 6127(b) of Pub. L. 100–647 effective as if included in the amendments made by section 1235 of Pub. L. 99–514, see section 6127(c)(1) of Pub. L. 100–647, set out as a note under section 1295 of this title.

EFFECTIVE DATE

Pub. L. 99–514, title XII, § 1235(h), Oct. 22, 1986, 100 Stat. 2576, provided that: ''The amendments made by this section [enacting this section and sections 1293 to 1297 of this title and amending sections 532, 542, 551, 851, 904, 951, 1246, and 6503 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 1986.''

SUBPART B—TREATMENT OF QUALIFIED ELECTING FUNDS

Sec.
1293. Current taxation of income from qualified electing funds.
1294. Election to extend time for payment of tax on undistributed earnings.
1295. Qualified electing fund.

§ 1293. Current taxation of income from qualified electing funds

(a) Inclusion

(1) In general

Every United States person who owns (or is treated under section 1298(a) as owning) stock of a qualified electing fund at any time during the taxable year of such fund shall include in gross income—

(A) as ordinary income, such shareholder's pro rata share of the ordinary earnings of such fund for such year, and

(B) as long-term capital gain, such shareholder's pro rata share of the net capital gain of such fund for such year.

(2) Year of inclusion

The inclusion under paragraph (1) shall be for the taxable year of the shareholder in which or with which the taxable year of the fund ends.

(b) Pro rata share

The pro rata share referred to in subsection (a) in the case of any shareholder is the amount which would have been distributed with respect to the shareholder's stock if, on each day during the taxable year of the fund, the fund had distributed to each shareholder a pro rata share of that day's ratable share of the fund's ordinary earnings and net capital gain for such year. To the extent provided in regulations, if the fund establishes to the satisfaction of the Secretary that it uses a shorter period than the taxable year to determine shareholders' interests in the earnings of such fund, pro rata shares may be determined by using such shorter period.

(c) Previously taxed amounts distributed tax free

If the taxpayer establishes to the satisfaction of the Secretary that any amount distributed by a passive foreign investment company is paid out of earnings and profits of the company which were included under subsection (a) in the income of any United States person, such amount shall be treated, for purposes of this chapter, as a distribution which is not a dividend; except that such distribution shall immediately reduce earnings and profits. If the passive foreign investment company is a controlled foreign corporation (as defined in section 957(a)), the preceding sentence shall not apply to any United States shareholder (as defined in section 951(b)) in such corporation, and, in applying section 959 to any such shareholder, any inclusion under this section shall be treated as an inclusion under section 951(a)(1)(A).

(d) Basis adjustments

The basis of the taxpayer's stock in a passive foreign investment company shall be—

(1) increased by any amount which is included in the income of the taxpayer under subsection (a) with respect to such stock, and

(2) decreased by any amount distributed with respect to such stock which is not includible in the income of the taxpayer by reason of subsection (c).

A similar rule shall apply also in the case of any property if by reason of holding such property the taxpayer is treated under section 1298(a) as owning stock in a qualified electing fund.

(e) Ordinary earnings

For purposes of this section—

(1) Ordinary earnings

The term ''ordinary earnings'' means the excess of the earnings and profits of the qualified electing fund for the taxable year over its net capital gain for such taxable year.

(2) Limitation on net capital gain

A qualified electing fund's net capital gain for any taxable year shall not exceed its earnings and profits for such taxable year.

(3) Determination of earnings and profits

The earnings and profits of any qualified electing fund shall be determined without regard to paragraphs (4), (5), and (6) of section 312(n). Under regulations, the preceding sentence shall not apply to the extent it would increase earnings and profits by an amount which was previously distributed by the qualified electing fund.

(f) Foreign tax credit allowed in the case of 10-percent corporate shareholder

For purposes of section 960—

(1) any amount included in the gross income under subsection (a) shall be treated as if it were included under section 951(a),

(2) any amount excluded from gross income under subsection (c) shall be treated in the same manner as amounts excluded from gross income under section 959, and

(3) a domestic corporation which owns (or is treated under section 1298(a) as owning) stock of a qualified electing fund shall be treated in the same manner as a United States shareholder of a controlled foreign corporation (and such qualified electing fund shall be treated in the same manner as such controlled foreign corporation) if such domestic corporation meets the stock ownership requirements of subsection (a) or (b) of section 902 (as in effect before its repeal) with respect to such qualified electing fund.

(g) Other special rules

(1) Exception for certain income

For purposes of determining the amount included in the gross income of any person under this section, the ordinary earnings and net capital gain of a qualified electing fund shall not include any item of income received by such fund if—

(A) such fund is a controlled foreign corporation (as defined in section 957(a)) and such person is a United States shareholder (as defined in section 951(b)) in such fund, and

(B) such person establishes to the satisfaction of the Secretary that—

(i) such income was subject to an effective rate of income tax imposed by a foreign country greater than 90 percent of the maximum rate of tax specified in section 11, or

(ii) such income is—

(I) from sources within the United States,

(II) effectively connected with the conduct by the qualified electing fund of a trade or business in the United States, and

(III) not exempt from taxation (or subject to a reduced rate of tax) pursuant to a treaty obligation of the United States.

(2) Prevention of double inclusion

The Secretary shall prescribe such adjustment to the provisions of this section as may be necessary to prevent the same item of income of a qualified electing fund from being included in the gross income of a United States person more than once.

(Added Pub. L. 99–514, title XII, §1235(a), Oct. 22, 1986, 100 Stat. 2569; amended Pub. L. 100–647, title I, §1012(p)(15), (18), (23), (32), Nov. 10, 1988, 102 Stat. 3518, 3519, 3521; Pub. L. 103–66, title XIII, §13231(c)(3), Aug. 10, 1993, 107 Stat. 498; Pub. L. 105–34, title XI, §1122(d)(3), Aug. 5, 1997, 111 Stat. 977; Pub. L. 115–97, title I, §14301(c)(35), Dec. 22, 2017, 131 Stat. 2224.)

REFERENCES IN TEXT

Section 902 (as in effect before its repeal), referred to in subsec. (f)(3), means section 902 of this title as in effect before its repeal by Pub. L. 115–97, title I, §14301(a), Dec. 22, 2017, 131 Stat. 2221.

AMENDMENTS

2017—Subsec. (f)(3). Pub. L. 115–97 added par. (3).

1997—Subsecs. (a)(1), (d). Pub. L. 105–34 substituted ''section 1298(a)'' for ''section 1297(a)''.

1993—Subsec. (c). Pub. L. 103–66 inserted at end ''If the passive foreign investment company is a controlled foreign corporation (as defined in section 957(a)), the preceding sentence shall not apply to any United States shareholder (as defined in section 951(b)) in such corporation, and, in applying section 959 to any such shareholder, any inclusion under this section shall be treated as an inclusion under section 951(a)(1)(A).''

1988—Subsec. (b). Pub. L. 100–647, §1012(p)(15), inserted at end ''To the extent provided in regulations, if the fund establishes to the satisfaction of the Secretary that it uses a shorter period than the taxable year to determine shareholders' interests in the earnings of such fund, pro rata shares may be determined by using such shorter period.''

Subsec. (c). Pub. L. 100–647, §1012(p)(23), inserted '', for purposes of this chapter,'' after ''shall be treated'', and ''; except that such distribution shall immediately reduce earnings and profits'' after ''is not a dividend''.

Subsec. (e)(3). Pub. L. 100–647, §1012(p)(18), added par. (3).

Subsec. (g). Pub. L. 100–647, §1012(p)(32), added subsec. (g).

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 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 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years of foreign corporations beginning after Sept. 30, 1993, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, see section 13231(e) of Pub. L. 103–66, set out as a note under section 951 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 of foreign corporations beginning after Dec. 31, 1986, see section 1235(h) of Pub. L. 99–514, set out as a note under section 1291 of this title.

§ 1294. Election to extend time for payment of tax on undistributed earnings

(a) Extension allowed by election

(1) In general

At the election of the taxpayer, the time for payment of any undistributed PFIC earnings tax liability of the taxpayer for the taxable year shall be extended to the extent and subject to the limitations provided in this section.

(2) Election not permitted where amounts otherwise includible under section 951

The taxpayer may not make an election under paragraph (1) with respect to the undistributed PFIC earnings tax liability attrib-

utable to a qualified electing fund for the taxable year if any amount is includible in the gross income of the taxpayer under section 951 with respect to such fund for such taxable year.

(b) Definitions

For purposes of this section—

(1) Undistributed PFIC earnings tax liability

The term ''undistributed PFIC earnings tax liability'' means, in the case of any taxpayer, the excess of—

(A) the tax imposed by this chapter for the taxable year, over

(B) the tax which would be imposed by this chapter for such year without regard to the inclusion in gross income under section 1293 of the undistributed earnings of a qualified electing fund.

(2) Undistributed earnings

The term ''undistributed earnings'' means, with respect to any qualified electing fund, the excess (if any) of—

(A) the amount includible in gross income by reason of section 1293(a) for the taxable year, over

(B) the amount not includible in gross income by reason of section 1293(c) for such taxable year.

(c) Termination of extension

(1) Distributions

(A) In general

If a distribution is not includible in gross income for the taxable year by reason of section 1293(c), then the extension under subsection (a) for payment of the undistributed PFIC earnings tax liability with respect to the earnings to which such distribution is attributable shall expire on the last date prescribed by law (determined without regard to extensions) for filing the return of tax for such taxable year.

(B) Ordering rule

For purposes of subparagraph (A), a distribution shall be treated as made from the most recently accumulated earnings and profits.

(2) Transfers, etc.

If—

(A) stock in a passive foreign investment company is transferred during the taxable year, or

(B) a passive foreign investment company ceases to be a qualified electing fund,

all extensions under subsection (a) for payment of undistributed PFIC earnings tax liability attributable to such stock (or, in the case of such a cessation, attributable to any stock in such company) which had not expired before the date of such transfer or cessation shall expire on the last date prescribed by law (determined without regard to extensions) for filing the return of tax for the taxable year in which such transfer or cessation occurs. To the extent provided in regulations, the preceding sentence shall not apply in the case of a transfer in a transaction with respect to which gain or loss is not recognized (in whole or in part), and the transferee in such transaction shall succeed to the treatment under this section of the transferor.

(3) Jeopardy

If the Secretary believes that collection of an amount to which an extension under this section relates is in jeopardy, the Secretary shall immediately terminate such extension with respect to such amount, and notice and demand shall be made by him for payment of such amount.

(d) Election

The election under subsection (a) shall be made not later than the time prescribed by law (including extensions) for filing the return of tax imposed by this chapter for the taxable year.

(e) Authority to require bond

Section 6165 shall apply to any extension under this section as though the Secretary were extending the time for payment of the tax.

(f) Treatment of loans to shareholder

For purposes of this section and section 1293, any loan by a qualified electing fund (directly or indirectly) to a shareholder of such fund shall be treated as a distribution to such shareholder.

(g) Cross reference

For provisions providing for interest for the period of the extension under this section, see section 6601.

(Added Pub. L. 99–514, title XII, § 1235(a), Oct. 22, 1986, 100 Stat. 2570; amended Pub. L. 100–647, title I, § 1012(p)(4), (8), (25), (34), Nov. 10, 1988, 102 Stat. 3515, 3517, 3519, 3522; Pub. L. 108–357, title IV, § 413(c)(25), Oct. 22, 2004, 118 Stat. 1509.)

AMENDMENTS

2004—Subsec. (a)(2). Pub. L. 108–357 amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''The taxpayer may not make an election under paragraph (1) with respect to the undistributed PFIC earnings tax liability attributable to a qualified electing fund for the taxable year if—

''(A) any amount is includible in the gross income of the taxpayer under section 551 with respect to such fund for such taxable year, or

''(B) any amount is includible in the gross income of the taxpayer under section 951 with respect to such fund for such taxable year.''

1988—Subsec. (c)(2). Pub. L. 100–647, § 1012(p)(4), (34), substituted ''Transfers'' for ''Dispositions'' in heading and ''is transferred'' for ''is disposed of'' in subpar. (A), and in closing provisions substituted ''such transfer'' for ''such disposition'' in two places and inserted at end ''To the extent provided in regulations, the preceding sentence shall not apply in the case of a transfer in a transaction with respect to which gain or loss is not recognized (in whole or in part), and the transferee in such transaction shall succeed to the treatment under this section of the transferor.''

Subsec. (f). Pub. L. 100–647, § 1012(p)(25), added subsec. (f).

Subsec. (g). Pub. L. 100–647, § 1012(p)(8), added subsec. (g).

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 cor-

porations 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 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 of foreign corporations beginning after Dec. 31, 1986, see section 1235(h) of Pub. L. 99–514, set out as a note under section 1291 of this title.

§ 1295. Qualified electing fund

(a) General rule

For purposes of this part, any passive foreign investment company shall be treated as a qualified electing fund with respect to the taxpayer if—

(1) an election by the taxpayer under subsection (b) applies to such company for the taxable year, and

(2) such company complies with such requirements as the Secretary may prescribe for purposes of—

(A) determining the ordinary earnings and net capital gain of such company, and

(B) otherwise carrying out the purposes of this subpart.

(b) Election

(1) In general

A taxpayer may make an election under this subsection with respect to any passive foreign investment company for any taxable year of the taxpayer. Such an election, once made with respect to any company, shall apply to all subsequent taxable years of the taxpayer with respect to such company unless revoked by the taxpayer with the consent of the Secretary.

(2) When made

An election under this subsection may be made for any taxable year at any time on or before the due date (determined with regard to extensions) for filing the return of the tax imposed by this chapter for such taxable year. To the extent provided in regulations, such an election may be made later than as required in the preceding sentence where the taxpayer fails to make a timely election because the taxpayer reasonably believed that the company was not a passive foreign investment company.

(Added Pub. L. 99–514, title XII, §1235(a), Oct. 22, 1986, 100 Stat. 2571; amended Pub. L. 100–647, title I, §1012(p)(37)(A), title VI, §6127(a), Nov. 10, 1988, 102 Stat. 3522, 3715.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–647, §6127(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''For purposes of this part, the term 'qualified electing fund' means any passive foreign investment company if—

''(1) an election under subsection (b) applies to such company for the taxable year, and

''(2) such company complies for such taxable year with such requirements as the Secretary may prescribe for purposes of—

''(A) determining the ordinary earnings and net capital gain of such company for the taxable year,

''(B) ascertaining the ownership of its outstanding stock, and

''(C) otherwise carrying out the purposes of this subpart.''

Subsec. (b). Pub. L. 100–647, §6127(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

''(1) IN GENERAL.—A passive foreign investment company may make an election under this subsection for any taxable year. Such an election, once made, shall apply to all subsequent taxable years of such company for which such company is a passive foreign investment company unless revoked with the consent of the Secretary.

''(2) WHEN MADE.—An election under this subsection may be made for any taxable year at any time before the 15th day of the 3rd month of the following taxable year. To the extent provided in regulations, such an election may be made later than as required by the preceding sentence in cases where the company failed to make a timely election because it reasonably believed it was not a passive foreign investment company.''

Pub. L. 100–647, §1012(p)(37)(A), inserted sentence at end of par. (2) permitting a later election when a company reasonably believed it was not a passive foreign investment company.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1012(p)(37)(A) 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, §6127(c), Nov. 10, 1988, 102 Stat. 3715, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 1291 of this title] shall take effect as if included in the amendments made by section 1235 of the Reform Act [Pub. L. 99–514].

''(2) TIME FOR MAKING ELECTION.—The period during which an election under section 1295(b) of the 1986 Code may be made shall in no event expire before the date 60 days after the date of the enactment of this Act [Nov. 10, 1988].''

EFFECTIVE DATE

Section applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, see section 1235(h) of Pub. L. 99–514, set out as a note under section 1291 of this title.

EXPIRATION OF SUBSECTION (b) ELECTION PERIOD

Pub. L. 100–647, title I, §1012(p)(37)(B), Nov. 10, 1988, 102 Stat. 3522, provided that: ''The period during which an election under section 1295(b) of the 1986 Code may be made shall in no event expire before the date 60 days after the date of enactment of this Act [Nov. 10, 1988].''

SUBPART C—ELECTION OF MARK TO MARKET FOR MARKETABLE STOCK

AMENDMENTS

1997—Pub. L. 105–34, title XI, §1122(a), Aug. 5, 1997, 111 Stat. 972, added subpart C and item 1296. Former subpart C redesignated D.

PRIOR PROVISIONS

A prior subpart C, consisting of sections 1296 and 1297 of this title, was redesignated subpart D consisting of sections 1297 and 1298.

§ 1296. Election of mark to market for marketable stock

(a) General rule

In the case of marketable stock in a passive foreign investment company which is owned (or treated under subsection (g) as owned) by a United States person at the close of any taxable year of such person, at the election of such person—

(1) If the fair market value of such stock as of the close of such taxable year exceeds its adjusted basis, such United States person shall include in gross income for such taxable year an amount equal to the amount of such excess.

(2) If the adjusted basis of such stock exceeds the fair market value of such stock as of the close of such taxable year, such United States person shall be allowed a deduction for such taxable year equal to the lesser of—

(A) the amount of such excess, or

(B) the unreversed inclusions with respect to such stock.

(b) Basis adjustments

(1) In general

The adjusted basis of stock in a passive foreign investment company—

(A) shall be increased by the amount included in the gross income of the United States person under subsection (a)(1) with respect to such stock, and

(B) shall be decreased by the amount allowed as a deduction to the United States person under subsection (a)(2) with respect to such stock.

(2) Special rule for stock constructively owned

In the case of stock in a passive foreign investment company which the United States person is treated as owning under subsection (g)—

(A) the adjustments under paragraph (1) shall apply to such stock in the hands of the person actually holding such stock but only for purposes of determining the subsequent treatment under this chapter of the United States person with respect to such stock, and

(B) similar adjustments shall be made to the adjusted basis of the property by reason of which the United States person is treated as owning such stock.

(c) Character and source rules

(1) Ordinary treatment

(A) Gain

Any amount included in gross income under subsection (a)(1), and any gain on the sale or other disposition of marketable stock in a passive foreign investment company (with respect to which an election under this section is in effect), shall be treated as ordinary income.

(B) Loss

Any—

(i) amount allowed as a deduction under subsection (a)(2), and

(ii) loss on the sale or other disposition of marketable stock in a passive foreign investment company (with respect to which an election under this section is in effect) to the extent that the amount of such loss does not exceed the unreversed inclusions with respect to such stock,

shall be treated as an ordinary loss. The amount so treated shall be treated as a deduction allowable in computing adjusted gross income.

(2) Source

The source of any amount included in gross income under subsection (a)(1) (or allowed as a deduction under subsection (a)(2)) shall be determined in the same manner as if such amount were gain or loss (as the case may be) from the sale of stock in the passive foreign investment company.

(d) Unreversed inclusions

For purposes of this section, the term ''unreversed inclusions'' means, with respect to any stock in a passive foreign investment company, the excess (if any) of—

(1) the amount included in gross income of the taxpayer under subsection (a)(1) with respect to such stock for prior taxable years, over

(2) the amount allowed as a deduction under subsection (a)(2) with respect to such stock for prior taxable years.

The amount referred to in paragraph (1) shall include any amount which would have been included in gross income under subsection (a)(1) with respect to such stock for any prior taxable year but for section 1291. In the case of a regulated investment company which elected to mark to market the stock held by such company as of the last day of the taxable year preceding such company's first taxable year for which such company elects the application of this section, the amount referred to in paragraph (1) shall include amounts included in gross income under such mark to market with respect to such stock for prior taxable years.

(e) Marketable stock

For purposes of this section—

(1) In general

The term ''marketable stock'' means—

(A) any stock which is regularly traded on—

(i) a national securities exchange which is registered with the Securities and Exchange Commission or the national market system established pursuant to section 11A of the Securities and Exchange Act of 1934, or

(ii) any exchange or other market which the Secretary determines has rules adequate to carry out the purposes of this part,

(B) to the extent provided in regulations, stock in any foreign corporation which is comparable to a regulated investment company and which offers for sale or has outstanding any stock of which it is the issuer and which is redeemable at its net asset value, and

(C) to the extent provided in regulations, any option on stock described in subparagraph (A) or (B).

(2) Special rule for regulated investment companies

In the case of any regulated investment company which is offering for sale or has outstanding any stock of which it is the issuer and which is redeemable at its net asset value, all stock in a passive foreign investment company which it owns directly or indirectly shall be treated as marketable stock for purposes of this section. Except as provided in regulations, similar treatment as marketable stock shall apply in the case of any other regulated investment company which publishes net asset valuations at least annually.

(f) Treatment of controlled foreign corporations which are shareholders in passive foreign investment companies

In the case of a foreign corporation which is a controlled foreign corporation and which owns (or is treated under subsection (g) as owning) stock in a passive foreign investment company—

(1) this section (other than subsection (c)(2)) shall apply to such foreign corporation in the same manner as if such corporation were a United States person, and

(2) for purposes of subpart F of part III of subchapter N—

(A) any amount included in gross income under subsection (a)(1) shall be treated as foreign personal holding company income described in section 954(c)(1)(A), and

(B) any amount allowed as a deduction under subsection (a)(2) shall be treated as a deduction allocable to foreign personal holding company income so described.

(g) Stock owned through certain foreign entities

Except as provided in regulations—

(1) In general

For purposes of this section, stock owned, directly or indirectly, by or for a foreign partnership or foreign trust or foreign estate shall be considered as being owned proportionately by its 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.

(2) Treatment of certain dispositions

In any case in which a United States person is treated as owning stock in a passive foreign investment company by reason of paragraph (1)—

(A) any disposition by the United States person or by any other person which results in the United States person being treated as no longer owning such stock, and

(B) any disposition by the person owning such stock,

shall be treated as a disposition by the United States person of the stock in the passive foreign investment company.

(h) Coordination with section 851(b)

For purposes of section 851(b)(2), any amount included in gross income under subsection (a) shall be treated as a dividend.

(i) Stock acquired from a decedent

In the case of stock of a passive foreign investment company which is acquired by bequest, devise, or inheritance (or by the decedent's estate) and with respect to which an election under this section was in effect as of the date of the decedent's death, notwithstanding section 1014, the basis of such stock in the hands of the person so acquiring it shall be the adjusted basis of such stock in the hands of the decedent immediately before his death (or, if lesser, the basis which would have been determined under section 1014 without regard to this subsection).

(j) Coordination with section 1291 for first year of election

(1) Taxpayers other than regulated investment companies

(A) In general

If the taxpayer elects the application of this section with respect to any marketable stock in a corporation after the beginning of the taxpayer's holding period in such stock, and if the requirements of subparagraph (B) are not satisfied, section 1291 shall apply to—

(i) any distributions with respect to, or disposition of, such stock in the first taxable year of the taxpayer for which such election is made, and

(ii) any amount which, but for section 1291, would have been included in gross income under subsection (a) with respect to such stock for such taxable year in the same manner as if such amount were gain on the disposition of such stock.

(B) Requirements

The requirements of this subparagraph are met if, with respect to each of such corporation's taxable years for which such corporation was a passive foreign investment company and which begin after December 31, 1986, and included any portion of the taxpayer's holding period in such stock, such corporation was treated as a qualified electing fund under this part with respect to the taxpayer.

(2) Special rules for regulated investment companies

(A) In general

If a regulated investment company elects the application of this section with respect to any marketable stock in a corporation after the beginning of the taxpayer's holding period in such stock, then, with respect to such company's first taxable year for which such company elects the application of this section with respect to such stock—

(i) section 1291 shall not apply to such stock with respect to any distribution or disposition during, or amount included in gross income under this section for, such first taxable year, but

(ii) such regulated investment company's tax under this chapter for such first taxable year shall be increased by the aggregate amount of interest which would have been determined under section 1291(c)(3) if section 1291 were applied without regard to this subparagraph.

Clause (ii) shall not apply if for the preceding taxable year the company elected to

mark to market the stock held by such company as of the last day of such preceding taxable year.

(B) Disallowance of deduction

No deduction shall be allowed to any regulated investment company for the increase in tax under subparagraph (A)(ii).

(k) Election

This section shall apply to marketable stock in a passive foreign investment company which is held by a United States person only if such person elects to apply this section with respect to such stock. Such an election shall apply to the taxable year for which made and all subsequent taxable years unless—

(1) such stock ceases to be marketable stock, or

(2) the Secretary consents to the revocation of such election.

***(l)* Transition rule for individuals becoming subject to United States tax**

If any individual becomes a United States person in a taxable year beginning after December 31, 1997, solely for purposes of this section, the adjusted basis (before adjustments under subsection (b)) of any marketable stock in a passive foreign investment company owned by such individual on the first day of such taxable year shall be treated as being the greater of its fair market value on such first day or its adjusted basis on such first day.

(Added Pub. L. 105–34, title XI, § 1122(a), Aug. 5, 1997, 111 Stat. 972; amended Pub. L. 105–206, title VI, § 6011(c)(3), July 22, 1998, 112 Stat. 818; Pub. L. 107–16, title V, § 542(e)(5)(C), June 7, 2001, 115 Stat. 85; Pub. L. 108–311, title IV, § 408(a)(19), Oct. 4, 2004, 118 Stat. 1192; Pub. L. 111–312, title III, § 301(a), Dec. 17, 2010, 124 Stat. 3300.)

REFERENCES IN TEXT

Section 11A of the Securities and Exchange Act of 1934, referred to in subsec. (e)(1)(A)(i), is classified to section 78k–1 of Title 15, Commerce and Trade.

PRIOR PROVISIONS

A prior section 1296 was renumbered section 1297 of this title.

AMENDMENTS

2010—Subsec. (i). Pub. L. 111–312 amended subsec. (i) to read as if amendment by Pub. L. 107–16, § 542(e)(5)(C), had never been enacted. See 2001 Amendment note below.

2004—Subsec. (h). Pub. L. 108–311 substituted ''section 851(b)(2)'' for ''paragraphs (2) and (3) of section 851(b)''.

2001—Subsec. (i). Pub. L. 107–16, § 542(e)(5)(C), struck out subsec. (i). Text read as follows: ''In the case of stock of a passive foreign investment company which is acquired by bequest, devise, or inheritance (or by the decedent's estate) and with respect to which an election under this section was in effect as of the date of the decedent's death, notwithstanding section 1014, the basis of such stock in the hands of the person so acquiring it shall be the adjusted basis of such stock in the hands of the decedent immediately before his death (or, if lesser, the basis which would have been determined under section 1014 without regard to this subsection).''

1998—Subsec. (d). Pub. L. 105–206 inserted at end ''In the case of a regulated investment company which elected to mark to market the stock held by such company as of the last day of the taxable year preceding such company's first taxable year for which such company elects the application of this section, the amount referred to in paragraph (1) shall include amounts included in gross income under such mark to market with respect to such stock for prior taxable years.''

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 estates of decedents dying after Dec. 31, 2009, see section 542(f)(1) of Pub. L. 107–16, set out as a note under section 121 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 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 an Effective Date of 1997 Amendment note under section 532 of this title.

SUBPART D—GENERAL PROVISIONS

Sec.
1297. Passive foreign investment company.
1298. Special rules.

AMENDMENTS

1997—Pub. L. 105–34, title XI, § 1122(a), (d)(5), Aug. 5, 1997, 111 Stat. 972, 977, redesignated subpart C of this part as this subpart and amended table of sections generally, renumbering items 1296 and 1297 as 1297 and 1298, respectively.

§ 1297. Passive foreign investment company

(a) In general

For purposes of this part, except as otherwise provided in this subpart, the term ''passive foreign investment company'' means any foreign corporation if—

(1) 75 percent or more of the gross income of such corporation for the taxable year is passive income, or

(2) the average percentage of assets (as determined in accordance with subsection (e)) held by such corporation during the taxable year which produce passive income or which are held for the production of passive income is at least 50 percent.

(b) Passive income

For purposes of this section—

(1) In general

Except as provided in paragraph (2), the term ''passive income'' means any income which is of a kind which would be foreign personal holding company income as defined in section 954(c).

(2) Exceptions

Except as provided in regulations, the term ''passive income'' does not include any income—

(A) derived in the active conduct of a banking business by an institution licensed to do business as a bank in the United States (or, to the extent provided in regulations, by any other corporation),

(B) derived in the active conduct of an insurance business by a qualifying insurance corporation (as defined in subsection (f)),

(C) which is interest, a dividend, or a rent or royalty, which is received or accrued from a related person (within the meaning of section 954(d)(3)) to the extent such amount is properly allocable (under regulations prescribed by the Secretary) to income of such related person which is not passive income, or

(D) which is export trade income of an export trade corporation (as defined in section 971).

For purposes of subparagraph (C), the term ''related person'' has the meaning given such term by section 954(d)(3) determined by substituting ''foreign corporation'' for ''controlled foreign corporation'' each place it appears in section 954(d)(3).

(c) Look-thru in the case of 25-percent owned corporations

If a foreign corporation owns (directly or indirectly) at least 25 percent (by value) of the stock of another corporation, for purposes of determining whether such foreign corporation is a passive foreign investment company, such foreign corporation shall be treated as if it—

(1) held its proportionate share of the assets of such other corporation, and

(2) received directly its proportionate share of the income of such other corporation.

(d) Exception for United States shareholders of controlled foreign corporations

(1) In general

For purposes of this part, a corporation shall not be treated with respect to a shareholder as a passive foreign investment company during the qualified portion of such shareholder's holding period with respect to stock in such corporation.

(2) Qualified portion

For purposes of this subsection, the term ''qualified portion'' means the portion of the shareholder's holding period—

(A) which is after December 31, 1997, and

(B) during which the shareholder is a United States shareholder (as defined in section 951(b)) of the corporation and the corporation is a controlled foreign corporation.

(3) New holding period if qualified portion ends

(A) In general

Except as provided in subparagraph (B), if the qualified portion of a shareholder's holding period with respect to any stock ends after December 31, 1997, solely for purposes of this part, the shareholder's holding period with respect to such stock shall be treated as beginning as of the first day following such period.

(B) Exception

Subparagraph (A) shall not apply if such stock was, with respect to such shareholder, stock in a passive foreign investment company at any time before the qualified portion of the shareholder's holding period with respect to such stock and no election under section 1298(b)(1) is made.

(4) Treatment of holders of options

Paragraph (1) shall not apply to stock treated as owned by a person by reason of section 1298(a)(4) (relating to the treatment of a person that has an option to acquire stock as owning such stock) unless such person establishes that such stock is owned (within the meaning of section 958(a)) by a United States shareholder (as defined in section 951(b)) who is not exempt from tax under this chapter.

(e) Methods for measuring assets

(1) Determination using value

The determination under subsection (a)(2) shall be made on the basis of the value of the assets of a foreign corporation if—

(A) such corporation is a publicly traded corporation for the taxable year, or

(B) paragraph (2) does not apply to such corporation for the taxable year.

(2) Determination using adjusted bases

The determination under subsection (a)(2) shall be based on the adjusted bases (as determined for the purposes of computing earnings and profits) of the assets of a foreign corporation if such corporation is not described in paragraph (1)(A) and such corporation—

(A) is a controlled foreign corporation, or

(B) elects the application of this paragraph.

An election under subparagraph (B), once made, may be revoked only with the consent of the Secretary.

(3) Publicly traded corporation

For purposes of this subsection, a foreign corporation shall be treated as a publicly traded corporation if the stock in the corporation is regularly traded on—

(A) a national securities exchange which is registered with the Securities and Exchange Commission or the national market system established pursuant to section 11A of the Securities and Exchange Act of 1934, or

(B) any exchange or other market which the Secretary determines has rules adequate to carry out the purposes of this subsection.

(f) Qualifying insurance corporation

For purposes of subsection (b)(2)(B)—

(1) In general

The term ''qualifying insurance corporation'' means, with respect to any taxable year, a foreign corporation—

(A) which would be subject to tax under subchapter L if such corporation were a domestic corporation, and

(B) the applicable insurance liabilities of which constitute more than 25 percent of its total assets, determined on the basis of such liabilities and assets as reported on the corporation's applicable financial statement for the last year ending with or within the taxable year.

(2) Alternative facts and circumstances test for certain corporations

If a corporation fails to qualify as a qualified insurance corporation under paragraph (1) solely because the percentage determined under paragraph (1)(B) is 25 percent or less, a United States person that owns stock in such corporation may elect to treat such stock as stock of a qualifying insurance corporation if—

(A) the percentage so determined for the corporation is at least 10 percent, and

(B) under regulations provided by the Secretary, based on the applicable facts and circumstances—

(i) the corporation is predominantly engaged in an insurance business, and

(ii) such failure is due solely to runoff-related or rating-related circumstances involving such insurance business.

(3) Applicable insurance liabilities

For purposes of this subsection—

(A) In general

The term ''applicable insurance liabilities'' means, with respect to any life or property and casualty insurance business—

(i) loss and loss adjustment expenses, and

(ii) reserves (other than deficiency, contingency, or unearned premium reserves) for life and health insurance risks and life and health insurance claims with respect to contracts providing coverage for mortality or morbidity risks.

(B) Limitations on amount of liabilities

Any amount determined under clause (i) or (ii) of subparagraph (A) shall not exceed the lesser of such amount—

(i) as reported to the applicable insurance regulatory body in the applicable financial statement described in paragraph (4)(A) (or, if less, the amount required by applicable law or regulation), or

(ii) as determined under regulations prescribed by the Secretary.

(4) Other definitions and rules

For purposes of this subsection—

(A) Applicable financial statement

The term ''applicable financial statement'' means a statement for financial reporting purposes which—

(i) is made on the basis of generally accepted accounting principles,

(ii) is made on the basis of international financial reporting standards, but only if there is no statement that meets the requirement of clause (i), or

(iii) except as otherwise provided by the Secretary in regulations, is the annual statement which is required to be filed with the applicable insurance regulatory body, but only if there is no statement which meets the requirements of clause (i) or (ii).

(B) Applicable insurance regulatory body

The term ''applicable insurance regulatory body'' means, with respect to any insurance business, the entity established by law to license, authorize, or regulate such business and to which the statement described in subparagraph (A) is provided.

(Added Pub. L. 99–514, title XII, § 1235(a), Oct. 22, 1986, 100 Stat. 2572, § 1296; amended Pub. L. 100–647, title I, §§ 1012(p)(2), (5), (16), (26), (27), 1018(u)(40), Nov. 10, 1988, 102 Stat. 3515, 3518–3520, 3592; Pub. L. 103–66, title XIII, § 13231(d)(1), (3), Aug. 10, 1993, 107 Stat. 499; Pub. L. 104–188, title I, § 1704(r)(1), Aug. 20, 1996, 110 Stat. 1887; renumbered § 1297 and amended Pub. L. 105–34, title XI, §§ 1121, 1122(a), (d)(4), 1123, Aug. 5, 1997, 111 Stat. 971, 972, 977; Pub. L. 105–206, title VI, § 6011(b)(1), (d), July 22, 1998, 112 Stat. 817, 818; Pub. L. 110–172, § 11(a)(24)(A), (g)(18), Dec. 29, 2007, 121 Stat. 2486, 2491; Pub. L. 115–97, title I, § 14501(a), (b), Dec. 22, 2017, 131 Stat. 2234.)

REFERENCES IN TEXT

Section 11A of the Securities and Exchange Act of 1934, referred to in subsec. (e)(3)(A), is classified to section 78k–1 of Title 15, Commerce and Trade.

PRIOR PROVISIONS

A prior section 1297 was renumbered section 1298 of this title.

AMENDMENTS

2017—Subsec. (b)(2)(B). Pub. L. 115–97, § 14501(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''derived in the active conduct of an insurance business by a corporation which is predominantly engaged in an insurance business and which would be subject to tax under subchapter L if it were a domestic corporation,''.

Subsec. (f). Pub. L. 115–97, § 14501(b), added subsec. (f).

2007—Subsec. (b)(2)(D). Pub. L. 110–172, § 11(g)(18), which directed amendment of subpar. (D) by striking out ''foreign trade income of a FSC or'', was executed by striking out ''foreign trade income of an FSC or'' before ''export trade income'' to reflect the probable intent of Congress.

Subsecs. (d) to (f). Pub. L. 110–172, § 11(a)(24)(A), redesignated subsecs. (e) and (f) as (d) and (e), respectively, and struck out heading and text of former subsec. (d). Text read as follows: ''For purposes of this part, the term 'passive foreign investment company' does not include any foreign investment company to which section 1247 applies.''

1998—Subsec. (e). Pub. L. 105–206, § 6011(d), redesignated subsec. (e), relating to methods for measuring assets, as (f).

Subsec. (e)(4). Pub. L. 105–206, § 6011(b)(1), added par. (4).

Subsec. (f). Pub. L. 105–206, § 6011(d), redesignated subsec. (e), relating to methods for measuring assets, as (f).

1997—Pub. L. 105–34, § 1122(a), renumbered section 1296 of this title as this section.

Subsec. (a). Pub. L. 105–34, § 1123(b)(2), struck out concluding provisions which read as follows: ''In the case of a controlled foreign corporation (or any other foreign corporation if such corporation so elects), the determination under paragraph (2) shall be based on the adjusted bases (as determined for purposes of computing earnings and profits) of its assets in lieu of their value. Such an election, once made, may be revoked only with the consent of the Secretary.''

Subsec. (a)(2). Pub. L. 105–34, § 1123(b)(1), substituted ''(as determined in accordance with subsection (e))'' for ''(by value)''.

Subsec. (b)(3). Pub. L. 105–34, § 1122(d)(4), struck out par. (3) which consisted of subpars. (A) to (C) relating to treatment of certain dealers in securities.

Subsec. (e). Pub. L. 105–34, § 1123(a), added subsec. (e) relating to methods for measuring assets.

Pub. L. 105–34, §1121, added subsec. (e) relating to exception for United States shareholders of controlled foreign corporations.

1996—Subsec. (b)(2)(D). Pub. L. 104–188 added subpar. (D).

1993—Subsec. (a). Pub. L. 103–66, §13231(d)(1), substituted in closing provisions ''In the case of a controlled foreign corporation (or any other foreign corporation if such corporation so elects), the determination under paragraph (2) shall be based on the adjusted bases (as determined for purposes of computing earnings and profits) of its assets in lieu of their value. Such an election, once made, may be revoked only with the consent of the Secretary.'' for ''A foreign corporation may elect to have the determination under paragraph (2) based on the adjusted bases of its assets in lieu of their value. Such an election, once made, may be revoked only with the consent of the Secretary.''

Subsec. (b)(3). Pub. L. 103–66, §13231(d)(3), added par. (3).

1988—Subsec. (a). Pub. L. 100–647, §1018(u)(40), inserted a comma after ''subpart''.

Pub. L. 100–647, §1012(p)(27), inserted at end ''A foreign corporation may elect to have the determination under paragraph (2) based on the adjusted bases of its assets in lieu of their value. Such an election, once made, may be revoked only with the consent of the Secretary.''

Subsec. (b)(1). Pub. L. 100–647, §1012(p)(5), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Except as provided in paragraph (2), the term 'passive income' has the meaning given such term by section 904(d)(2)(A) without regard to the exceptions contained in clause (iii) thereof.''

Subsec. (b)(2). Pub. L. 100–647, §1012(p)(26), substituted ''Exceptions'' for ''Exception for certain banks and insurance companies'' in heading, and inserted sentence at end defining ''related person''.

Subsec. (b)(2)(B). Pub. L. 100–647, §1012(p)(16), inserted ''is predominantly engaged in an insurance business and which'' after ''a corporation which''.

Subsec. (b)(2)(C). Pub. L. 100–647, §1012(p)(26)(A), added subpar. (C).

Subsec. (c). Pub. L. 100–647, §1012(p)(2), inserted ''(directly or indirectly)'' after ''foreign corporation owns''.

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–97, title I, §14501(c), Dec. 22, 2017, 131 Stat. 2235, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2017.''

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 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 1996 AMENDMENT

Pub. L. 104–188, title I, §1704(r)(2), Aug. 20, 1996, 110 Stat. 1887, provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect as if included in the amendments made by section 1235 of the Tax Reform Act of 1986 [Pub. L. 99–514].''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years of foreign corporations beginning after Sept. 30, 1993, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, see section 13231(e) of Pub. L. 103–66, set out as a note under section 951 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 of foreign corporations beginning after Dec. 31, 1986, see section 1235(h) of Pub. L. 99–514, set out as a note under section 1291 of this title.

§ 1298. Special rules

(a) Attribution of ownership

For purposes of this part—

(1) Attribution to United States persons

This subsection—

(A) shall apply to the extent that the effect is to treat stock of a passive foreign investment company as owned by a United States person, and

(B) except to the extent provided in regulations, shall not apply to treat stock owned (or treated as owned under this subsection) by a United States person as owned by any other person.

(2) Corporations

(A) In general

If 50 percent or more in value of the stock of a corporation is owned, directly or indirectly, by or for any person, such person shall be considered as owning the stock owned directly or indirectly by or for such corporation in that proportion which the value of the stock which such person so owns bears to the value of all stock in the corporation.

(B) 50-percent limitation not to apply to PFIC

For purposes of determining whether a shareholder of a passive foreign investment company is treated as owning stock owned directly or indirectly by or for such company, subparagraph (A) shall be applied without regard to the 50-percent limitation contained therein. Section 1297(d) shall not apply in determining whether a corporation is a passive foreign investment company for purposes of this subparagraph.

(3) Partnerships, etc.

Stock owned, directly or indirectly, by or for a partnership, estate, or trust shall be considered as being owned proportionately by its partners or beneficiaries.

(4) Options

To the extent provided in regulations, 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.

(5) Successive application

Stock considered to be owned by a person by reason of the application of paragraph (2), (3),

or (4) shall, for purposes of applying such paragraphs, be considered as actually owned by such person.

(b) Other special rules

For purposes of this part—

(1) Time for determination

Stock held by a taxpayer shall be treated as stock in a passive foreign investment company if, at any time during the holding period of the taxpayer with respect to such stock, such corporation (or any predecessor) was a passive foreign investment company which was not a qualified electing fund. The preceding sentence shall not apply if the taxpayer elects to recognize gain (as of the last day of the last taxable year for which the company was a passive foreign investment company (determined without regard to the preceding sentence)) under rules similar to the rules of section 1291(d)(2).

(2) Certain corporations not treated as PFIC's during start-up year

A corporation shall not be treated as a passive foreign investment company for the first taxable year such corporation has gross income (hereinafter in this paragraph referred to as the ''start-up year'') if—

(A) no predecessor of such corporation was a passive foreign investment company,

(B) it is established to the satisfaction of the Secretary that such corporation will not be a passive foreign investment company for either of the 1st 2 taxable years following the start-up year, and

(C) such corporation is not a passive foreign investment company for either of the 1st 2 taxable years following the start-up year.

(3) Certain corporations changing businesses

A corporation shall not be treated as a passive foreign investment company for any taxable year if—

(A) neither such corporation (nor any predecessor) was a passive foreign investment company for any prior taxable year,

(B) it is established to the satisfaction of the Secretary that—

(i) substantially all of the passive income of the corporation for the taxable year is attributable to proceeds from the disposition of 1 or more active trades or businesses, and

(ii) such corporation will not be a passive foreign investment company for either of the 1st 2 taxable years following such taxable year, and

(C) such corporation is not a passive foreign investment company for either of such 2 taxable years.

(4) Separate interests treated as separate corporations

Under regulations prescribed by the Secretary, where necessary to carry out the purposes of this part, separate classes of stock (or other interests) in a corporation shall be treated as interests in separate corporations.

(5) Application of part where stock held by other entity

(A) In general

Under regulations, in any case in which a United States person is treated as owning stock in a passive foreign investment company by reason of subsection (a)—

(i) any disposition by the United States person or the person owning such stock which results in the United States person being treated as no longer owning such stock, or

(ii) any distribution of property in respect of such stock to the person holding such stock,

shall be treated as a disposition by, or distribution to, the United States person with respect to the stock in the passive foreign investment company.

(B) Amount treated in same manner as previously taxed income

Rules similar to the rules of section 959(b) shall apply to any amount described in subparagraph (A) and to any amount included in gross income under section 1293(a) (or which would have been so included but for section 951(f))[1] in respect of stock which the taxpayer is treated as owning under subsection (a).

(6) Dispositions

Except as provided in regulations, if a taxpayer uses any stock in a passive foreign investment company as security for a loan, the taxpayer shall be treated as having disposed of such stock.

(7) Treatment of certain foreign corporations owning stock in 25-percent owned domestic corporation

(A) In general

If—

(i) a foreign corporation is subject to the tax imposed by section 531 (or waives any benefit under any treaty which would otherwise prevent the imposition of such tax), and

(ii) such foreign corporation owns at least 25 percent (by value) of the stock of a domestic corporation,

for purposes of determining whether such foreign corporation is a passive foreign investment company, any qualified stock held by such domestic corporation shall be treated as an asset which does not produce passive income (and is not held for the production of passive income) and any amount included in gross income with respect to such stock shall not be treated as passive income.

(B) Qualified stock

For purposes of subparagraph (A), the term ''qualified stock'' means any stock in a C corporation which is a domestic corporation and which is not a regulated investment company or real estate investment trust.

[1] See References in Text notes below.

(8) Treatment of certain subpart F inclusions

Any amount included in gross income under section 951(a)(1)(B) shall be treated as a distribution received with respect to the stock.

(c) Treatment of stock held by pooled income fund

If stock in a passive foreign investment company is owned (or treated as owned under subsection (a)) by a pooled income fund (as defined in section 642(c)(5)) and no portion of any gain from a disposition of such stock may be allocated to income under the terms of the governing instrument of such fund—

(1) section 1291 shall not apply to any gain on a disposition of such stock by such fund if (without regard to section 1291) a deduction would be allowable with respect to such gain under section 642(c)(3),

(2) section 1293 shall not apply with respect to such stock, and

(3) in determining whether section 1291 applies to any distribution in respect of such stock, subsection (d) of section 1291 shall not apply.

(d) Treatment of certain leased property

For purposes of this part—

(1) In general

Any tangible personal property with respect to which a foreign corporation is the lessee under a lease with a term of at least 12 months shall be treated as an asset actually held by such corporation.

(2) Amount taken into account

(A) In general

The amount taken into account under section 1296(a)(2)[1] with respect to any asset to which paragraph (1) applies shall be the unamortized portion (as determined under regulations prescribed by the Secretary) of the present value of the payments under the lease for the use of such property.

(B) Present value

For purposes of subparagraph (A), the present value of payments described in subparagraph (A) shall be determined in the manner provided in regulations prescribed by the Secretary—

(i) as of the beginning of the lease term, and

(ii) except as provided in such regulations, by using a discount rate equal to the applicable Federal rate determined under section 1274(d)—

(I) by substituting the lease term for the term of the debt instrument, and

(II) without regard to paragraph (2) or (3) thereof.

(3) Exceptions

This subsection shall not apply in any case where—

(A) the lessor is a related person (as defined in section 954(d)(3)) with respect to the foreign corporation, or

(B) a principal purpose of leasing the property was to avoid the provisions of this part.

(e) Special rules for certain intangibles

For purposes of this part—

(1) Research expenditures

The adjusted basis of the total assets of a controlled foreign corporation shall be increased by the research or experimental expenditures (within the meaning of section 174) paid or incurred by such foreign corporation during the taxable year and the preceding 2 taxable years. Any expenditure otherwise taken into account under the preceding sentence shall be reduced by the amount of any reimbursement received by the controlled foreign corporation with respect to such expenditure.

(2) Certain licensed intangibles

(A) In general

In the case of any intangible property (as defined in section 936(h)(3)(B)) with respect to which a controlled foreign corporation is a licensee and which is used by such foreign corporation in the active conduct of a trade or business, the adjusted basis of the total assets of such foreign corporation shall be increased by an amount equal to 300 percent of the payments made during the taxable year by such foreign corporation for the use of such intangible property.

(B) Exceptions

Subparagraph (A) shall not apply to—

(i) any payments to a foreign person if such foreign person is a related person (as defined in section 954(d)(3)) with respect to the controlled foreign corporation, and

(ii) any payments under a license if a principal purpose of entering into such license was to avoid the provisons[2] of this part.

(3) Controlled foreign corporation

For purposes of this subsection, the term ''controlled foreign corporation'' has the meaning given such term by section 957(a).

(f) Reporting requirement

Except as otherwise provided by the Secretary, each United States person who is a shareholder of a passive foreign investment company shall file an annual report containing such information as the Secretary may require.

(g) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this part.

(Added Pub. L. 99–514, title XII, §1235(a), Oct. 22, 1986, 100 Stat. 2573, §1297; amended Pub. L. 100–647, title I, §1012(p)(10), (17), (20), (22), (24), (35), (36), Nov. 10, 1988, 102 Stat. 3517–3519, 3522; Pub. L. 101–239, title VII, §7811(i)(4), Dec. 19, 1989, 103 Stat. 2410; Pub. L. 103–66, title XIII, §13231(d)(2), (4), Aug. 10, 1993, 107 Stat. 499; Pub. L. 104–188, title I, §§1501(b)(10), (11), 1703(i)(5), (6), Aug. 20, 1996, 110 Stat. 1826, 1876; renumbered §1298 and amended Pub. L. 105–34, title XI, §1122(a), (e), Aug. 5, 1997, 111 Stat. 972, 977; Pub. L. 105–206, title VI, §6011(b)(2), July 22, 1998, 112 Stat. 818; Pub. L. 110–172, §11(a)(24)(C), (f)(2), Dec. 29, 2007, 121 Stat. 2487, 2489; Pub. L. 111–147, title V, §521(a), Mar. 18, 2010, 124 Stat. 112.)

[2] So in original. Probably should be ''provisions''.

REFERENCES IN TEXT

Section 951(f), referred to in subsec. (b)(5)(B), was redesignated section 951(d) by Pub. L. 108–357, title IV, § 413(c)(16), Oct. 22, 2004, 118 Stat. 1508, and subsequently was redesignated section 951(c) by Pub. L. 110–172, § 11(g)(13), Dec. 29, 2007, 121 Stat. 2490.

Section 1296, referred to in subsec. (d)(2)(A), was renumbered section 1297 and a new section 1296 was added by Pub. L. 105–34, title XI, § 1122(a), Aug. 5, 1997, 111 Stat. 972.

AMENDMENTS

2010—Subsecs. (f), (g). Pub. L. 111–147 added subsec. (f) and redesignated former subsec. (f) as (g).

2007—Subsec. (a)(2)(B). Pub. L. 110–172, § 11(a)(24)(C), substituted ''Section 1297(d)'' for ''Section 1297(e)''.

Subsec. (b)(7) to (9). Pub. L. 110–172, § 11(f)(2), redesignated pars. (8) and (9) as (7) and (8), respectively, and struck out former par. (7) which read as follows: ''Section 1246 shall not apply to earnings and profits of any company for any taxable year beginning after December 31, 1986, if such company is a passive foreign investment company for such taxable year.''

1998—Subsec. (a)(2)(B). Pub. L. 105–206 inserted at end ''Section 1297(e) shall not apply in determining whether a corporation is a passive foreign investment company for purposes of this subparagraph.''

1997—Pub. L. 105–34, § 1122(a), renumbered section 1297 of this title as this section.

Subsec. (b)(1). Pub. L. 105–34, § 1122(e), inserted ''(determined without regard to the preceding sentence)'' after ''investment company'' in last sentence.

1996—Subsec. (b)(9). Pub. L. 104–188, § 1501(b)(10), substituted ''section 951(a)(1)(B)'' for ''subparagraph (B) or (C) of section 951(a)(1)''.

Subsec. (d)(2). Pub. L. 104–188, § 1703(i)(5)(B), in heading substituted ''Amount taken into account'' for ''Determination of adjusted basis''.

Subsec. (d)(2)(A). Pub. L. 104–188, § 1703(i)(5)(A), substituted ''The amount taken into account under section 1296(a)(2) with respect to any asset'' for ''The adjusted basis of any asset''.

Subsec. (d)(3)(B). Pub. L. 104–188, § 1501(b)(11), struck out ''or section 956A'' after ''this part''.

Subsec. (e). Pub. L. 104–188, § 1703(i)(6), inserted ''For purposes of this part—'' after heading.

Subsec. (e)(2)(B)(ii). Pub. L. 104–188, § 1501(b)(11), struck out ''or section 956A'' after ''this part''.

1993—Subsec. (b)(9). Pub. L. 103–66, § 13231(d)(2), added par. (9).

Subsecs. (d) to (f). Pub. L. 103–66, § 13231(d)(4), added subsecs. (d) and (e) and redesignated former subsec. (d) as (f).

1989—Subsec. (b)(5). Pub. L. 101–239, § 7811(i)(4)(A), substituted ''where stock held'' for ''where held'' in heading.

Subsec. (b)(5)(A). Pub. L. 101–239, § 7811(i)(4)(C), substituted ''treated as a disposition by, or distribution to'' for ''treated as a disposition to'' in concluding provisions.

Subsec. (b)(5)(A)(ii). Pub. L. 101–239, § 7811(i)(4)(B), substituted ''any distribution of'' for ''any disposition of''.

1988—Subsec. (a)(4). Pub. L. 100–647, § 1012(p)(10)(A), added par. (4). Former par. (4) redesignated (5).

Subsec. (a)(5). Pub. L. 100–647, § 1012(p)(10), redesignated par. (4) as (5) and substituted ''paragraph (2), (3), or (4)'' for ''paragraph (2) or (3)''.

Subsec. (b)(1). Pub. L. 100–647, § 1012(p)(36), substituted ''investment company which'' for ''investment corporation which''.

Subsec. (b)(3)(A). Pub. L. 100–647, § 1012(p)(22), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''such corporation (and any predecessor) was not a passive foreign investment corporation for any prior taxable year,''.

Subsec. (b)(5). Pub. L. 100–647, § 1012(p)(17), substituted ''part where held'' for ''section where stock held'' in heading, and amended text generally. Prior to amendment, text read as follows: ''Under regulations, in any case in which a United States person is treated as holding stock in a passive foreign investment company by reason of subsection (a), any disposition by the United States person or the person holding such stock which results in the United States person being treated as no longer holding such stock, shall be treated as a disposition by the United States person with respect to stock in the passive foreign investment company.''

Subsec. (b)(6). Pub. L. 100–647, § 1012(p)(20), substituted ''Except as provided in regulations, if a'' for ''If a''.

Subsec. (b)(8). Pub. L. 100–647, § 1012(p)(24), added par. (8).

Subsecs. (c), (d). Pub. L. 100–647, § 1012(p)(35), added subsec. (c) and redesignated former subsec. (c) as (d).

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by section 11(f)(2) of 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 11(f)(4) of Pub. L. 110–172, set out as a note under section 904 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 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 1996 AMENDMENT

Amendment by section 1501(b)(10), (11) of Pub. L. 104–188 applicable to taxable years of foreign corporations beginning after Dec. 31, 1996, and to taxable years of United States shareholders within which or with which such taxable years of foreign corporations end, see section 1501(d) of Pub. L. 104–188, set out as a note under section 904 of this title.

Amendment by section 1703(i)(5), (6) of Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§ 13001–13444, to which such amendment relates, see section 1703(*o*) of Pub. L. 104–188, set out as a note under section 39 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years of foreign corporations beginning after Sept. 30, 1993, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, see section 13231(e) of Pub. L. 103–66, set out as a note under section 951 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

Section applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, see section

1235(h) of Pub. L. 99–514, set out as a note under section 1291 of this title.

Subchapter Q—Readjustment of Tax Between Years and Special Limitations

AMENDMENTS

1997—Pub. L. 105–34, title IX, §933(b), Aug. 5, 1997, 111 Stat. 882, added item for part I.

1986—Pub. L. 99–514, title I, §141(c), Oct. 22, 1986, 100 Stat. 2117, struck out item for part I ''Income averaging''.

1981—Pub. L. 97–34, title I, §101(c)(2)(C), Aug. 13, 1981, 95 Stat. 183, struck out item for part VI ''Maximum rate on personal service income''.

1976—Pub. L. 94–455, title XIX, §§1901(b)(36)(E), (37)(F), 1951(c)(3)(D), Oct. 4, 1976, 90 Stat. 1802, 1803, 1841, struck out items for parts III and IV ''Involuntary liquidation and replacement of LIFO inventories'' and ''War loss recoveries'', respectively, and substituted in item for part VI ''Maximum rate on personal service income'' for ''Other limitations''.

1966—Pub. L. 89–384, §1(g)(1), Apr. 8, 1966, 80 Stat. 104, added item for part VII.

1964—Pub. L. 88–272, title II, §232(f)(3), Feb. 26, 1964, 78 Stat. 112, substituted ''averaging'' for ''attributable to several taxable years'' in item for part I.

PART I—INCOME AVERAGING

PRIOR PROVISIONS

A prior part I consisted of sections 1301 to 1305, prior to repeal by Pub. L. 99–514, title I, §141(a), Oct. 22, 1986, 100 Stat. 2117.

§ 1301. Averaging of farm income

(a) In general

At the election of an individual engaged in a farming business or fishing business, the tax imposed by section 1 for such taxable year shall be equal to the sum of—

(1) a tax computed under such section on taxable income reduced by elected farm income, plus

(2) the increase in tax imposed by section 1 which would result if taxable income for each of the 3 prior taxable years were increased by an amount equal to one-third of the elected farm income.

Any adjustment under this section for any taxable year shall be taken into account in applying this section for any subsequent taxable year.

(b) Definitions

In this section—

(1) Elected farm income

(A) In general

The term ''elected farm income'' means so much of the taxable income for the taxable year—

(i) which is attributable to any farming business or fishing business; and

(ii) which is specified in the election under subsection (a).

(B) Treatment of gains

For purposes of subparagraph (A), gain from the sale or other disposition of property (other than land) regularly used by the taxpayer in such a farming business or fishing business for a substantial period shall be treated as attributable to such a farming business or fishing business.

(2) Individual

The term ''individual'' shall not include any estate or trust.

(3) Farming business

The term ''farming business'' has the meaning given such term by section 263A(e)(4).

(4) Fishing business

The term ''fishing business'' means the conduct of commercial fishing as defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802).

(c) Regulations

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

(1) the order and manner in which items of income, gain, deduction, or loss, or limitations on tax, shall be taken into account in computing the tax imposed by this chapter on the income of any taxpayer to whom this section applies for any taxable year, and

(2) the treatment of any short taxable year.

(Added Pub. L. 105–34, title IX, §933(a), Aug. 5, 1997, 111 Stat. 881; amended Pub. L. 108–357, title III, §314(b), Oct. 22, 2004, 118 Stat. 1468.)

PRIOR PROVISIONS

A prior section 1301, added Pub. L. 88–272, title II, §232(a), Feb. 26, 1964, 78 Stat. 106; amended Pub. L. 91–172, title III, §311(a), Dec. 30, 1969, 83 Stat. 586; Pub. L. 98–369, div. A, title I, §173(b), (c)(1), July 18, 1984, 98 Stat. 704, placed a limit on the tax attributable to averagable income, prior to repeal by Pub. L. 99–514, title I, §§141(a), 151(a), Oct. 22, 1986, 100 Stat. 2117, 2121, effective Dec. 31, 1986.

Another prior section 1301, act Aug. 16, 1954, ch. 736, 68A Stat. 334, related to compensation from an employment, defined ''an employment'', and stated the rule with respect to partners, prior to the general revision of this part by Pub. L. 88–272.

A prior section 1302, added Pub. L. 88–272, title II, §232(a), Feb. 26, 1964, 78 Stat. 106; amended Pub. L. 91–172, title III, §311(b), Dec. 30, 1969, 83 Stat. 586; Pub. L. 94–455, title VII, §701(f)(1), Oct. 4, 1976, 90 Stat. 1580; Pub. L. 95–30, title I, §102(b)(15), May 23, 1977, 91 Stat. 138; Pub. L. 95–600, title I, §101(d)(2), Nov. 6, 1978, 92 Stat. 2770; Pub. L. 95–615, §202(g)(5), formerly §202(f)(5), Nov. 8, 1978, 92 Stat. 3100, renumbered Pub. L. 96–222, title I, §108(a)(1)(A), Apr. 1, 1980, 94 Stat. 223; Pub. L. 97–34, title I, §111(b)(3), Aug. 13, 1981, 95 Stat. 194; Pub. L. 97–248, title II, §265(b)(2)(B), Sept. 3, 1982, 96 Stat. 547; Pub. L. 98–369, div. A, title I, §173(a), (c)(2)–(4), July 18, 1984, 98 Stat. 703, 704, defined ''averagable income'' and other terms related to income averaging, prior to repeal by Pub. L. 99–514, title I, §§141(a), 151(a), Oct. 22, 1986, 100 Stat. 2117, 2121, effective Dec. 31, 1986.

Another prior section 1302, act Aug. 16, 1964, ch. 736, 68A Stat. 335, related to income from an invention or artistic work, prior to the general revision of this part by Pub. L. 88–272.

A prior section 1303, added Pub. L. 88–272, title II, § 232(a), Feb. 26, 1964, 78 Stat. 107; amended Pub. L. 91–172, title III, § 311(d)(1), Dec. 30, 1969, 83 Stat. 587; Pub. L. 94–455, title XIX, § 1901(b)(8)(G), Oct. 4, 1976, 90 Stat. 1795; Pub. L. 97–34, title I, § 111(b)(4), Aug. 13, 1981, 95 Stat. 194; Pub. L. 99–272, title XIII, § 13206(a), (b), Apr. 7, 1986, 100 Stat. 318, 319, related to individuals eligible for income averaging, prior to repeal by Pub. L. 99–514, title I, §§ 141(a), 151(a), Oct. 22, 1986, 100 Stat. 2117, 2121, effective Dec. 31, 1986.

Another prior section 1303, acts Aug. 16, 1954, ch. 736, 68A Stat. 335, Sept. 22, 1961, Pub. L. 87–293, title II, § 201(b), 75 Stat. 625, related to income from back pay, prior to the general revision of this part by Pub. L. 88–272.

A prior section 1304, added Pub. L. 88–272, title II, § 232(a), Feb. 26, 1964, 78 Stat. 108; amended Pub. L. 91–172, title III, § 311(c), (d)(2), title V, § 515(c)(4), title VIII, §§ 802(c)(5), 803(d)(8), Dec. 30, 1969, 83 Stat. 587, 646, 678, 684; Pub. L. 93–406, title II, § 2005(c)(6), Sept. 2, 1974, 88 Stat. 991; Pub. L. 94–455, title III, § 302(c), title V, § 501(b)(7), title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1555, 1559, 1834; Pub. L. 95–600, title IV, § 401(b)(5), Nov. 6, 1978, 92 Stat. 2867; Pub. L. 95–615, § 202(g)(5), formerly § 202(f)(5), Nov. 8, 1978, 92 Stat. 3100, renumbered Pub. L. 96–222, title I, § 108(a)(1)(A), Apr. 1, 1980, 94 Stat. 223; Pub. L. 97–34, title I, §§ 101(c)(2)(B), 111(b)(3), (4), Aug. 13, 1981, 95 Stat. 183, 194; Pub. L. 97–248, title II, § 265(b)(2)(C), Sept. 3, 1982, 96 Stat. 547, set out special rules for income averaging, prior to repeal by Pub. L. 99–514, title I, §§ 141(a), 151(a), Oct. 22, 1986, 100 Stat. 2117, 2121, effective Dec. 31, 1986.

Another prior section 1304, act Aug. 11, 1955, ch. 804, § 1(a), 69 Stat. 688, related to compensatory damages for patent infringement, prior to the general revision of this part by Pub. L. 88–272.

A prior section 1305, added Pub. L. 88–272, title II, § 232(a), Feb. 26, 1964, 78 Stat. 110; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, provided for promulgation of regulations for income averaging, prior to repeal by Pub. L. 99–514, title I, §§ 141(a), 151(a), Oct. 22, 1986, 100 Stat. 2117, 2121, effective Dec. 31, 1986.

Another prior section 1305, act Aug. 26, 1957, Pub. L. 85–165, § 1, 71 Stat. 413, related to damages for breach of contract or fiduciary duty, prior to the general revision of this part by Pub. L. 88–272.

A prior section 1306, Pub. L. 85–866, title I, § 58(a), Sept. 2, 1958, 72 Stat. 1646, related to damages received for injuries under the antitrust laws, prior to the general revision of this part by Pub. L. 88–272.

A prior section 1307, act Aug. 16, 1954, ch. 736, 68A Stat. 336, § 1307, formerly § 1304; renumbered § 1305, Aug. 11, 1955, ch. 804, § 1(a), 69 Stat. 688; renumbered § 1306, Aug. 26, 1957, Pub. L. 85–165, § 1, 71 Stat. 413; renumbered § 1307, Sept. 2, 1958, Pub. L. 85–866, title I, § 58(a), 72 Stat. 1646; amended Oct. 16, 1962, Pub. L. 87–834, § 22(a), 76 Stat. 1064, provided rules applicable to this part, prior to the general revision of this part by Pub. L. 88–272.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–357, § 314(b)(1), substituted ''farming business or fishing business'' for ''farming business'' in introductory provisions.

Subsec. (b)(1)(A)(i), (B). Pub. L. 108–357, § 314(b)(2), inserted ''or fishing business'' after ''farming business'' wherever appearing.

Subsec. (b)(4). Pub. L. 108–357, § 314(b)(3), added par. (4).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years beginning after Dec. 31, 2003, see section 314(c) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 55 of this title.

EFFECTIVE DATE

Pub. L. 105–34, title IX, § 933(c), Aug. 5, 1997, 111 Stat. 882, as amended by Pub. L. 105–277, div. J, title II, § 2011, Oct. 21, 1998, 112 Stat. 2681–902, provided that: ''The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1997.''

PART II—MITIGATION OF EFFECT OF LIMITATIONS AND OTHER PROVISIONS

AMENDMENTS

1976—Pub. L. 94–455, title XIX, § 1901(b)(35), Oct. 4, 1976, 90 Stat. 1802, struck out item 1315 ''Effective date''.

§ 1311. Correction of error

(a) General rule

If a determination (as defined in section 1313) is described in one or more of the paragraphs of section 1312 and, on the date of the determination, correction of the effect of the error referred to in the applicable paragraph of section 1312 is prevented by the operation of any law or rule of law, other than this part and other than section 7122 (relating to compromises), then the effect of the error shall be corrected by an adjustment made in the amount and in the manner specified in section 1314.

(b) Conditions necessary for adjustment

(1) Maintenance of an inconsistent position

Except in cases described in paragraphs (3)(B) and (4) of section 1312, an adjustment shall be made under this part only if—

(A) in case the amount of the adjustment would be credited or refunded in the same manner as an overpayment under section 1314, there is adopted in the determination a position maintained by the Secretary, or

(B) in case the amount of the adjustment would be assessed and collected in the same manner as a deficiency under section 1314, there is adopted in the determination a position maintained by the taxpayer with respect to whom the determination is made,

and the position maintained by the Secretary in the case described in subparagraph (A) or maintained by the taxpayer in the case described in subparagraph (B) is inconsistent with the erroneous inclusion, exclusion, omission, allowance, disallowance, recognition, or nonrecognition, as the case may be.

(2) Correction not barred at time of erroneous action

(A) Determination described in section 1312(3)(B)

In the case of a determination described in section 1312(3)(B) (relating to certain exclusions from income), adjustment shall be made under this part only if assessment of a deficiency for the taxable year in which the item is includible or against the related taxpayer was not barred, by any law or rule of law, at the time the Secretary first maintained, in a notice of deficiency sent pursuant to section 6212 or before the Tax Court,

that the item described in section 1312(3)(B) should be included in the gross income of the taxpayer for the taxable year to which the determination relates.

(B) Determination described in section 1312(4)

In the case of a determination described in section 1312(4) (relating to disallowance of certain deductions and credits), adjustment shall be made under this part only if credit or refund of the overpayment attributable to the deduction or credit described in such section which should have been allowed to the taxpayer or related taxpayer was not barred, by any law or rule of law, at the time the taxpayer first maintained before the Secretary or before the Tax Court, in writing, that he was entitled to such deduction or credit for the taxable year to which the determination relates.

(3) Existence of relationship

In case the amount of the adjustment would be assessed and collected in the same manner as a deficiency (except for cases described in section 1312(3)(B)), the adjustment shall not be made with respect to a related taxpayer unless he stands in such relationship to the taxpayer at the time the latter first maintains the inconsistent position in a return, claim for refund, or petition (or amended petition) to the Tax Court for the taxable year with respect to which the determination is made, or if such position is not so maintained, then at the time of the determination.

(Aug. 16, 1954, ch. 736, 68A Stat. 337; Pub. L. 94–455, title XIX, §§1901(a)(142), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1788, 1834.)

AMENDMENTS

1976—Subsec. (b)(2). Pub. L. 94–455, §§1901(a)(142), 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' and ''of the United States'' after ''Tax Court'' wherever appearing.

Subsec. (b)(3). Pub. L. 94–455, §1901(a)(142), struck out ''of the United States'' after ''Tax Court''.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(142) 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.

§ 1312. Circumstances of adjustment

The circumstances under which the adjustment provided in section 1311 is authorized are as follows:

(1) Double inclusion of an item of gross income

The determination requires the inclusion in gross income of an item which was erroneously included in the gross income of the taxpayer for another taxable year or in the gross income of a related taxpayer.

(2) Double allowance of a deduction or credit

The determination allows a deduction or credit which was erroneously allowed to the taxpayer for another taxable year or to a related taxpayer.

(3) Double exclusion of an item of gross income

(A) Items included in income

The determination requires the exclusion from gross income of an item included in a return filed by the taxpayer or with respect to which tax was paid and which was erroneously excluded or omitted from the gross income of the taxpayer for another taxable year, or from the gross income of a related taxpayer; or

(B) Items not included in income

The determination requires the exclusion from gross income of an item not included in a return filed by the taxpayer and with respect to which the tax was not paid but which is includible in the gross income of the taxpayer for another taxable year or in the gross income of a related taxpayer.

(4) Double disallowance of a deduction or credit

The determination disallows a deduction or credit which should have been allowed to, but was not allowed to, the taxpayer for another taxable year, or to a related taxpayer.

(5) Correlative deductions and inclusions for trusts or estates and legatees, beneficiaries, or heirs

The determination allows or disallows any of the additional deductions allowable in computing the taxable income of estates or trusts, or requires or denies any of the inclusions in the computation of taxable income of beneficiaries, heirs, or legatees, specified in subparts A to E, inclusive (secs. 641 and following, relating to estates, trusts, and beneficiaries) of part I of subchapter J of this chapter, or corresponding provisions of prior internal revenue laws, and the correlative inclusion or deduction, as the case may be, has been erroneously excluded, omitted, or included, or disallowed, omitted, or allowed, as the case may be, in respect of the related taxpayer.

(6) Correlative deductions and credits for certain related corporations

The determination allows or disallows a deduction (including a credit) in computing the taxable income (or, as the case may be, net income, normal tax net income, or surtax net income) of a corporation, and a correlative deduction or credit has been erroneously allowed, omitted, or disallowed, as the case may be, in respect of a related taxpayer described in section 1313(c)(7).

(7) Basis of property after erroneous treatment of a prior transaction

(A) General rule

The determination determines the basis of property, and in respect of any transaction on which such basis depends, or in respect of any transaction which was erroneously treated as affecting such basis, there occurred, with respect to a taxpayer described in subparagraph (B) of this paragraph, any of the errors described in subparagraph (C) of this paragraph.

(B) Taxpayers with respect to whom the erroneous treatment occurred

The taxpayer with respect to whom the erroneous treatment occurred must be—

(i) the taxpayer with respect to whom the determination is made,

(ii) a taxpayer who acquired title to the property in the transaction and from whom, mediately or immediately, the taxpayer with respect to whom the determination is made derived title, or

(iii) a taxpayer who had title to the property at the time of the transaction and from whom, mediately or immediately, the taxpayer with respect to whom the determination is made derived title, if the basis of the property in the hands of the taxpayer with respect to whom the determination is made is determined under section 1015(a) (relating to the basis of property acquired by gift).

(C) Prior erroneous treatment

With respect to a taxpayer described in subparagraph (B) of this paragraph—

(i) there was an erroneous inclusion in, or omission from, gross income,

(ii) there was an erroneous recognition, or nonrecognition, of gain or loss, or

(iii) there was an erroneous deduction of an item properly chargeable to capital account or an erroneous charge to capital account of an item properly deductible.

(Aug. 16, 1954, ch. 736, 68A Stat. 338; Pub. L. 85–866, title I, § 59(a), Sept. 2, 1958, 72 Stat. 1647.)

AMENDMENTS

1958—Pars. (6), (7). Pub. L. 85–866 added par. (6) and redesignated former par. (6) as (7).

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–866, title I, § 59(c), Sept. 2, 1958, 72 Stat. 1647, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1314 of this title] shall apply to determinations (as defined in section 1313(a)) made after November 14, 1954.''

§ 1313. Definitions

(a) Determination

For purposes of this part, 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) a final disposition by the Secretary of a claim for refund. For purposes of this part, a claim for refund shall be deemed finally disposed of by the Secretary—

(A) as to items with respect to which the claim was allowed, on the date of allowance of refund or credit or on the date of mailing notice of disallowance (by reason of offsetting items) of the claim for refund, and

(B) as to items with respect to which the claim was disallowed, in whole or in part, or as to items applied by the Secretary in reduction of the refund or credit, on expiration of the time for instituting suit with respect thereto (unless suit is instituted before the expiration of such time); or

(4) under regulations prescribed by the Secretary, an agreement for purposes of this part, signed by the Secretary and by any person, relating to the liability of such person (or the person for whom he acts) in respect of a tax under this subtitle for any taxable period.

(b) Taxpayer

Notwithstanding section 7701(a)(14), the term ''taxpayer'' means any person subject to a tax under the applicable revenue law.

(c) Related taxpayer

For purposes of this part, the term ''related taxpayer'' means a taxpayer who, with the taxpayer with respect to whom a determination is made, stood, in the taxable year with respect to which the erroneous inclusion, exclusion, omission, allowance, or disallowance was made, in one of the following relationships:

(1) husband and wife,

(2) grantor and fiduciary,

(3) grantor and beneficiary,

(4) fiduciary and beneficiary, legatee, or heir,

(5) decedent and decedent's estate,

(6) partner, or

(7) member of an affiliated group of corporations (as defined in section 1504).

(Aug. 16, 1954, ch. 736, 68A Stat. 339; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsec. (a)(3), (4). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary'' wherever appearing.

§ 1314. Amount and method of adjustment

(a) Ascertainment of amount of adjustment

In computing the amount of an adjustment under this part there shall first be ascertained the tax previously determined for the taxable year with respect to which the error was made. The amount of the tax previously determined shall be the excess of—

(1) the sum of—

(A) the amount shown as the tax by the taxpayer on his return (determined as provided in section 6211(b)(1), (3), and (4), relating to the definition of deficiency), if a return was made by the taxpayer and an amount was shown as the tax by the taxpayer thereon, plus

(B) the amounts previously assessed (or collected without assessment) as a deficiency, over—

(2) the amount of rebates, as defined in section 6211(b)(2), made.

There shall then be ascertained the increase or decrease in tax previously determined which results solely from the correct treatment of the item which was the subject of the error (with due regard given to the effect of the item in the computation of gross income, taxable income, and other matters under this subtitle). A similar computation shall be made for any other taxable year affected, or treated as affected, by a net op-

erating loss deduction (as defined in section 172) or by a capital loss carryback or carryover (as defined in section 1212), determined with reference to the taxable year with respect to which the error was made. The amount so ascertained (together with any amounts wrongfully collected as additions to the tax or interest, as a result of such error) for each taxable year shall be the amount of the adjustment for that taxable year.

(b) Method of adjustment

The adjustment authorized in section 1311(a) shall be made by assessing and collecting, or refunding or crediting, the amount thereof in the same manner as if it were a deficiency determined by the Secretary with respect to the taxpayer as to whom the error was made or an overpayment claimed by such taxpayer, as the case may be, for the taxable year or years with respect to which an amount is ascertained under subsection (a), and as if on the date of the determination one year remained before the expiration of the periods of limitation upon assessment or filing claim for refund for such taxable year or years. If, as a result of a determination described in section 1313(a)(4), an adjustment has been made by the assessment and collection of a deficiency or the refund or credit of an overpayment, and subsequently such determination is altered or revoked, the amount of the adjustment ascertained under subsection (a) of this section shall be redetermined on the basis of such alteration or revocation and any overpayment or deficiency resulting from such redetermination shall be refunded or credited, or assessed and collected, as the case may be, as an adjustment under this part. In the case of an adjustment resulting from an increase or decrease in a net operating loss or net capital loss which is carried back to the year of adjustment, interest shall not be collected or paid for any period prior to the close of the taxable year in which the net operating loss or net capital loss arises.

(c) Adjustment unaffected by other items

The amount to be assessed and collected in the same manner as a deficiency, or to be refunded or credited in the same manner as an overpayment, under this part, shall not be diminished by any credit or set-off based upon any item other than the one which was the subject of the adjustment. The amount of the adjustment under this part, if paid, shall not be recovered by a claim or suit for refund or suit for erroneous refund based upon any item other than the one which was the subject of the adjustment.

(d) Taxes imposed by subtitle C

This part shall not apply to any tax imposed by subtitle C (sec. 3101 and following relating to employment taxes).

(Aug. 16, 1954, ch. 736, 68A Stat. 340; Pub. L. 85–866, title I, §59(b), Sept. 2, 1958, 72 Stat. 1647; Pub. L. 89–44, title VIII, §809(d)(5)(B), June 21, 1965, 79 Stat. 168; Pub. L. 91–172, title V, §512(f)(7), (8), Dec. 30, 1969, 83 Stat. 641, 642; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 113–295, div. A, title II, §221(a)(87), Dec. 19, 2014, 128 Stat. 4050.)

AMENDMENTS

2014—Subsecs. (d), (e). Pub. L. 113–295 redesignated subsec. (e) as (d) and struck out former subsec. (d). Prior to amendment, text of subsec. (d) read as follows: ''No adjustment shall be made under this part in respect of any taxable year beginning prior to January 1, 1932.''

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

1969—Subsec. (a). Pub. L. 91–172, §512(f)(7), substituted ''capital loss carryback or carryover'' for ''capital loss carryover''.

Subsec. (b). Pub. L. 91–172, §512(f)(8), inserted reference to net capital loss.

1965—Subsec. (a)(1)(A). Pub. L. 89–44 struck out ''(b)(1) and (3)'' and inserted in lieu thereof ''(b)(1), (3), and (4)''.

1958—Subsec. (c). Pub. L. 85–866 substituted in second sentence ''The'' for ''Other than in the case of an adjustment resulting from a determination under section 1313(a)(4), the''.

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 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 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.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 effective with respect to determinations made after Nov. 14, 1954, see section 59(c) of Pub. L. 85–866, set out as a note under section 1312 of this title.

[§ 1315. Repealed. Pub. L. 94–455, title XIX, § 1901(a)(143), Oct. 4, 1976, 90 Stat. 1788]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 341, related to effective date of this part.

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 III—REPEALED]

[§ 1321. Repealed. Pub. L. 94–455, title XIX, § 1901(a)(144), Oct. 4, 1976, 90 Stat. 1788]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 342, related to involuntary liquidation of LIFO inventories.

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—REPEALED]

[§§ 1331 to 1337. Repealed. Pub. L. 94–455, title XIX, § 1901(a)(145)(A), Oct. 4, 1976, 90 Stat. 1788]

Section 1331, act Aug. 16, 1954, ch. 736, 68A Stat. 343, related to war loss recoveries.

Section 1332, act Aug. 16, 1954, ch. 736, 68A Stat. 343, related to inclusion in gross income of war loss recoveries.

Section 1333, act Aug. 16, 1954, ch. 736, 68A Stat. 344, related to tax adjustment measured by prior benefits.

Section 1334, act Aug. 16, 1954, ch. 736, 68A Stat. 346, related to restoration of value of investments referable to destroyed or seized property.

Section 1335, act Aug. 16, 1954, ch. 736, 68A Stat. 346, related to election by taxpayer for application of section 1333.

Section 1336, act Aug. 16, 1954, ch. 736, 68A Stat. 347, related to basis of recovered property.

Section 1337, act Aug. 16, 1954, ch. 736, 68A Stat. 347, related to applicable rules.

EFFECTIVE DATE OF REPEAL

Pub. L. 94–455, title XIX, § 1901(a)(145)(B), Oct. 4, 1976, 90 Stat. 1788, provided that: ''The repeal by subparagraph (A) [repealing sections 1331 to 1337 of this title] shall apply with respect to war loss recoveries in taxable years beginning after December 31, 1976''.

PART V—CLAIM OF RIGHT

Sec.

AMENDMENTS

1976—Pub. L. 94–455, title XIX, § 1901(b)(38), Oct. 4, 1976, 90 Stat. 1803, struck out item 1342 ''Computation of tax where taxpayer recovers substantial amount held by another under claim of right''.

§ 1341. Computation of tax where taxpayer restores substantial amount held under claim of right

(a) General rule

If—

(1) an item was included in gross income for a prior taxable year (or years) because it appeared that the taxpayer had an unrestricted right to such item;

(2) a deduction is allowable for the taxable year because it was established after the close of such prior taxable year (or years) that the taxpayer did not have an unrestricted right to such item or to a portion of such item; and

(3) the amount of such deduction exceeds $3,000,

then the tax imposed by this chapter for the taxable year shall be the lesser of the following:

(4) the tax for the taxable year computed with such deduction; or

(5) an amount equal to—

(A) the tax for the taxable year computed without such deduction, minus

(B) the decrease in tax under this chapter (or the corresponding provisions of prior revenue laws) for the prior taxable year (or years) which would result solely from the exclusion of such item (or portion thereof) from gross income for such prior taxable year (or years).

For purposes of paragraph (5)(B), the corresponding provisions of the Internal Revenue Code of 1939 shall be chapter 1 of such code (other than subchapter E, relating to self-employment income) and subchapter E of chapter 2 of such code.

(b) Special rules

(1) If the decrease in tax ascertained under subsection (a)(5)(B) exceeds the tax imposed by this chapter for the taxable year (computed without the deduction) such excess shall be considered to be a payment of tax on the last day prescribed by law for the payment of tax for the taxable year, and shall be refunded or credited in the same manner as if it were an overpayment for such taxable year.

(2) Subsection (a) does not apply to any deduction allowable with respect to an item which was included in gross income by reason of the sale or other disposition of stock in trade of the taxpayer (or other property of a kind which would properly have been included in the inventory of the taxpayer if on hand at the close of the prior taxable year) or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business. This paragraph shall not apply if the deduction arises out of refunds or repayments with respect to rates made by a regulated public utility (as defined in section 7701(a)(33) without regard to the limitation contained in the last two sentences thereof) if such refunds or repayments are required to be made by the Government, political subdivision, agency, or instrumentality referred to in such section, or by an order of a court, or are made in settlement of litigation or under threat or imminence of litigation.

(3) If the tax imposed by this chapter for the taxable year is the amount determined under subsection (a)(5), then the deduction referred to in subsection (a)(2) shall not be taken into account for any purpose of this subtitle other than this section.

(4) For purposes of determining whether paragraph (4) or paragraph (5) of subsection (a) applies—

(A) in any case where the deduction referred to in paragraph (4) of subsection (a) results in a net operating loss, such loss shall, for purposes of computing the tax for the taxable year under such paragraph (4), be carried back to the same extent and in the same manner as is provided under section 172; and

(B) in any case where the exclusion referred to in paragraph (5)(B) of subsection (a) results in a net operating loss or capital loss for the prior taxable year (or years), such loss shall, for purposes of computing the decrease in tax for the prior taxable year (or years) under such paragraph (5) (B), be carried back and carried over to the same extent and in the same manner as is provided under section 172 or section 1212, except that no carryover beyond the taxable year shall be taken into account.

(5) For purposes of this chapter, the net operating loss described in paragraph (4)(A) of this subsection, or the net operating loss or capital loss described in paragraph (4)(B) of this subsection, as the case may be, shall (after the application of paragraph (4) or (5)(B) of subsection (a) for the taxable year) be taken into account under section 172 or 1212 for taxable years after the taxable year to the same extent and in the same manner as—

(A) a net operating loss sustained for the taxable year, if paragraph (4) of subsection (a) applied, or

(B) a net operating loss or capital loss sustained for the prior taxable year (or years), if paragraph (5)(B) of subsection (a) applied.

(Aug. 16, 1954, ch. 736, 68A Stat. 348; Pub. L. 85–866, title I, §60(a)–(d), Sept. 2, 1958, 72 Stat. 1647; Pub. L. 87–863, §5(a), Oct. 23, 1962, 76 Stat. 1142; Pub. L. 88–272, title II, §234(b)(7), Feb. 26, 1964, 78 Stat. 116; Pub. L. 94–455, title XIX, §1901(a)(146), Oct. 4, 1976, 90 Stat. 1788.)

REFERENCES IN TEXT

Chapter 1 of the Internal Revenue Code of 1939, referred to in subsec. (a), was comprised of sections 1 to 482 of former Title 26, Internal Revenue Code. Chapter 1 was 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.

Subchapter E of chapter 2 of the Internal Revenue Code of 1939, referred to in subsec. (a), was comprised of sections 710 to 784 of former Title 26, Internal Revenue Code. Sections 710 to 736, 740, 742 to 744, 750, 751, 760, 761, and 780 to 784 were repealed by act Nov. 8, 1945, ch. 453, title I, §122(a), 59 Stat. 568. Section 741 was repealed by act Oct. 21, 1942, ch. 619, title II, §§224(b), 228(b), 56 Stat. 920, 925. Section 752 was repealed by act Oct. 21, 1942, ch. 619, title II, §229(a)(1), 56 Stat. 931, eff. as of Oct. 8, 1940.

AMENDMENTS

1976—Subsec. (b)(2). Pub. L. 94–455 struck out provision relating to the applicability of this paragraph where deduction arises out of payments or repayments made pursuant to a price redetermination provision in a subcontract entered into before Jan. 1, 1958.

1964—Subsec. (b)(2). Pub. L. 88–272 substituted ''7701(a)(33) without regard to the limitation continued in the last two sentences thereof)'' for ''1503(c) without regard to paragraph (2) thereof)''.

1962—Subsec. (b)(4), (5). Pub. L. 87–863 added pars. (4) and (5).

1958—Subsec. (a). Pub. L. 85–866, §60(a), inserted ''and subchapter E of chapter 2 of such code'' in last sentence.

Subsec. (b)(2). Pub. L. 85–866, §60(b), (c), in second sentence inserted ''with respect to rates'' and inserted '', or by an order of a court, or are made in settlement of litigation or under threat or imminence of litigation'' and inserted last sentence.

Subsec. (b)(3). Pub. L. 85–866, §60(d), added par. (3).

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 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 234(c) of Pub. L. 88–272, set out as a note under section 1503 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87–863, §5(b), Oct. 23, 1962, 76 Stat. 1143, provided that: ''The amendment made by subsection (a) [amending this section] shall be effective with respect to taxable years beginning on or after January 1, 1962.''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 60(a), (c), (d) 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, §60(e), Sept. 2, 1958, 72 Stat. 1647, provided that: ''The amendment made by subsection (b) [amending this section] shall apply with respect to taxable years beginning after December 31, 1957. No interest shall be allowed or paid on any overpayment resulting from the application of the amendment made by subsection (c) [amending this section].''

[§ 1342. Repealed. Pub. L. 94–455, title XIX, §1901(a)(147), Oct. 4, 1976, 90 Stat. 1788]

Section, added Aug. 12, 1955, ch. 870, §3, 69 Stat. 717, related to computation of tax where taxpayer recovers substantial amount held by another under claim of right.

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 VI—REPEALED]

[§ 1346. Repealed. Pub. L. 94–455, title XIX, §1901(a)(148), Oct. 4, 1976, 90 Stat. 1788]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 349, related to recovery of unconstitutional Federal taxes.

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.

[§ 1347. Repealed. Pub. L. 94–455, title XIX, §1951(b)(12)(A), Oct. 4, 1976, 90 Stat. 1840]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 349; Sept. 2, 1958, Pub. L. 85–866, title I, §61(a), 72 Stat. 1648; Dec. 30, 1969, Pub. L. 91–172, title VIII, §803(d)(5), 83 Stat. 684, related to claims against the United States involving acquisition of property.

SAVINGS PROVISION

Pub. L. 94–455, title XIX, §1951(b)(12)(B), Oct. 4, 1976, 90 Stat. 1840, provided that: ''Notwithstanding subparagraph (A) [repealing this section], if amounts received in a taxable year beginning after December 31, 1976, would have been subject to the provisions of section 1347 if received in a taxable year beginning before such date, the tax imposed by section 1 attributable to such receipt shall be computed as if section 1347 had not been repealed.''

[§ 1348. Repealed. Pub. L. 97–34, title I, §101(c)(1), Aug. 13, 1981, 95 Stat. 183]

Section, added Pub. L. 91–172, title VIII, §804(a), Dec. 30, 1969, 83 Stat. 685; amended Pub. L. 93–406, title II, §2005(c)(14), Sept. 2, 1974, 88 Stat. 992; Pub. L. 94–455, title III, §302(a), Oct. 4, 1976, 90 Stat. 1554; Pub. L. 95–600, title IV, §§441(a), 442(a), title VII, §701(x)(1), (2), Nov. 6, 1978, 92 Stat. 2878, 2920; Pub. L. 95–600, title IV, §441(a), as amended Pub. L. 96–222, title I, §104(a)(5)(B), Apr. 1, 1980, 94 Stat. 218, provided for a 50-percent maximum rate on personal service income.

EFFECTIVE DATE OF REPEAL

Repeal effective for taxable years beginning after Dec. 31, 1981, see section 101(f)(1) of Pub. L. 97–34, set

out as an Effective Date of 1981 Amendment note under section 1 of this title.

TRANSITIONAL RULE IN CASE OF TAXABLE YEAR BEGINNING BEFORE NOV. 1, 1978, AND ENDING AFTER OCT. 31, 1978

Pub. L. 95–600, title IV, § 441(b)(2), Nov. 6, 1978, 92 Stat. 2878, as amended by Pub. L. 96–222, title I, § 104(a)(5)(A), Apr. 1, 1980, 94 Stat. 218, provided that in the case of a taxable year which began before Nov. 1, 1978, and ended after Oct. 31, 1978, the amount taken into account under subsec. (b)(2)(B) of section 1348 of this title by reason of section 57(a)(9) of this title be 50 percent of the lesser of the net capital gain for the taxable year or the net capital gain taking into account only gain or loss properly taken into account for the portion of the taxable year before Nov. 1, 1978.

PART VII—RECOVERIES OF FOREIGN EXPROPRIATION LOSSES

§ 1351. Treatment of recoveries of foreign expropriation losses

(a) Election

(1) In general

This section shall apply only to a recovery, by a domestic corporation subject to the tax imposed by section 11 or 801, of a foreign expropriation loss sustained by such corporation and only if such corporation was subject to the tax imposed by section 11 or 801, as the case may be, for the year of the loss and elects to have the provisions of this section apply with respect to such loss.

(2) Time, manner, and scope

An election under paragraph (1) shall be made at such time and in such manner as the Secretary may prescribe by regulations. An election made with respect to any foreign expropriation loss shall apply to all recoveries in respect of such loss.

(b) Definition of foreign expropriation loss

For purposes of this section, the term ''foreign expropriation loss'' means any loss sustained by reason of the expropriation, intervention, seizure, or similar taking of property by the government of any foreign country, any political subdivision thereof, or any agency or instrumentality of the foregoing. For purposes of the preceding sentence, a debt which becomes worthless shall, to the extent of any deduction allowed under section 166(a), be treated as a loss.

(c) Amount of recovery

(1) General rule

The amount of any recovery of a foreign expropriation loss is the amount of money and the fair market value of other property received in respect of such loss, determined as of the date of receipt.

(2) Special rule for life insurance companies

The amount of any recovery of a foreign expropriation loss includes, in the case of a life insurance company, the amount of decrease of any item taken into account under section 807(c), to the extent such decrease is attributable to the release, by reason of such loss, of its liabilities with respect to such item.

(d) Adjustment for prior tax benefits

(1) In general

That part of the amount of a recovery of a foreign expropriation loss to which this section applies which, when added to the aggregate of the amounts of previous recoveries with respect to such loss, does not exceed the allowable deductions in prior taxable years on account of such loss shall be excluded from gross income for the taxable year of the recovery for purposes of computing the tax under this subtitle; but there shall be added to, and assessed and collected as a part of, the tax under this subtitle for such taxable year an amount equal to the total increase in the tax under this subtitle for all taxable years which would result by decreasing, in an amount equal to such part of the recovery so excluded, the deductions allowable in the prior taxable years on account of such loss. For purposes of this paragraph, if the loss to which the recovery relates was taken into account as a loss from the sale or exchange of a capital asset, the amount of the loss shall be treated as an allowable deduction even though there were no gains against which to allow such loss.

(2) Computation

The increase in the tax for each taxable year referred to in paragraph (1) shall be computed in accordance with regulations prescribed by the Secretary. Such regulations shall give effect to previous recoveries of any kind (including recoveries described in section 111, relating to recovery of tax benefit items) with respect to any prior taxable year, but shall otherwise treat the tax previously determined for any taxable year in accordance with the principles set forth in section 1314(a) (relating to correction of errors). Subject to the provisions of paragraph (3), all credits allowable against the tax for any taxable year, and all carryovers and carrybacks affected by so decreasing the allowable deductions, shall be taken into account in computing the increase in the tax.

(3) Foreign taxes

For purposes of this subsection, any choice made under subpart A of part III of subchapter N (relating to foreign tax credit) for any taxable year may be changed.

(4) Substitution of current tax rate

For purposes of this subsection, the rates of tax specified in section 11(b) for the taxable year of the recovery shall be treated as having been in effect for all prior taxable years.

(e) Gain on recovery

That part of the amount of a recovery of a foreign expropriation loss to which this section applies which is not excluded from gross income under subsection (d)(1) shall be considered for the taxable year of the recovery as gain on the involuntary conversion of property as a result of its destruction or seizure and shall be recognized or not recognized as provided in section 1033.

(f) Basis of recovered property

The basis of property (other than money) received as a recovery of a foreign expropriation

loss to which this section applies shall be an amount equal to its fair market value on the date of receipt, reduced by such part of the gain under subsection (e) which is not recognized as provided in section 1033.

(g) Restoration of value of investments

For purposes of this section, if the value of any interest in, or with respect to, property (including any interest represented by a security, as defined in section 165(g)(2))—

(1) which became worthless by reason of the expropriation, intervention, seizure, or similar taking of such property by the government of any foreign country, any political subdivision thereof, or any agency or instrumentality of the foregoing, and

(2) which was taken into account as a loss from the sale or exchange of a capital asset or with respect to which a deduction for a loss was allowed under section 165 or a deduction for a bad debt was allowed under section 166,

is restored in whole or in part by reason of any recovery of money or other property in respect of the property which became worthless, the value so restored shall be treated as property received as a recovery in respect of such loss or such bad debt.

(h) Special rule for evidences of indebtedness

Bonds or other evidences of indebtedness received as a recovery of a foreign expropriation loss to which this section applies shall not be considered to have any original issue discount within the meaning of section 1273(a).

(i) Adjustments for succeeding years

For purposes of this subtitle, proper adjustment shall be made, under regulations prescribed by the Secretary, in—

(1) the credit under section 27 (relating to foreign tax credit),

(2) the credit under section 38 (relating to general business credit),

(3) the net operating loss deduction under section 172,

(4) the capital loss carryover under section 1212(a), and

(5) such other items as may be specified by such regulations,

for the taxable year of a recovery of a foreign expropriation loss to which this section applies, and for succeeding taxable years, to take into account items changed in making the computations under subsection (d) for taxable years prior to the taxable year of such recovery.

(Added Pub. L. 89–384, §1(a), Apr. 8, 1966, 80 Stat. 99; amended Pub. L. 94–455, title X, §1031(b)(3), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1623, 1834; Pub. L. 95–600, title III, §301(b)(17), Nov. 6, 1978, 92 Stat. 2823; Pub. L. 98–369, div. A, title I, §42(a)(12), title II, §211(b)(18), title IV, §474(r)(25), July 18, 1984, 98 Stat. 557, 756, 844; Pub. L. 99–514, title XVIII, §1812(a)(4), Oct. 22, 1986, 100 Stat. 2833; Pub. L. 115–97, title I, §13511(b)(8), Dec. 22, 2017, 131 Stat. 2142.)

AMENDMENTS

2017—Subsec. (i)(3). Pub. L. 115–97 struck out at end ''or the operations loss deduction under section 810,''.

1986—Subsec. (d)(2). Pub. L. 99–514 substituted ''relating to recovery of tax benefit items'' for ''relating to recovery of bad debts, etc.''.

1984—Subsec. (a)(1). Pub. L. 98–369, §211(b)(18)(A), substituted ''801'' for ''802'' in two places.

Subsec. (c)(2). Pub. L. 98–369, §211(b)(18)(B), substituted ''section 807(c)'' for ''section 810(c)''.

Subsec. (h). Pub. L. 98–369, §42(a)(12), substituted ''section 1273(a)'' for ''section 1232(a)(2)''.

Subsec. (i)(1). Pub. L. 98–369, §474(r)(25)(A), substituted ''section 27'' for ''section 33''.

Subsec. (i)(2). Pub. L. 98–369, §474(r)(25)(B), substituted ''section 38 (relating to general business credit)'' for ''section 38 (relating to investment credit)''.

Subsec. (i)(3). Pub. L. 98–369, §211(b)(18)(C), substituted ''section 810'' for ''section 812''.

1978—Subsec. (d)(4). Pub. L. 95–600 substituted ''the rates of tax specified in section 11(b)'' for ''the normal tax rate provided by section 11(b) and the surtax rate provided by section 11(c) which are in effect''.

1976—Subsecs. (a)(2), (d)(2). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (d)(3). Pub. L. 94–455, §1031(b)(3), struck out provisions relating to an election to have limitation provided by section 904(a)(2) apply and to revocation of such an election previously made.

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

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by 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 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 section 42(a)(12) 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 211(b)(18) of 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.

Amendment by section 474(r)(25) 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.

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 1976 AMENDMENT

Amendment by section 1031(b)(3) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, with exceptions for certain mining operations, and for income from possessions, see section 1031(c) of Pub. L. 94–455, set out as a note under section 904 of this title.

EFFECTIVE DATE

Pub. L. 89–384, §2, Apr. 8, 1966, 80 Stat. 105, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by section 1 (except subsection (b)) [enacting this section and section 6167 of this title and amending sections 46, 901, 6503, and 6601 of this title] shall apply with respect to amounts received after December 31, 1964, in respect of foreign expropriation losses (as defined in section 1351(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]

added by section 1(a)) sustained after December 31, 1958.''

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.

Subchapter R—Election To Determine Corporate Tax on Certain International Shipping Activities Using Per Ton Rate

PRIOR PROVISIONS

A prior subchapter R, consisting of section 1361, related to election of certain partnerships and proprietorships to be taxed as domestic corporations, prior to repeal by Pub. L. 89–389, § 4(b)(1), Apr. 14, 1966, 80 Stat. 116, effective Jan. 1, 1969.

§ 1352. Alternative tax on qualifying shipping activities

In the case of an electing corporation, the tax imposed by section 11 shall be the amount equal to the sum of—

(1) the tax imposed by section 11 determined after the application of this subchapter, and

(2) a tax equal to—

(A) the highest rate of tax specified in section 11, multiplied by

(B) the notional shipping income for the taxable year.

(Added Pub. L. 108–357, title II, § 248(a), Oct. 22, 2004, 118 Stat. 1450.)

EFFECTIVE DATE

Section applicable to taxable years beginning after Oct. 22, 2004, see section 248(c) of Pub. L. 108–357, set out as an Effective Date of 2004 Amendments note under section 56 of this title.

§ 1353. Notional shipping income

(a) In general

For purposes of this subchapter, the notional shipping income of an electing corporation shall be the sum of the amounts determined under subsection (b) for each qualifying vessel operated by such electing corporation.

(b) Amounts

(1) In general

For purposes of subsection (a), the amount of notional shipping income of an electing corporation for each qualifying vessel for the taxable year shall equal the product of—

(A) the daily notional shipping income, and

(B) the number of days during the taxable year that the electing corporation operated such vessel as a qualifying vessel in United States foreign trade.

(2) Treatment of vessels the income from which is not otherwise subject to tax

In the case of a qualifying vessel any of the income from which is not included in gross income by reason of section 883 or otherwise, the amount of notional shipping income from such vessel for the taxable year shall be the amount which bears the same ratio to such shipping income (determined without regard to this paragraph) as the gross income from the operation of such vessel in the United States foreign trade bears to the sum of such gross income and the income so excluded.

(c) Daily notional shipping income

For purposes of subsection (b), the daily notional shipping income from the operation of a qualifying vessel is—

(1) 40 cents for each 100 tons of so much of the net tonnage of the vessel as does not exceed 25,000 net tons, and

(2) 20 cents for each 100 tons of so much of the net tonnage of the vessel as exceeds 25,000 net tons.

(d) Multiple operators of vessel

If for any period 2 or more persons are operators of a qualifying vessel, the notional shipping income from the operation of such vessel for such period shall be allocated among such persons on the basis of their respective ownership, charter, and operating agreement interests in such vessel or on such other basis as the Secretary may prescribe by regulations.

(Added Pub. L. 108–357, title II, § 248(a), Oct. 22, 2004, 118 Stat. 1450; amended Pub. L. 109–135, title IV, § 403(g)(1)(A), Dec. 21, 2005, 119 Stat. 2624.)

AMENDMENTS

2005—Subsec. (d). Pub. L. 109–135 substituted ''ownership, charter, and operating agreement interests'' for ''ownership and charter interests''.

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

Section applicable to taxable years beginning after Oct. 22, 2004, see section 248(c) of Pub. L. 108–357, set out as an Effective Date of 2004 Amendments note under section 56 of this title.

§ 1354. Alternative tax election; revocation; termination

(a) In general

A qualifying vessel operator may elect the application of this subchapter.

(b) Time and manner; years for which effective

An election under this subchapter—

(1) shall be made in such form as prescribed by the Secretary, and

(2) shall be effective for the taxable year for which made and all succeeding taxable years until terminated under subsection (d).

Such election may be effective for any taxable year only if made on or before the due date (including extensions) for filing the corporation's return for such taxable year.

(c) Consistent elections by members of controlled groups

An election under subsection (a) by a member of a controlled group shall apply to all qualifying vessel operators that are members of such group.

(d) Termination

(1) By revocation

(A) In general

An election under subsection (a) may be terminated by revocation.

(B) When effective

Except as provided in subparagraph (C)—

(i) a revocation made during the taxable year and on or before the 15th day of the 4th month thereof shall be effective on the 1st day of such taxable year, and

(ii) a revocation made during the taxable year but after such 15th day shall be effective on the 1st day of the following taxable year.

(C) Revocation may specify prospective date

If the revocation specifies a date for revocation which is on or after the day on which the revocation is made, the revocation shall be effective for taxable years beginning on and after the date so specified.

(2) By person ceasing to be qualifying vessel operator

(A) In general

An election under subsection (a) shall be terminated whenever (at any time on or after the 1st day of the 1st taxable year for which the corporation is an electing corporation) such corporation ceases to be a qualifying vessel operator.

(B) When effective

Any termination under this paragraph shall be effective on and after the date of cessation.

(C) Annualization

The Secretary shall prescribe such annualization and other rules as are appropriate in the case of a termination under this paragraph.

(e) Election after termination

If a qualifying vessel operator has made an election under subsection (a) and if such election has been terminated under subsection (d), such operator (and any successor operator) shall not be eligible to make an election under subsection (a) for any taxable year before its 5th taxable year which begins after the 1st taxable year for which such termination is effective, unless the Secretary consents to such election.

(Added Pub. L. 108–357, title II, §248(a), Oct. 22, 2004, 118 Stat. 1451; amended Pub. L. 109–135, title IV, §403(g)(4), Dec. 21, 2005, 119 Stat. 2624; Pub. L. 114–41, title II, §2006(a)(2)(C), July 31, 2015, 129 Stat. 457.)

AMENDMENTS

2015—Subsec. (d)(1)(B)(i). Pub. L. 114–41 substituted ''4th month'' for ''3d month''.

2005—Subsec. (b). Pub. L. 109–135 inserted ''on or'' after ''only if made'' in concluding provisions.

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 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

Section applicable to taxable years beginning after Oct. 22, 2004, see section 248(c) of Pub. L. 108–357, set out as an Effective Date of 2004 Amendments note under section 56 of this title.

§ 1355. Definitions and special rules

(a) Definitions

For purposes of this subchapter—

(1) Electing corporation

The term ''electing corporation'' means any corporation for which an election is in effect under this subchapter.

(2) Electing group; controlled group

(A) Electing group

The term ''electing group'' means a controlled group of which one or more members is an electing corporation.

(B) Controlled group

The term ''controlled group'' means any group which would be treated as a single employer under subsection (a) or (b) of section 52 if paragraphs (1) and (2) of section 52(a) did not apply.

(3) Qualifying vessel operator

The term ''qualifying vessel operator'' means any corporation—

(A) who operates one or more qualifying vessels, and

(B) who meets the shipping activity requirement in subsection (c).

(4) Qualifying vessel

The term ''qualifying vessel'' means a self-propelled (or a combination self-propelled and non-self-propelled) United States flag vessel of not less than 6,000 deadweight tons used exclusively in the United States foreign trade during the period that the election under this subchapter is in effect.

(5) United States flag vessel

The term ''United States flag vessel'' means any vessel documented under the laws of the United States.

(6) United States domestic trade

The term ''United States domestic trade'' means the transportation of goods or passengers between places in the United States.

(7) United States foreign trade

The term ''United States foreign trade'' means the transportation of goods or passengers between a place in the United States and a foreign place or between foreign places.

(b) Operating a vessel

For purposes of this subchapter—

(1) In general

Except as provided in paragraph (2), a person is treated as operating any vessel during any period if—

(A)(i) such vessel is owned by, or chartered (including a time charter) to, the person, or

(ii) the person provides services for such vessel pursuant to an operating agreement, and

(B) such vessel is in use as a qualifying vessel during such period.

(2) Bareboat charters

A person is treated as operating and using a vessel that it has chartered out on bareboat charter terms only if—

(A)(i) the vessel is temporarily surplus to the person's requirements and the term of the charter does not exceed 3 years, or

(ii) the vessel is bareboat chartered to a member of a controlled group which includes such person or to an unrelated person who sub-bareboats or time charters the vessel to such a member (including the owner of the vessel), and

(B) the vessel is used as a qualifying vessel by the person to whom ultimately chartered.

(c) Shipping activity requirement

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, a corporation meets the shipping activity requirement of this subsection for any taxable year only if the requirement of paragraph (4) is met for each of the 2 preceding taxable years.

(2) Special rule for 1st year of election

A corporation meets the shipping activity requirement of this subsection for the first taxable year for which the election under section 1354(a) is in effect only if the requirement of paragraph (4) is met for the preceding taxable year.

(3) Controlled groups

A corporation who is a member of a controlled group meets the shipping activity requirement of this subsection only if such requirement is met determined by treating all members of such group as 1 person.

(4) Requirement

The requirement of this paragraph is met for any taxable year if, on average during such year, at least 25 percent of the aggregate tonnage of qualifying vessels used by the corporation were owned by such corporation or chartered to such corporation on bareboat charter terms.

(d) Activities carried on partnerships, etc.

In applying this subchapter to a partner in a partnership—

(1) each partner shall be treated as operating vessels operated by the partnership,

(2) each partner shall be treated as conducting the activities conducted by the partnership, and

(3) the extent of a partner's ownership, charter, or operating agreement interest in any vessel operated by the partnership shall be determined on the basis of the partner's interest in the partnership.

A similar rule shall apply with respect to other pass-thru entities.

(e) Effect of temporarily ceasing to operate a qualifying vessel

(1) In general

For purposes of subsections (b) and (c), an electing corporation shall be treated as continuing to use a qualifying vessel during any period of temporary cessation if the electing corporation gives timely notice to the Secretary stating—

(A) that it has temporarily ceased to operate the qualifying vessel, and

(B) its intention to resume operating the qualifying vessel.

(2) Notice

Notice shall be deemed timely if given not later than the due date (including extensions) for the corporation's tax return for the taxable year in which the temporary cessation begins.

(3) Period disregard in effect

The period of temporary cessation under paragraph (1) shall continue until the earlier of the date on which—

(A) the electing corporation abandons its intention to resume operation of the qualifying vessel, or

(B) the electing corporation resumes operation of the qualifying vessel.

(f) Effect of temporarily operating a qualifying vessel in the United States domestic trade

(1) In general

For purposes of this subchapter, an electing corporation shall be treated as continuing to use a qualifying vessel in the United States foreign trade during any period of temporary use in the United States domestic trade if the electing corporation gives timely notice to the Secretary stating—

(A) that it temporarily operates or has operated in the United States domestic trade a qualifying vessel which had been used in the United States foreign trade, and

(B) its intention to resume operation of the vessel in the United States foreign trade.

(2) Notice

Notice shall be deemed timely if given not later than the due date (including extensions) for the corporation's tax return for the taxable year in which the temporary cessation begins.

(3) Period disregard in effect

The period of temporary use under paragraph (1) continues until the earlier of the date of[1] which—

[1] So in original.

(A) the electing corporation abandons its intention to resume operations of the vessel in the United States foreign trade, or

(B) the electing corporation resumes operation of the vessel in the United States foreign trade.

(4) No disregard if domestic trade use exceeds 30 days

Paragraph (1) shall not apply to any qualifying vessel which is operated in the United States domestic trade for more than 30 days during the taxable year.

(g) Great Lakes domestic shipping to not disqualify vessel

(1) In general

If the electing corporation elects (at such time and in such manner as the Secretary may require) to apply this subsection for any taxable year to any qualifying vessel which is used in qualified zone domestic trade during the taxable year—

(A) solely for purposes of subsection (a)(4), such use shall be treated as use in United States foreign trade (and not as use in United States domestic trade), and

(B) subsection (f) shall not apply with respect to such vessel for such taxable year.

(2) Effect of temporarily operating vessel in United States domestic trade

In the case of a qualifying vessel to which this subsection applies—

(A) In general

An electing corporation shall be treated as using such vessel in qualified zone domestic trade during any period of temporary use in the United States domestic trade (other than qualified zone domestic trade) if the electing corporation gives timely notice to the Secretary stating—

(i) that it temporarily operates or has operated in the United States domestic trade (other than qualified zone domestic trade) a qualifying vessel which had been used in the United States foreign trade or qualified zone domestic trade, and

(ii) its intention to resume operation of the vessel in the United States foreign trade or qualified zone domestic trade.

(B) Notice

Notice shall be deemed timely if given not later than the due date (including extensions) for the corporation's tax return for the taxable year in which the temporary cessation begins.

(C) Period disregard in effect

The period of temporary use under subparagraph (A) continues until the earlier of the date of which—

(i) the electing corporation abandons its intention to resume operations of the vessel in the United States foreign trade or qualified zone domestic trade, or

(ii) the electing corporation resumes operation of the vessel in the United States foreign trade or qualified zone domestic trade.

(D) No disregard if domestic trade use exceeds 30 days

Subparagraph (A) shall not apply to any qualifying vessel which is operated in the United States domestic trade (other than qualified zone domestic trade) for more than 30 days during the taxable year.

(3) Allocation of income and deductions to qualifying shipping activities

In the case of a qualifying vessel to which this subsection applies, the Secretary shall prescribe rules for the proper allocation of income, expenses, losses, and deductions between the qualified shipping activities and the other activities of such vessel.

(4) Qualified zone domestic trade

For purposes of this subsection—

(A) In general

The term ''qualified zone domestic trade'' means the transportation of goods or passengers between places in the qualified zone if such transportation is in the United States domestic trade.

(B) Qualified zone

The term ''qualified zone'' means the Great Lakes Waterway and the St. Lawrence Seaway.

(h) Regulations

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

(Added Pub. L. 108–357, title II, §248(a), Oct. 22, 2004, 118 Stat. 1452; amended Pub. L. 109–135, title IV, §403(g)(1)(B)–(2), Dec. 21, 2005, 119 Stat. 2624; Pub. L. 109–222, title II, §205(a), May 17, 2006, 120 Stat. 350; Pub. L. 109–432, div. A, title IV, §§413(a), 415(a), Dec. 20, 2006, 120 Stat. 2963.)

AMENDMENTS

2006—Subsec. (a)(4). Pub. L. 109–432, §413(a), substituted ''6,000'' for ''10,000 (6,000, in the case of taxable years beginning after December 31, 2005, and ending before January 1, 2011)''.

Pub. L. 109–222 inserted ''(6,000, in the case of taxable years beginning after December 31, 2005, and ending before January 1, 2011)'' after ''10,000''.

Subsecs. (g), (h). Pub. L. 109–432, §415(a), added subsec. (g) and redesignated former subsec. (g) as (h).

2005—Subsec. (a)(8). Pub. L. 109–135, §403(g)(1)(B), struck out heading and text of par. (8). Text read as follows: ''The term 'charter' includes an operating agreement.''

Subsec. (b)(1). Pub. L. 109–135, §403(g)(1)(C), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Except as provided in paragraph (2), a person is treated as operating any vessel during any period if such vessel is—

''(A) owned by, or chartered (including a time charter) to, the person, and

''(B) is in use as a qualifying vessel during such period.''

Subsec. (c)(3). Pub. L. 109–135, §403(g)(2), substituted ''determined by treating all members of such group as 1 person.'' for ''determined—

''(A) by treating all members of such group as 1 person, and

''(B) by disregarding vessel charters between members of such group.''

Subsec. (d)(3). Pub. L. 109–135, §403(g)(1)(D), amended par. (3) generally. Prior to amendment, par. (3) read as

follows: ''the extent of a partner's ownership or charter interest in any vessel owned by or chartered to the partnership shall be determined on the basis of the partner's interest in the partnership.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title IV, § 413(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 205 of the Tax Increase Prevention and Reconciliation Act of 2005 [Pub. L. 109–222].''

Pub. L. 109–432, div. A, title IV, § 415(b), Dec. 20, 2006, 120 Stat. 2965, 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 [Dec. 20, 2006].''

Pub. L. 109–222, title II, § 205(b), May 17, 2006, 120 Stat. 350, 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 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

Section applicable to taxable years beginning after Oct. 22, 2004, see section 248(c) of Pub. L. 108–357, set out as an Effective Date of 2004 Amendments note under section 56 of this title.

§ 1356. Qualifying shipping activities

(a) Qualifying shipping activities

For purposes of this subchapter, the term ''qualifying shipping activities'' means—

(1) core qualifying activities,

(2) qualifying secondary activities, and

(3) qualifying incidental activities.

(b) Core qualifying activities

For purposes of this subchapter, the term ''core qualifying activities'' means activities in operating qualifying vessels in United States foreign trade.

(c) Qualifying secondary activities

For purposes of this section—

(1) In general

The term ''qualifying secondary activities'' means secondary activities but only to the extent that, without regard to this subchapter, the gross income derived by such corporation from such activities does not exceed 20 percent of the gross income derived by the corporation from its core qualifying activities.

(2) Secondary activities

The term ''secondary activities'' means—

(A) the active management or operation of vessels other than qualifying vessels in the United States foreign trade,

(B) the provision of vessel, barge, container, or cargo-related facilities or services to any person,

(C) other activities of the electing corporation and other members of its electing group that are an integral part of its business of operating qualifying vessels in United States foreign trade, including—

(i) ownership or operation of barges, containers, chassis, and other equipment that are the complement of, or used in connection with, a qualifying vessel in United States foreign trade,

(ii) the inland haulage of cargo shipped, or to be shipped, on qualifying vessels in United States foreign trade, and

(iii) the provision of terminal, maintenance, repair, logistical, or other vessel, barge, container, or cargo-related services that are an integral part of operating qualifying vessels in United States foreign trade, and

(D) such other activities as may be prescribed by the Secretary pursuant to regulations.

Such term shall not include any core qualifying activities.

(d) Qualifying incidental activities

For purposes of this section, the term ''qualified incidental activities'' means shipping-related activities if—

(1) they are incidental to the corporation's core qualifying activities,

(2) they are not qualifying secondary activities, and

(3) without regard to this subchapter, the gross income derived by such corporation from such activities does not exceed 0.1 percent of the corporation's gross income from its core qualifying activities.

(e) Application of gross income tests in case of electing group

In the case of an electing group, subsections (c)(1) and (d)(3) shall be applied as if such group were 1 entity, and the limitations under such subsections shall be allocated among the corporations in such group.

(Added Pub. L. 108–357, title II, § 248(a), Oct. 22, 2004, 118 Stat. 1454; amended Pub. L. 109–135, title IV, § 403(g)(3), Dec. 21, 2005, 119 Stat. 2624.)

AMENDMENTS

2005—Subsec. (c)(2). Pub. L. 109–135, § 403(g)(3)(B), inserted concluding provisions.

Subsec. (c)(3). Pub. L. 109–135, § 403(g)(3)(A), struck out heading and text of par. (3). Text read as follows: ''(A) IN GENERAL.—Such term shall not include any core qualifying activities.

''(B) NONELECTING CORPORATIONS.—In the case of a corporation (other than an electing corporation) which is a member of an electing group, any core qualifying activities of the corporation shall be treated as qualifying secondary activities (and not as core qualifying activities).''

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

Section applicable to taxable years beginning after Oct. 22, 2004, see section 248(c) of Pub. L. 108–357, set out as an Effective Date of 2004 Amendments note under section 56 of this title.

§ 1357. Items not subject to regular tax; depreciation; interest

(a) Exclusion from gross income

Gross income of an electing corporation shall not include its income from qualifying shipping activities.

(b) Electing group member

Gross income of a corporation (other than an electing corporation) which is a member of an electing group shall not include its income from qualifying shipping activities conducted by such member.

(c) Denial of losses, deductions, and credits

(1) General rule

Subject to paragraph (2), each item of loss, deduction (other than for interest expense), or credit of any taxpayer with respect to any activity the income from which is excluded from gross income under this section shall be disallowed.

(2) Depreciation

(A) In general

Notwithstanding paragraph (1), the adjusted basis (for purposes of determining gain) of any qualifying vessel shall be determined as if the deduction for depreciation had been allowed.

(B) Method

(i) In general

Except as provided in clause (ii), the straight-line method of depreciation shall apply to qualifying vessels the income from operation of which is excluded from gross income under this section.

(ii) Exception

Clause (i) shall not apply to any qualifying vessel which is subject to a charter entered into before the date of the enactment of this subchapter.

(3) Interest

(A) In general

Except as provided in subparagraph (B), the interest expense of an electing corporation shall be disallowed in the ratio that the fair market value of such corporation's qualifying vessels bears to the fair market value of such corporation's total assets.

(B) Electing group

In the case of a corporation which is a member of an electing group, the interest expense of such corporation shall be disallowed in the ratio that the fair market value of such corporation's qualifying vessels bears to the fair market value of the electing groups total assets.

(Added Pub. L. 108–357, title II, § 248(a), Oct. 22, 2004, 118 Stat. 1455.)

REFERENCES IN TEXT

The date of the enactment of this subchapter, referred to in subsec. (c)(2)(B)(ii), is the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

EFFECTIVE DATE

Section applicable to taxable years beginning after Oct. 22, 2004, see section 248(c) of Pub. L. 108–357, set out as an Effective Date of 2004 Amendments note under section 56 of this title.

§ 1358. Allocation of credits, income, and deductions

(a) Qualifying shipping activities

For purposes of this chapter, the qualifying shipping activities of an electing corporation shall be treated as a separate trade or business activity distinct from all other activities conducted by such corporation.

(b) Exclusion of credits or deductions

(1) No deduction shall be allowed against the notional shipping income of an electing corporation, and no credit shall be allowed against the tax imposed by section 1352(a)(2).[1]

(2) No deduction shall be allowed for any net operating loss attributable to the qualifying shipping activities of any person to the extent that such loss is carried forward by such person from a taxable year preceding the first taxable year for which such person was an electing corporation.

(c) Transactions not at arm's length

Section 482 applies in accordance with this subsection to a transaction or series of transactions—

(1) as between an electing corporation and another person, or

(2) as between an[2] person's qualifying shipping activities and other activities carried on by it.

(Added Pub. L. 108–357, title II, § 248(a), Oct. 22, 2004, 118 Stat. 1456.)

EFFECTIVE DATE

Section applicable to taxable years beginning after Oct. 22, 2004, see section 248(c) of Pub. L. 108–357, set out as an Effective Date of 2004 Amendments note under section 56 of this title.

§ 1359. Disposition of qualifying vessels

(a) In general

If any qualifying vessel operator sells or disposes of any qualifying vessel in an otherwise taxable transaction, at the election of such operator, no gain shall be recognized if any replacement qualifying vessel is acquired during the period specified in subsection (b), except to the extent that the amount realized upon such sale or disposition exceeds the cost of the replacement qualifying vessel.

(b) Period within which property must be replaced

The period referred to in subsection (a) shall be the period beginning one year prior to the disposition of the qualifying vessel and ending—

(1) 3 years after the close of the first taxable year in which the gain is realized, or

(2) subject to such terms and conditions as may be specified by the Secretary, on such later date as the Secretary may designate on application by the taxpayer.

Such application shall be made at such time and in such manner as the Secretary may by regulations prescribe.

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[1] So in original. Probably should be section ''1352(2).''.

[2] So in original.

(c) Application of section to noncorporate operators

For purposes of this section, the term ''qualifying vessel operator'' includes any person who would be a qualifying vessel operator were such person a corporation.

(d) Time for assessment of deficiency attributable to gain

If a qualifying vessel operator has made the election provided in subsection (a), then—

(1) the statutory period for the assessment of any deficiency, for any taxable year in which any part of the gain is realized, attributable to such gain shall not expire prior to the expiration of 3 years from the date the Secretary is notified by such operator (in such manner as the Secretary may by regulations prescribe) of the replacement qualifying vessel or of an intention not to replace, and

(2) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of section 6212(c) or the provisions of any other law or rule of law which would otherwise prevent such assessment.

(e) Basis of replacement qualifying vessel

In the case of any replacement qualifying vessel purchased by the qualifying vessel operator which resulted in the nonrecognition of any part of the gain realized as the result of a sale or other disposition of a qualifying vessel, the basis shall be the cost of the replacement qualifying vessel decreased in the amount of the gain not so recognized; and if the property purchased consists of more than one piece of property, the basis determined under this sentence shall be allocated to the purchased properties in proportion to their respective costs.

(Added Pub. L. 108–357, title II, § 248(a), Oct. 22, 2004, 118 Stat. 1456.)

EFFECTIVE DATE

Section applicable to taxable years beginning after Oct. 22, 2004, see section 248(c) of Pub. L. 108–357, set out as an Effective Date of 2004 Amendments note under section 56 of this title.

Subchapter S—Tax Treatment of S Corporations and Their Shareholders

PART I—IN GENERAL

§ 1361. S corporation defined

(a) S corporation defined

(1) In general

For purposes of this title, the term ''S corporation'' means, with respect to any taxable year, a small business corporation for which an election under section 1362(a) is in effect for such year.

(2) C corporation

For purposes of this title, the term ''C corporation'' means, with respect to any taxable year, a corporation which is not an S corporation for such year.

(b) Small business corporation

(1) In general

For purposes of this subchapter, the term ''small business corporation'' means a domestic corporation which is not an ineligible corporation and which does not—

(A) have more than 100 shareholders,

(B) have as a shareholder a person (other than an estate, a trust described in subsection (c)(2), or an organization described in subsection (c)(6)) who is not an individual,

(C) have a nonresident alien as a shareholder, and

(D) have more than 1 class of stock.

(2) Ineligible corporation defined

For purposes of paragraph (1), the term ''ineligible corporation'' means any corporation which is—

(A) a financial institution which uses the reserve method of accounting for bad debts described in section 585,

(B) an insurance company subject to tax under subchapter L,

(C) a corporation to which an election under section 936 applies, or

(D) a DISC or former DISC.

(3) Treatment of certain wholly owned subsidiaries

(A) In general

Except as provided in regulations prescribed by the Secretary, for purposes of this title—

(i) a corporation which is a qualified subchapter S subsidiary shall not be treated as a separate corporation, and

(ii) all assets, liabilities, and items of income, deduction, and credit of a qualified subchapter S subsidiary shall be treated as assets, liabilities, and such items (as the case may be) of the S corporation.

(B) Qualified subchapter S subsidiary

For purposes of this paragraph, the term ''qualified subchapter S subsidiary'' means any domestic corporation which is not an ineligible corporation (as defined in paragraph (2)), if—

(i) 100 percent of the stock of such corporation is held by the S corporation, and

(ii) the S corporation elects to treat such corporation as a qualified subchapter S subsidiary.

(C) Treatment of terminations of qualified subchapter S subsidiary status

(i) In general

For purposes of this title, if any corporation which was a qualified subchapter S subsidiary ceases to meet the requirements of subparagraph (B), 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 S corporation in exchange for its stock.

(ii) Termination by reason of sale of stock

If the failure to meet the requirements of subparagraph (B) is by reason of the sale of stock of a corporation which is a qualified subchapter S subsidiary, the sale of such stock shall be treated as if—

(I) the sale were a sale of an undivided interest in the assets of such corporation (based on the percentage of the corporation's stock sold), and

(II) the sale were followed by an acquisition by such corporation of all of its assets (and the assumption by such corporation of all of its liabilities) in a transaction to which section 351 applies.

(D) Election after termination

If a corporation's status as a qualified subchapter S subsidiary terminates, such corporation (and any successor corporation) shall not be eligible to make—

(i) an election under subparagraph (B)(ii) to be treated as a qualified subchapter S subsidiary, or

(ii) an election under section 1362(a) to be treated as an S corporation,

before its 5th taxable year which begins after the 1st taxable year for which such termination was effective, unless the Secretary consents to such election.

(E) Information returns

Except to the extent provided by the Secretary, this paragraph shall not apply to part III of subchapter A of chapter 61 (relating to information returns).

(c) Special rules for applying subsection (b)

(1) Members of a family treated as 1 shareholder

(A) In general

For purposes of subsection (b)(1)(A), there shall be treated as one shareholder—

(i) a husband and wife (and their estates), and

(ii) all members of a family (and their estates).

(B) Members of a family

For purposes of this paragraph—

(i) In general

The term ''members of a family'' means a common ancestor, any lineal descendant of such common ancestor, and any spouse or former spouse of such common ancestor or any such lineal descendant.

(ii) Common ancestor

An individual shall not be considered to be a common ancestor if, on the applicable date, the individual is more than 6 generations removed from the youngest generation of shareholders who would (but for this subparagraph) be members of the family. For purposes of the preceding sentence, a spouse (or former spouse) shall be treated as being of the same generation as the individual to whom such spouse is (or was) married.

(iii) Applicable date

The term ''applicable date'' means the latest of—

(I) the date the election under section 1362(a) is made,

(II) the earliest date that an individual described in clause (i) holds stock in the S corporation, or

(III) October 22, 2004.

(C) Effect of adoption, etc.

Any legally adopted child of an individual, any child who is lawfully placed with an individual for legal adoption by the individual, and any eligible foster child of an individual (within the meaning of section 152(f)(1)(C)), shall be treated as a child of such individual by blood.

(2) Certain trusts permitted as shareholders

(A) In general

For purposes of subsection (b)(1)(B), the following trusts may be shareholders:

(i) A trust all of which is treated (under subpart E of part I of subchapter J of this chapter) as owned by an individual who is a citizen or resident of the United States.

(ii) A trust which was described in clause (i) immediately before the death of the deemed owner and which continues in existence after such death, but only for the 2-year period beginning on the day of the deemed owner's death.

(iii) A trust with respect to stock transferred to it pursuant to the terms of a will, but only for the 2-year period beginning on the day on which such stock is transferred to it.

(iv) A trust created primarily to exercise the voting power of stock transferred to it.

(v) An electing small business trust.

(vi) In the case of a corporation which is a bank (as defined in section 581) or a depository institution holding company (as defined in section 3(w)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(1)), a trust which constitutes an individual retirement account under section 408(a), including one designated as a Roth IRA under section 408A, but only to the extent of the stock held by such trust in such bank or company as of the date of the enactment of this clause.

This subparagraph shall not apply to any foreign trust.

(B) Treatment as shareholders

For purposes of subsection (b)(1)—

(i) In the case of a trust described in clause (i) of subparagraph (A), the deemed owner shall be treated as the shareholder.

(ii) In the case of a trust described in clause (ii) of subparagraph (A), the estate of the deemed owner shall be treated as the shareholder.

(iii) In the case of a trust described in clause (iii) of subparagraph (A), the estate of the testator shall be treated as the shareholder.

(iv) In the case of a trust described in clause (iv) of subparagraph (A), each bene-

ficiary of the trust shall be treated as a shareholder.

(v) In the case of a trust described in clause (v) of subparagraph (A), each potential current beneficiary of such trust shall be treated as a shareholder; except that, if for any period there is no potential current beneficiary of such trust, such trust shall be treated as the shareholder during such period. This clause shall not apply for purposes of subsection (b)(1)(C).

(vi) In the case of a trust described in clause (vi) of subparagraph (A), the individual for whose benefit the trust was created shall be treated as a shareholder.

(3) Estate of individual in bankruptcy may be shareholder

For purposes of subsection (b)(1)(B), the term ''estate'' includes the estate of an individual in a case under title 11 of the United States Code.

(4) Differences in common stock voting rights disregarded

For purposes of subsection (b)(1)(D), a corporation shall not be treated as having more than 1 class of stock solely because there are differences in voting rights among the shares of common stock.

(5) Straight debt safe harbor

(A) In general

For purposes of subsection (b)(1)(D), straight debt shall not be treated as a second class of stock.

(B) Straight debt defined

For purposes of this paragraph, the term ''straight debt'' means any written unconditional promise to pay on demand or on a specified date a sum certain in money if—

(i) the interest rate (and interest payment dates) are not contingent on profits, the borrower's discretion, or similar factors,

(ii) there is no convertibility (directly or indirectly) into stock, and

(iii) the creditor is an individual (other than a nonresident alien), an estate, a trust described in paragraph (2), or a person which is actively and regularly engaged in the business of lending money.

(C) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to provide for the proper treatment of straight debt under this subchapter and for the coordination of such treatment with other provisions of this title.

(6) Certain exempt organizations permitted as shareholders

For purposes of subsection (b)(1)(B), an organization which is—

(A) described in section 401(a) or 501(c)(3), and

(B) exempt from taxation under section 501(a),

may be a shareholder in an S corporation.

(d) Special rule for qualified subchapter S trust

(1) In general

In the case of a qualified subchapter S trust with respect to which a beneficiary makes an election under paragraph (2)—

(A) such trust shall be treated as a trust described in subsection (c)(2)(A)(i),

(B) for purposes of section 678(a), the beneficiary of such trust shall be treated as the owner of that portion of the trust which consists of stock in an S corporation with respect to which the election under paragraph (2) is made, and

(C) for purposes of applying sections 465 and 469 to the beneficiary of the trust, the disposition of the S corporation stock by the trust shall be treated as a disposition by such beneficiary.

(2) Election

(A) In general

A beneficiary of a qualified subchapter S trust (or his legal representative) may elect to have this subsection apply.

(B) Manner and time of election

(i) Separate election with respect to each corporation

An election under this paragraph shall be made separately with respect to each corporation the stock of which is held by the trust.

(ii) Elections with respect to successive income beneficiaries

If there is an election under this paragraph with respect to any beneficiary, an election under this paragraph shall be treated as made by each successive beneficiary unless such beneficiary affirmatively refuses to consent to such election.

(iii) Time, manner, and form of election

Any election, or refusal, under this paragraph shall be made in such manner and form, and at such time, as the Secretary may prescribe.

(C) Election irrevocable

An election under this paragraph, once made, may be revoked only with the consent of the Secretary.

(D) Grace period

An election under this paragraph shall be effective up to 15 days and 2 months before the date of the election.

(3) Qualified subchapter S trust

For purposes of this subsection, the term ''qualified subchapter S trust'' means a trust—

(A) the terms of which require that—

(i) during the life of the current income beneficiary, there shall be only 1 income beneficiary of the trust,

(ii) any corpus distributed during the life of the current income beneficiary may be distributed only to such beneficiary,

(iii) the income interest of the current income beneficiary in the trust shall terminate on the earlier of such beneficiary's death or the termination of the trust, and

(iv) upon the termination of the trust during the life of the current income beneficiary, the trust shall distribute all of its assets to such beneficiary, and

(B) all of the income (within the meaning of section 643(b)) of which is distributed (or required to be distributed) currently to 1 individual who is a citizen or resident of the United States.

A substantially separate and independent share of a trust within the meaning of section 663(c) shall be treated as a separate trust for purposes of this subsection and subsection (c).

(4) Trust ceasing to be qualified

(A) Failure to meet requirements of paragraph (3)(A)

If a qualified subchapter S trust ceases to meet any requirement of paragraph (3)(A), the provisions of this subsection shall not apply to such trust as of the date it ceases to meet such requirement.

(B) Failure to meet requirements of paragraph (3)(B)

If any qualified subchapter S trust ceases to meet any requirement of paragraph (3)(B) but continues to meet the requirements of paragraph (3)(A), the provisions of this subsection shall not apply to such trust as of the first day of the first taxable year beginning after the first taxable year for which it failed to meet the requirements of paragraph (3)(B).

(e) Electing small business trust defined

(1) Electing small business trust

For purposes of this section—

(A) In general

Except as provided in subparagraph (B), the term ''electing small business trust'' means any trust if—

(i) such trust does not have as a beneficiary any person other than (I) an individual, (II) an estate, (III) an organization described in paragraph (2), (3), (4), or (5) of section 170(c), or (IV) an organization described in section 170(c)(1) which holds a contingent interest in such trust and is not a potential current beneficiary,

(ii) no interest in such trust was acquired by purchase, and

(iii) an election under this subsection applies to such trust.

(B) Certain trusts not eligible

The term ''electing small business trust'' shall not include—

(i) any qualified subchapter S trust (as defined in subsection (d)(3)) if an election under subsection (d)(2) applies to any corporation the stock of which is held by such trust,

(ii) any trust exempt from tax under this subtitle, and

(iii) any charitable remainder annuity trust or charitable remainder unitrust (as defined in section 664(d)).

(C) Purchase

For purposes of subparagraph (A), the term ''purchase'' means any acquisition if the basis of the property acquired is determined under section 1012.

(2) Potential current beneficiary

For purposes of this section, the term ''potential current beneficiary'' means, with respect to any period, any person who at any time during such period is entitled to, or at the discretion of any person may receive, a distribution from the principal or income of the trust (determined without regard to any power of appointment to the extent such power remains unexercised at the end of such period). If a trust disposes of all of the stock which it holds in an S corporation, then, with respect to such corporation, the term ''potential current beneficiary'' does not include any person who first met the requirements of the preceding sentence during the 1-year period ending on the date of such disposition.

(3) Election

An election under this subsection shall be made by the trustee. Any such election shall apply to the taxable year of the trust for which made and all subsequent taxable years of such trust unless revoked with the consent of the Secretary.

(4) Cross reference

For special treatment of electing small business trusts, see section 641(c).

(f) Restricted bank director stock

(1) In general

Restricted bank director stock shall not be taken into account as outstanding stock of the S corporation in applying this subchapter (other than section 1368(f)).

(2) Restricted bank director stock

For purposes of this subsection, the term ''restricted bank director stock'' means stock in a bank (as defined in section 581) or a depository institution holding company (as defined in section 3(w)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(1)),[1] if such stock—

(A) is required to be held by an individual under applicable Federal or State law in order to permit such individual to serve as a director, and

(B) is subject to an agreement with such bank or company (or a corporation which controls (within the meaning of section 368(c)) such bank or company) pursuant to which the holder is required to sell back such stock (at the same price as the individual acquired such stock) upon ceasing to hold the office of director.

(3) Cross reference

For treatment of certain distributions with respect to restricted bank director stock, see section 1368(f).

(g) Special rule for bank required to change from the reserve method of accounting on becoming S corporation

In the case of a bank which changes from the reserve method of accounting for bad debts de-

[1] So in original. Another closing parenthesis probably should precede the comma.

scribed in section 585 or 593 for its first taxable year for which an election under section 1362(a) is in effect, the bank may elect to take into account any adjustments under section 481 by reason of such change for the taxable year immediately preceding such first taxable year.

(Added Pub. L. 97–354, § 2, Oct. 19, 1982, 96 Stat. 1669; amended Pub. L. 98–369, div. A, title VII, § 721(c), (f), July 18, 1984, 98 Stat. 967; Pub. L. 99–514, title IX, § 901(d)(4)(G), title XVIII, § 1879(m)(1)(A), Oct. 22, 1986, 100 Stat. 2380, 2910; Pub. L. 100–647, title I, § 1018(q)(2), Nov. 10, 1988, 102 Stat. 3585; Pub. L. 101–239, title VII, § 7811(c)(6), Dec. 19, 1989, 103 Stat. 2407; Pub. L. 104–188, title I, §§ 1301–1302(c), 1303, 1304, 1308(a), (b), (d)(1), 1315, 1316(a), (e), 1616(b)(15), Aug. 20, 1996, 110 Stat. 1777, 1779, 1782, 1783, 1785, 1786, 1857; Pub. L. 105–34, title XVI, § 1601(c)(1), (3), (4)(B), (C), Aug. 5, 1997, 111 Stat. 1087; Pub. L. 105–206, title VI, § 6007(f)(3), July 22, 1998, 112 Stat. 810; Pub. L. 106–554, § 1(a)(7) [title III, § 316(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–644; Pub. L. 108–357, title II, §§ 231(a), 232(a), 233(a), (b), 234(a), 236(a), 239(a), Oct. 22, 2004, 118 Stat. 1433–1435, 1437; Pub. L. 109–135, title IV, §§ 403(b), 413(a)(1), (c), Dec. 21, 2005, 119 Stat. 2620, 2641; Pub. L. 110–28, title VIII, §§ 8232(a), 8233(a), 8234(a), May 25, 2007, 121 Stat. 197, 198; Pub. L. 115–97, title I, § 13541(a), Dec. 22, 2017, 131 Stat. 2154.)

References in Text

The date of the enactment of this clause, referred to in subsec. (c)(2)(A)(vi), is the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

Prior Provisions

A prior section 1361, acts Aug. 16, 1954, ch. 736, 68A Stat. 350; Oct. 10, 1962, Pub. L. 87–792, § 7(h), 76 Stat. 829; Feb. 26, 1964, Pub. L. 88–272, title II, § 225(k)(5), 78 Stat. 94; Apr. 14, 1966, Pub. L. 89–389, § 4(a), 80 Stat. 115, related to election of certain partnerships and proprietorships to be taxed as domestic corporations, prior to repeal by Pub. L. 89–389, § 4(b)(1), Apr. 14, 1966, 80 Stat. 116, effective Jan. 1, 1969.

Amendments

2017—Subsec. (c)(2)(B)(v). Pub. L. 115–97 inserted at end ''This clause shall not apply for purposes of subsection (b)(1)(C).''

2007—Subsec. (b)(3)(C). Pub. L. 110–28, § 8234(a), designated existing provisions as cl. (i), inserted cl. (i) heading, and added cl. (ii).

Subsec. (f). Pub. L. 110–28, § 8232(a), added subsec. (f).

Subsec. (g). Pub. L. 110–28, § 8233(a), added subsec. (g).

2005—Subsec. (b)(3)(A). Pub. L. 109–135, § 413(c)(1), struck out ''and in the case of information returns required under part III of subchapter A of chapter 61'' after ''Secretary''.

Subsec. (b)(3)(E). Pub. L. 109–135, § 413(c)(2), added subpar. (E).

Subsec. (c)(1). Pub. L. 109–135, § 403(b), reenacted heading without change and amended text generally. Prior to amendment, text consisted of subpars. (A) to (D) relating to treatment as 1 shareholder, family members, adoption, and election.

Subsec. (c)(2)(A)(vi). Pub. L. 109–135, § 413(a)(1), inserted ''or a depository institution holding company (as defined in section 3(w)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(1))'' after ''a bank (as defined in section 581)'' and ''or company'' after ''such bank''.

2004—Subsec. (b)(1)(A). Pub. L. 108–357, § 232(a), substituted ''100'' for ''75''.

Subsec. (b)(3)(A). Pub. L. 108–357, § 239(a), inserted ''and in the case of information returns required under part III of subchapter A of chapter 61'' after ''Secretary''.

Subsec. (c)(1). Pub. L. 108–357, § 231(a), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: ''For purposes of subsection (b)(1)(A), a husband and wife (and their estates) shall be treated as 1 shareholder.''

Subsec. (c)(2)(A)(vi). Pub. L. 108–357, § 233(a), added cl. (vi).

Subsec. (c)(2)(B)(vi). Pub. L. 108–357, § 233(b), added cl. (vi).

Subsec. (d)(1)(C). Pub. L. 108–357, § 236(a), added subpar. (C).

Subsec. (e)(2). Pub. L. 108–357, § 234(a), inserted ''(determined without regard to any power of appointment to the extent such power remains unexercised at the end of such period)'' after ''of the trust'' and substituted ''1-year'' for ''60-day''.

2000—Subsec. (e)(1)(A)(i)(IV). Pub. L. 106–554 added subcl. (IV).

1998—Subsec. (e)(4). Pub. L. 105–206 substituted ''section 641(c)'' for ''section 641(d)''.

1997—Subsec. (b)(1)(B). Pub. L. 105–34, § 1601(c)(4)(C), substituted ''subsection (c)(6)'' for ''subsection (c)(7)''.

Subsec. (b)(3)(A). Pub. L. 105–34, § 1601(c)(3), substituted ''Except as provided in regulations prescribed by the Secretary, for purposes of this title'' for ''For purposes of this title''.

Subsec. (c)(6), (7). Pub. L. 105–34, § 1601(c)(4)(B), redesignated par. (7) as (6).

Subsec. (e)(1)(B)(iii). Pub. L. 105–34, § 1601(c)(1), added cl. (iii).

1996—Subsec. (b)(1)(A). Pub. L. 104–188, § 1301, substituted ''75'' for ''35''.

Subsec. (b)(1)(B). Pub. L. 104–188, § 1316(a)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''have as a shareholder a person (other than an estate and other than a trust described in subsection (c)(2)) who is not an individual,''.

Subsec. (b)(2)(A). Pub. L. 104–188, § 1315, amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''a financial institution to which section 585 applies (or would apply but for subsection (c) thereof),''.

Pub. L. 104–188, § 1308(a), redesignated subpar. (B) as (A) and struck out former subpar. (A) which read as follows: ''a member of an affiliated group (determined under section 1504 without regard to the exceptions contained in subsection (b) thereof),''.

Subsec. (b)(2)(B). Pub. L. 104–188, § 1308(a), redesignated subpar. (C) as (B). Former subpar. (B) redesignated (A).

Pub. L. 104–188, § 1616(b)(15), struck out ''or to which section 593 applies'' after ''subsection (c) thereof)''.

Subsec. (b)(2)(C) to (E). Pub. L. 104–188, § 1308(a), redesignated subpars. (D) and (E) as (C) and (D), respectively. Former subpar. (C) redesignated (B).

Subsec. (b)(3). Pub. L. 104–188, § 1308(b), added par. (3).

Subsec. (c)(2)(A)(ii). Pub. L. 104–188, § 1303, substituted ''2-year period'' for ''60-day period'' in first sentence and struck out at end ''If a trust is described in the preceding sentence and if the entire corpus of the trust is includible in the gross estate of the deemed owner, the preceding sentence shall be applied by substituting '2-year period' for '60-day period'.''

Subsec. (c)(2)(A)(iii). Pub. L. 104–188, § 1303(1), substituted ''2-year period'' for ''60-day period''.

Subsec. (c)(2)(A)(v). Pub. L. 104–188, § 1302(a), added cl. (v).

Subsec. (c)(2)(B)(v). Pub. L. 104–188, § 1302(b), added cl. (v).

Subsec. (c)(5)(B)(iii). Pub. L. 104–188, § 1304, substituted ''a trust described in paragraph (2), or a person which is actively and regularly engaged in the business of lending money'' for ''or a trust described in paragraph (2)''.

Subsec. (c)(6). Pub. L. 104–188, § 1308(d)(1), struck out par. (6) which read as follows:

''(6) Ownership of stock in certain inactive corporations.—For purposes of subsection (b)(2)(A), a cor-

poration shall not be treated as a member of an affiliated group during any period within a taxable year by reason of the ownership of stock in another corporation if such other corporation—

''(A) has not begun business at any time on or before the close of such period, and

''(B) does not have gross income for such period.''

Subsec. (c)(7). Pub. L. 104–188, §1316(a)(2), added par. (7).

Subsec. (e). Pub. L. 104–188, §1302(c), added subsec. (e).

Subsec. (e)(1)(A)(i). Pub. L. 104–188, §1316(e), struck out ''which holds a contingent interest and is not a potential current beneficiary'' after ''170(c)''.

1989—Subsec. (b)(2)(B). Pub. L. 101–239 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''a financial institution which is a bank (as defined in section 585(a)(2)) or to which section 593 applies,''.

1988—Subsec. (d)(3). Pub. L. 100–647 substituted ''within the meaning of'' for ''treated as a separate trust under'' in last sentence.

1986—Subsec. (b)(2)(B). Pub. L. 99–514, §901(d)(4)(G), substituted ''which is a bank (as defined in section 585(a)(2)) or to which section 593 applies'' for ''to which section 585 or 593 applies''.

Subsec. (d)(3). Pub. L. 99–514, §1879(m)(1)(A), inserted at end ''A substantially separate and independent share of a trust treated as a separate trust under section 663(c) shall be treated as a separate trust for purposes of this subsection and subsection (c).''

1984—Subsec. (c)(6). Pub. L. 98–369, §721(c), amended par. (6) generally, substituting ''during any period within a taxable year'' for ''during any taxable year'' in provisions preceding subpar. (A), and substituting ''on or before the close of such period'' for ''on or after the date of its incorporation and before the close of such taxable year'' in subpar. (A), and ''does not have gross income for such period'' for ''does not have taxable income for the period included within such taxable year'' in subpar. (B).

Subsec. (d)(2)(B)(i). Pub. L. 98–369, §721(f)(3), substituted ''corporation'' for ''S corporation'' in heading and text.

Subsec. (d)(2)(D). Pub. L. 98–369, §721(f)(1), substituted ''15 days and 2 months'' for ''60 days''.

Subsec. (d)(3). Pub. L. 98–369, §721(f)(2), in amending par. (3) generally, redesignated subpar. (C) as (A), substituted a period for '', and'' at end of subpar. (B), and struck out former subpar. (A) which read ''which owns stock in 1 or more S corporations''.

Subsec. (d)(4). Pub. L. 98–369, §721(f)(2), in amending par. (4) generally, redesignated existing provisions as subpar. (A), inserted ''Failure to meet requirements of paragraph (3)(A)'' as subpar. (A) heading, substituted ''of paragraph (3)(A)'' for ''under paragraph (3)'', and added subpar. (B).

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–97, title I, §13541(b), Dec. 22, 2017, 131 Stat. 2154, provided that: ''The amendment made by this section [amending this section] shall take effect on January 1, 2018.''

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–28, title VIII, §8232(c), May 25, 2007, 121 Stat. 198, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 1368 of this title] shall apply to taxable years beginning after December 31, 2006.

''(2) SPECIAL RULE FOR TREATMENT AS SECOND CLASS OF STOCK.—In the case of any taxable year beginning after December 31, 1996, restricted bank director stock (as defined in section 1361(f) of the Internal Revenue Code of 1986, as added by this section) shall not be taken into account in determining whether an S corporation has more than 1 class of stock.''

Pub. L. 110–28, title VIII, §8233(b), May 25, 2007, 121 Stat. 198, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2006.''

Pub. L. 110–28, title VIII, §8234(b), May 25, 2007, 121 Stat. 199, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2006.''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 403(b) 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.

Pub. L. 109–135, title IV, §413(d), Dec. 21, 2005, 119 Stat. 2642, provided that: ''The amendments made by this section [amending this section and sections 1362 and 4975 of this title] shall take effect as if included in the provisions of the American Jobs Creation Act of 2004 [Pub. L. 108–357] to which they relate.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title II, §231(c)(1), Oct. 22, 2004, 118 Stat. 1433, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 2004.''

Pub. L. 108–357, title II, §232(b), Oct. 22, 2004, 118 Stat. 1434, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2004.''

Amendment by section 233(a), (b) of Pub. L. 108–357 effective Oct. 22, 2004, see section 233(e) of Pub. L. 108–357, set out as a note under section 512 of this title.

Pub. L. 108–357, title II, §234(b), Oct. 22, 2004, 118 Stat. 1435, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2004.''

Pub. L. 108–357, title II, §236(b), Oct. 22, 2004, 118 Stat. 1435, provided that: ''The amendments made by this section [amending this section] shall apply to transfers made after December 31, 2004.''

Pub. L. 108–357, title II, §239(b), Oct. 22, 2004, 118 Stat. 1437, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2004.''

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 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 1(a)(7) [title III, §316(e)] of Pub. L. 106–554, set out as a note under section 51 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 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

Amendment by sections 1301–1302(c), 1303, 1304, 1308(a), (b), (d)(1), and 1315 of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1317(a) of Pub. L. 104–188, set out as a note under section 641 of this title.

Amendment by sections 1316(a), (e) 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.

Amendment by section 1616(b)(15) of 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 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 901(d)(4)(G) 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.

Pub. L. 99–514, title XVIII, §1879(m)(2), Oct. 22, 1986, 100 Stat. 2910, provided that: ''The amendments made by this subsection [amending this section and section 1368 of this title] shall apply to taxable years beginning after December 31, 1982.''

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title VII, §721(y), July 18, 1984, 98 Stat. 972, 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, any amendment made by this section [amending this section, sections 48, 108, 267, 318, 465, 1362, 1363, 1367, 1368, 1371, 1374, 1375, 1378, 1379, 6362, and 6659 and provisions set out as a note under this section] shall take effect as if included in the Subchapter S Revision Act of 1982 [Pub. L. 97–354].

''(2) AMENDMENT MADE BY SUBSECTION (b)(2).—Subparagraph (C) of section 108(d)(7) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by subsection (b)(2)) shall apply to contributions to capital after December 31, 1980, in taxable years ending after such date.

''(3) AMENDMENT MADE BY SUBSECTION (g)(1).—If—

''(A) any portion of a qualified stock purchase is pursuant to a binding contract entered into on or after October 19, 1982, and before the date of the enactment of this Act [July 18, 1984], and

''(B) the purchasing corporation establishes by clear and convincing evidence that such contract was negotiated on the contemplation that, with respect to the deemed sale under section 338 of the Internal Revenue Code of 1986, paragraph (2) of section 1362(e) of such Code would apply,

then the amendment made by paragraph (1) of subsection (g) [amending section 1362 of this title] shall not apply to such qualified stock purchase.

''(4) AMENDMENTS MADE BY SUBSECTION *(l)*.—The amendments made by subsection (*l*) [amending section 1362 of this title] shall apply to any election under section 1362 of the Internal Revenue Code of 1986 (or any corresponding provision of prior law) made after October 19, 1982.

''(5) AMENDMENT MADE BY SUBSECTION (t).—If—

''(A) on or before the date of the enactment of this Act [July 18, 1984] 50 percent or more of the stock of an S corporation has been sold or exchanged in 1 or more transactions, and

''(B) the person (or persons) acquiring such stock establish by clear and convincing evidence that such acquisitions were negotiated on the contemplation that paragraph (2) of section 1362(e) of the Internal Revenue Code of 1986 would apply to the S termination year in which such sales or exchanges occur,

then the amendment made by subsection (t) [amending section 1362 of this title] shall not apply to such S termination year.''

EFFECTIVE DATE

Pub. L. 97–354, §6, Oct. 19, 1982, 96 Stat. 1697, as amended by Pub. L. 97–448, title III, §305(d)(1)(A), Jan. 12, 1983, 96 Stat. 2399; Pub. L. 98–369, div. A, title VII, §721(i), (k), July 18, 1984, 98 Stat. 969; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) IN GENERAL.—Except as otherwise provided in this section, the amendments made by this Act [enacting this section and sections 1362, 1363, 1366 to 1368, 1371 to 1375, 1377 to 1379, and 6241 to 6245 of this title, amending sections 31, 44D to 44F, 46, 48, 50A, 50B, 52, 53, 55, 57, 58, 62, 108, 163, 168, 170, 172, 179, 183, 189, 194, 267, 280, 280A, 291, 447, 464, 465, 613A, 992, 1016, 1101, 1212, 1251, 1254, 1256, 3453, 3454, 4992, 4996, 6037, 6042, 6362, and 6661 of this title and section 1108 of Title 29, Labor, omitting section 1376 of this title, and enacting provisions set out as a note under section 1 of this title] shall apply to taxable years beginning after December 31, 1982.

''(b) TRANSITIONAL RULES.—

''(1) SECTIONS 1379 AND 62(9) CONTINUE TO APPLY FOR 1983.—Sections 1379 and 62(9) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect before the date of the enactment of this Act [Oct. 19, 1982]) shall remain in effect for years beginning before January 1, 1984.

''(2) ALLOWANCE OF EXCLUSION OF DEATH BENEFIT.—Notwithstanding section 241(b) of the Tax Equity and Fiscal Responsibility Act of 1982 [section 241(b) of Pub. L. 97–248, set out as a note under section 416 of this title] in the case of amounts received under a plan of an S corporation, the amendment made by section 239 of such Act [section 239 of Pub. L. 97–248, amending section 101 of this title] shall apply with respect to decedents dying after December 31, 1982.

''(3) NEW PASSIVE INCOME RULES APPLY TO TAXABLE YEARS BEGINNING DURING 1982.—In the case of a taxable year beginning during 1982—

''(A) sections 1362(d)(3), 1366(f)(3), and 1375 of the Internal Revenue Code of 1986 (as amended by this Act [Pub. L. 97–354]) shall apply, and

''(B) section 1372(e)(5) of such Code (as in effect on the day before the date of the enactment of this Act [Oct. 19, 1982]) shall not apply.

The preceding sentence shall not apply in the case of any corporation which elects (at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe) to have such sentence not apply. Subsection (e) shall not apply to any termination resulting from an election under the preceding sentence.

''(c) GRANDFATHER RULES.—

''(1) SUBSIDIARIES WHICH ARE FOREIGN CORPORATIONS OR DISC'S.—In the case of any corporation which on September 28, 1982, would have been a member of the same affiliated group as an electing small business corporation but for paragraph (3) or (7) of section 1504(b) of the Internal Revenue Code of 1986, subparagraph (A) of section 1361(b)(2) of such Code (as amended by section 2) shall be applied by substituting 'without regard to the exceptions contained in paragraphs (1), (2), (4), (5), and (6) of subsection (b) thereof' for 'without regard to the exceptions contained in subsection (b) thereof'.

''(2) CASUALTY INSURANCE COMPANIES.—

''(A) IN GENERAL.—In the case of any qualified casualty insurance electing small business corporation—

''(i) the amendments made by this Act shall not apply, and

''(ii) subchapter S (as in effect on July 1, 1982) of chapter 1 of the Internal Revenue Code of 1986 [former sections 1371 to 1379 of this title] and part III of subchapter L of chapter 1 of such Code [section 831 et seq. of this title] shall apply.

''(B) QUALIFIED CASUALTY INSURANCE ELECTING SMALL BUSINESS CORPORATION.—The term 'qualified casualty insurance electing small business corporation' means any corporation described in section 831(a) of the Internal Revenue Code of 1986 if—

''(i) as of July 12, 1982, such corporation was an electing small business corporation and was described in section 831(a) of such Code,

''(ii) such corporation was formed before April 1, 1982, and proposed (through a written private offering first circulated to investors before such date) to elect to be taxed as a subchapter S corporation and to be operated on an established insurance exchange, or

''(iii) such corporation is approved for membership on an established insurance exchange pursuant to a written agreement entered into before December 31, 1982, and such corporation is described in section 831(a) of such Code as of December 31, 1984.

A corporation shall not be treated as a qualified casualty insurance electing small business corporation unless an election under subchapter S of chapter 1 of such Code is in effect for its first taxable year beginning after December 31, 1984.

''(3) CERTAIN CORPORATIONS WITH OIL AND GAS PRODUCTION.—

''(A) IN GENERAL.—In the case of any qualified oil corporation—

''(i) the amendments made by this Act shall not apply, and

''(ii) subchapter S (as in effect on July 1, 1982) of chapter 1 of the Internal Revenue Code of 1986 [former sections 1371 to 1379 of this title] shall apply.

''(B) QUALIFIED OIL CORPORATION.—For purposes of this paragraph, the term 'qualified oil corporation' means any corporation if—

''(i) as of September 28, 1982, such corporation—

''(I) was an electing small business corporation, or

''(II) was a small business corporation which made an election under section 1372(a) after December 31, 1981, and before September 28, 1982,

''(ii) for calendar year 1982, the combined average daily production of domestic crude oil or natural gas of such corporation and any one of its substantial shareholders exceeds 1,000 barrels, and

''(iii) such corporation makes an election under this subparagraph at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe.

''(C) AVERAGE DAILY PRODUCTION.—For purposes of subparagraph (B), the average daily production of domestic crude oil or domestic natural gas shall be determined under section 613A(c)(2) of such Code without regard to the last sentence thereof.

''(D) SUBSTANTIAL SHAREHOLDER.—For purposes of subparagraph (B), the term 'substantial shareholder' means any person who on July 1, 1982, owns more than 40 percent (in value) of the stock of the corporation.

''(4) CONTINUITY REQUIRED.—

''(A) IN GENERAL.—This subsection shall cease to apply with respect to any corporation after—

''(i) any termination of the election of the corporation under subchapter S of chapter 1 of such Code, or

''(ii) the first day on which more than 50 percent of the stock of the corporation is newly owned stock within the meaning of section 1378(c)(2) of such Code (as amended by this Act [Pub. L. 97–354]).

''(B) SPECIAL RULES FOR PARAGRAPH (2).—

''(i) Paragraph (2) shall also cease to apply with respect to any corporation after the corporation ceases to be described in section 831(a) of such Code.

''(ii) For purposes of determining under subparagraph (A)(ii) whether paragraph (2) ceases to apply to any corporation, section 1378(c)(2) of such Code (as amended by this Act [Pub. L. 97–354]) shall be applied by substituting 'December 31, 1984' for 'December 31, 1982' each place it appears therein.

''(d) TREATMENT OF EXISTING FRINGE BENEFIT PLANS.—

''(1) IN GENERAL.—In the case of existing fringe benefits of a corporation which as of September 28, 1982, was an electing small business corporation, section 1372 of the Internal Revenue Code of 1986 (as added by this Act [Pub. L. 97–354]) shall apply only with respect to taxable years beginning after December 31, 1987.

''(2) REQUIREMENTS.—This subsection shall cease to apply with respect to any corporation after whichever of the following first occurs:

''(A) the first day of the first taxable year beginning after December 31, 1982, with respect to which the corporation does not meet the requirements of section 1372(e)(5) of such Code (as in effect on the day before the date of the enactment of this Act [Oct. 19, 1982]),

''(B) any termination after December 31, 1982, of the election of the corporation under subchapter S of chapter 1 of such Code, or

''(C) the first day on which more than 50 percent of the stock of the corporation is newly owned stock within the meaning of section 1378(c)(2) of such Code (as amended by this Act [Pub. L. 97–354]).

''(3) EXISTING FRINGE BENEFIT.—For purposes of this subsection, the term 'existing fringe benefit' means any employee fringe benefit of a type which the corporation provided to its employees as of September 28, 1982.

''(e) TREATMENT OF CERTAIN ELECTIONS UNDER PRIOR LAW.—For purposes of section 1362(g) of the Internal Revenue Code of 1986, as amended by this Act [Pub. L. 97–354] (relating to no election permitted within 5 years after termination of prior election), any termination or revocation under section 1372(e) of such Code (as in effect on the day before the date of the enactment of this Act [Oct. 19, 1982]) shall not be taken into account.

''(f) TAXABLE YEAR OF S CORPORATIONS.—Section 1378 of the Internal Revenue Code of 1986 (as added by this Act [Pub. L. 97–354]) shall take effect on the day after the date of the enactment of this Act [Oct. 19, 1982]. For purposes of applying such section, the reference in subsection (a)(2) of such section to an election under section 1362(a) shall include a reference to an election under section 1372(a) of such Code as in effect on the day before the date of the enactment of this Act [Oct. 19, 1982].''

ELIMINATION OF ALL EARNINGS AND PROFITS ATTRIBUTABLE TO PRE-1983 YEARS FOR CERTAIN CORPORATIONS

Pub. L. 110–28, title VIII, §8235, May 25, 2007, 121 Stat. 199, provided that: ''In the case of a corporation which is—

''(1) described in section 1311(a)(1) of the Small Business Job Protection Act of 1996 [Pub. L. 104–188, set out below], and

''(2) not described in section 1311(a)(2) of such Act,

the amount of such corporation's accumulated earnings and profits (for the first taxable year beginning after the date of the enactment of this Act [May 25, 2007]) shall be reduced by an amount equal to the portion (if any) of such accumulated earnings and profits which were accumulated in any taxable year beginning before January 1, 1983, for which such corporation was an electing small business corporation under subchapter S of the Internal Revenue Code of 1986.''

ELIMINATION OF CERTAIN EARNINGS AND PROFITS

Pub. L. 104–188, title I, §1311(a), Aug. 20, 1996, 110 Stat. 1784, provided that: ''If—

''(1) a corporation was an electing small business corporation under subchapter S of chapter 1 of the Internal Revenue Code of 1986 for any taxable year beginning before January 1, 1983, and

''(2) such corporation is an S corporation under subchapter S of chapter 1 of such Code for its first taxable year beginning after December 31, 1996,

the amount of such corporation's accumulated earnings and profits (as of the beginning of such first taxable year) shall be reduced by an amount equal to the portion (if any) of such accumulated earnings and profits which were accumulated in any taxable year beginning before January 1, 1983, for which such corporation was an electing small business corporation under such subchapter S.''

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 PROVISIONS

Pub. L. 97–448, title III, § 305(d)(1)(B), Jan. 12, 1983, 96 Stat. 2399, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''If—

''(i) after September 30, 1982, and on or before the date of the enactment of this Act [Jan. 12, 1983], stock or securities were transferred to a small business corporation (as defined in section 1361(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] as amended by the Subchapter S Revision Act of 1982 [Pub. L. 97–354]) in a transaction to which section 351 of such Code applies, and

''(ii) such corporation is liquidated under section 333 of such Code before March 1, 1983,

then such stock or securities shall not be taken into account under section 333(e)(2) of such Code.''

§ 1362. Election; revocation; termination

(a) Election

(1) In general

Except as provided in subsection (g), a small business corporation may elect, in accordance with the provisions of this section, to be an S corporation.

(2) All shareholders must consent to election

An election under this subsection shall be valid only if all persons who are shareholders in such corporation on the day on which such election is made consent to such election.

(b) When made

(1) In general

An election under subsection (a) may be made by a small business corporation for any taxable year—

(A) at any time during the preceding taxable year, or

(B) at any time during the taxable year and on or before the 15th day of the 3d month of the taxable year.

(2) Certain elections made during 1st 2½ months treated as made for next taxable year

If—

(A) an election under subsection (a) is made for any taxable year during such year and on or before the 15th day of the 3d month of such year, but

(B) either—

(i) on 1 or more days in such taxable year before the day on which the election was made the corporation did not meet the requirements of subsection (b) of section 1361, or

(ii) 1 or more of the persons who held stock in the corporation during such taxable year and before the election was made did not consent to the election,

then such election shall be treated as made for the following taxable year.

(3) Election made after 1st 2½ months treated as made for following taxable year

If—

(A) a small business corporation makes an election under subsection (a) for any taxable year, and

(B) such election is made after the 15th day of the 3d month of the taxable year and on or before the 15th day of the 3rd month of the following taxable year,

then such election shall be treated as made for the following taxable year.

(4) Taxable years of 2½ months or less

For purposes of this subsection, an election for a taxable year made not later than 2 months and 15 days after the first day of the taxable year shall be treated as timely made during such year.

(5) Authority to treat late elections, etc., as timely

If—

(A) an election under subsection (a) is made for any taxable year (determined without regard to paragraph (3)) after the date prescribed by this subsection for making such election for such taxable year or no such election is made for any taxable year, and

(B) the Secretary determines that there was reasonable cause for the failure to timely make such election,

the Secretary may treat such an election as timely made for such taxable year (and paragraph (3) shall not apply).

(c) Years for which effective

An election under subsection (a) shall be effective for the taxable year of the corporation for which it is made and for all succeeding taxable years of the corporation, until such election is terminated under subsection (d).

(d) Termination

(1) By revocation

(A) In general

An election under subsection (a) may be terminated by revocation.

(B) More than one-half of shares must consent to revocation

An election may be revoked only if shareholders holding more than one-half of the shares of stock of the corporation on the day on which the revocation is made consent to the revocation.

(C) When effective

Except as provided in subparagraph (D)—

(i) a revocation made during the taxable year and on or before the 15th day of the 3d

month thereof shall be effective on the 1st day of such taxable year, and

(ii) a revocation made during the taxable year but after such 15th day shall be effective on the 1st day of the following taxable year.

(D) Revocation may specify prospective date

If the revocation specifies a date for revocation which is on or after the day on which the revocation is made, the revocation shall be effective on and after the date so specified.

(2) By corporation ceasing to be small business corporation

(A) In general

An election under subsection (a) shall be terminated whenever (at any time on or after the 1st day of the 1st taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation.

(B) When effective

Any termination under this paragraph shall be effective on and after the date of cessation.

(3) Where passive investment income exceeds 25 percent of gross receipts for 3 consecutive taxable years and corporation has accumulated earnings and profits

(A) Termination

(i) In general

An election under subsection (a) shall be terminated whenever the corporation—

(I) has accumulated earnings and profits at the close of each of 3 consecutive taxable years, and

(II) has gross receipts for each of such taxable years more than 25 percent of which are passive investment income.

(ii) When effective

Any termination under this paragraph shall be effective on and after the first day of the first taxable year beginning after the third consecutive taxable year referred to in clause (i).

(iii) Years taken into account

A prior taxable year shall not be taken into account under clause (i) unless the corporation was an S corporation for such taxable year.

(B) Gross receipts from the sales of certain assets

For purposes of this paragraph—

(i) in the case of dispositions of capital assets (other than stock and securities), gross receipts from such dispositions shall be taken into account only to the extent of the capital gain net income therefrom, and

(ii) in the case of sales or exchanges of stock or securities, gross receipts shall be taken into account only to the extent of the gains therefrom.

(C) Passive investment income defined

(i) In general

Except as otherwise provided in this subparagraph, the term ''passive investment income'' means gross receipts derived from royalties, rents, dividends, interest, and annuities.

(ii) Exception for interest on notes from sales of inventory

The term ''passive investment income'' shall not include interest on any obligation acquired in the ordinary course of the corporation's trade or business from its sale of property described in section 1221(a)(1).

(iii) Treatment of certain lending or finance companies

If the S corporation meets the requirements of section 542(c)(6) for the taxable year, the term ''passive investment income'' shall not include gross receipts for the taxable year which are derived directly from the active and regular conduct of a lending or finance business (as defined in section 542(d)(1)).

(iv) Treatment of certain dividends

If an S corporation holds stock in a C corporation meeting the requirements of section 1504(a)(2), the term ''passive investment income'' shall not include dividends from such C corporation to the extent such dividends are attributable to the earnings and profits of such C corporation derived from the active conduct of a trade or business.

(v) Exception for banks, etc.

In the case of a bank (as defined in section 581) or a depository institution holding company (as defined in section 3(w)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(1)),[1] the term ''passive investment income'' shall not include—

(I) interest income earned by such bank or company, or

(II) dividends on assets required to be held by such bank or company, including stock in the Federal Reserve Bank, the Federal Home Loan Bank, or the Federal Agricultural Mortgage Bank or participation certificates issued by a Federal Intermediate Credit Bank.

(e) Treatment of S termination year

(1) In general

In the case of an S termination year, for purposes of this title—

(A) S short year

The portion of such year ending before the 1st day for which the termination is effective shall be treated as a short taxable year for which the corporation is an S corporation.

(B) C short year

The portion of such year beginning on such 1st day shall be treated as a short taxable year for which the corporation is a C corporation.

(2) Pro rata allocation

Except as provided in paragraph (3) and subparagraphs (C) and (D) of paragraph (6), the de-

[1] So in original. Another closing parenthesis probably should precede the comma.

termination of which items are to be taken into account for each of the short taxable years referred to in paragraph (1) shall be made—

(A) first by determining for the S termination year—

(i) the amount of each of the items of income, loss, deduction, or credit described in section 1366(a)(1)(A), and

(ii) the amount of the nonseparately computed income or loss, and

(B) then by assigning an equal portion of each amount determined under subparagraph (A) to each day of the S termination year.

(3) Election to have items assigned to each short taxable year under normal tax accounting rules

(A) In general

A corporation may elect to have paragraph (2) not apply.

(B) Shareholders must consent to election

An election under this subsection shall be valid only if all persons who are shareholders in the corporation at any time during the S short year and all persons who are shareholders in the corporation on the first day of the C short year consent to such election.

(4) S termination year

For purposes of this subsection, the term ''S termination year'' means any taxable year of a corporation (determined without regard to this subsection) in which a termination of an election made under subsection (a) takes effect (other than on the 1st day thereof).

(5) Tax for C short year determined on annualized basis

(A) In general

The taxable income for the short year described in subparagraph (B) of paragraph (1) shall be placed on an annual basis by multiplying the taxable income for such short year by the number of days in the S termination year and by dividing the result by the number of days in the short year. The tax shall be the same part of the tax computed on the annual basis as the number of days in such short year is of the number of days in the S termination year.

(B) Section 443(d)(2) to apply

Subsection (d) of section 443 shall apply to the short taxable year described in subparagraph (B) of paragraph (1).

(6) Other special rules

For purposes of this title—

(A) Short years treated as 1 year for carryover purposes

The short taxable year described in subparagraph (A) of paragraph (1) shall not be taken into account for purposes of determining the number of taxable years to which any item may be carried back or carried forward by the corporation.

(B) Due date for S year

The due date for filing the return for the short taxable year described in subparagraph (A) of paragraph (1) shall be the same as the due date for filing the return for the short taxable year described in subparagraph (B) of paragraph (1) (including extensions thereof).

(C) Paragraph (2) not to apply to items resulting from section 338

Paragraph (2) shall not apply with respect to any item resulting from the application of section 338.

(D) Pro rata allocation for S termination year not to apply if 50-percent change in ownership

Paragraph (2) shall not apply to an S termination year if there is a sale or exchange of 50 percent or more of the stock in such corporation during such year.

(f) Inadvertent invalid elections or terminations

If—

(1) an election under subsection (a) or section 1361(b)(3)(B)(ii) by any corporation—

(A) was not effective for the taxable year for which made (determined without regard to subsection (b)(2)) by reason of a failure to meet the requirements of section 1361(b) or to obtain shareholder consents, or

(B) was terminated under paragraph (2) or (3) of subsection (d) or section 1361(b)(3)(C),

(2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent,

(3) no later than a reasonable period of time after discovery of the circumstances resulting in such ineffectiveness or termination, steps were taken—

(A) so that the corporation for which the election was made or the termination occurred is a small business corporation or a qualified subchapter S subsidiary, as the case may be, or

(B) to acquire the required shareholder consents, and

(4) the corporation for which the election was made or the termination occurred, and each person who was a shareholder in such corporation at any time during the period specified pursuant to this subsection, agrees to make such adjustments (consistent with the treatment of such corporation as an S corporation or a qualified subchapter S subsidiary, as the case may be) as may be required by the Secretary with respect to such period,

then, notwithstanding the circumstances resulting in such ineffectiveness or termination, such corporation shall be treated as an S corporation or a qualified subchapter S subsidiary, as the case may be[2] during the period specified by the Secretary.

(g) Election after termination

If a small business corporation has made an election under subsection (a) and if such election has been terminated under subsection (d), such corporation (and any successor corporation) shall not be eligible to make an election under subsection (a) for any taxable year before

[2] So in original. Probably should be followed by a comma.

its 5th taxable year which begins after the 1st taxable year for which such termination is effective, unless the Secretary consents to such election.

(Added Pub. L. 97–354, § 2, Oct. 19, 1982, 96 Stat. 1672; amended Pub. L. 98–369, div. A, title I, § 102(d)(2), title VII, § 721(g), (h), (*l*), (t), July 18, 1984, 98 Stat. 623, 968, 969, 971; Pub. L. 100–647, title I, §§ 1006(f)(6), 1007(g)(9), Nov. 10, 1988, 102 Stat. 3406, 3435; Pub. L. 104–188, title I, §§ 1305(a), (b), 1308(c), 1311(b)(1), Aug. 20, 1996, 110 Stat. 1779, 1780, 1783, 1784; Pub. L. 106–170, title V, § 532(c)(2)(T), Dec. 17, 1999, 113 Stat. 1931; Pub. L. 108–357, title II, §§ 231(b), 237(a), 238(a), Oct. 22, 2004, 118 Stat. 1433, 1436; Pub. L. 109–135, title IV, § 413(b), Dec. 21, 2005, 119 Stat. 2641; Pub. L. 110–28, title VIII, § 8231(a), May 25, 2007, 121 Stat. 196; Pub. L. 110–172, § 11(a)(25), Dec. 29, 2007, 121 Stat. 2487; Pub. L. 113–295, div. A, title II, § 221(a)(88), Dec. 19, 2014, 128 Stat. 4050.)

AMENDMENTS

2014—Subsec. (d)(3)(A)(iii). Pub. L. 113–295 substituted ''unless the corporation was an S corporation for such taxable year.'' for ''unless—

''(I) such taxable year began after December 31, 1981, and

''(II) the corporation was an S corporation for such taxable year.''

2007—Subsec. (d)(3)(B) to (F). Pub. L. 110–28 added subpars. (B) and (C) and struck out former subpar. (B), which related to gross receipts from dispositions of capital assets (other than stock and securities) being taken into account only to the extent of the capital gain net income therefrom, subpar. (C), which defined passive investment income, subpar. (D), which provided that, in the case of any options dealer or commodities dealer, passive investment income was to be determined by not taking into account any gain or loss from any section 1256 contract or property related to such a contract, subpar. (E), which related to certain dividends not being treated as passive investment income if an S corporation held stock in a C corporation meeting the requirements of section 1504(a)(2), and subpar. (F), which related to the exception from passive investment income for banks and depository institution holding companies.

Subsec. (f)(1). Pub. L. 110–172 substituted ''or section 1361(b)(3)(B)(ii)'' for '', section 1361(b)(3)(B)(ii), or section 1361(c)(1)(A)(ii)'' in introductory provisions and ''or section 1361(b)(3)(C)'' for '', section 1361(b)(3)(C), or section 1361(c)(1)(D)(iii)'' in subpar. (B).

2005—Subsec. (d)(3)(F). Pub. L. 109–135 substituted ''a depository institution holding company (as defined in section 3(w)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(1))'' for ''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))), or a financial holding company (within the meaning of section 2(p) of such Act)''.

2004—Subsec. (d)(3)(F). Pub. L. 108–357, § 237(a), added subpar. (F).

Subsec. (f). Pub. L. 108–357, § 238(a)(5), inserted ''or a qualified subchapter S subsidiary, as the case may be'' after ''S corporation'' in concluding provisions.

Subsec. (f)(1). Pub. L. 108–357, § 238(a)(1), inserted '', section 1361(b)(3)(B)(ii),'' after ''subsection (a)'' in introductory provisions.

Pub. L. 108–357, § 231(b)(1), inserted ''or section 1361(c)(1)(A)(ii)'' after ''section 1361(b)(3)(B)(ii),'' in introductory provisions.

Subsec. (f)(1)(B). Pub. L. 108–357, § 238(a)(2), inserted '', section 1361(b)(3)(C),'' after ''subsection (d)''.

Pub. L. 108–357, § 231(b)(2), inserted ''or section 1361(c)(1)(D)(iii)'' after ''section 1361(b)(3)(C),''.

Subsec. (f)(3)(A). Pub. L. 108–357, § 238(a)(3), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''so that the corporation is a small business corporation, or''.

Subsec. (f)(4). Pub. L. 108–357, § 238(a)(4), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''the corporation, and each person who was a shareholder in the corporation at any time during the period specified pursuant to this subsection, agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period,''.

1999—Subsec. (d)(3)(C)(ii). Pub. L. 106–170 substituted ''section 1221(a)(1)'' for ''section 1221(1)''.

1996—Subsec. (b)(5). Pub. L. 104–188, § 1305(b), added par. (5).

Subsec. (d)(3). Pub. L. 104–188, § 1311(b)(1)(A), in heading substituted ''accumulated'' for ''subchapter C''.

Subsec. (d)(3)(A)(i)(I). Pub. L. 104–188, § 1311(b)(1)(B), substituted ''accumulated'' for ''subchapter C''.

Subsec. (d)(3)(B) to (E). Pub. L. 104–188, § 1311(b)(1)(C), redesignated subpars. (C) to (F) as (B) to (E), respectively, and struck out former subpar. (B) which read as follows:

''(B) SUBCHAPTER C EARNINGS AND PROFITS.—For purposes of subparagraph (A), the term 'subchapter C earnings and profits' means earnings and profits of any corporation for any taxable year with respect to which an election under section 1362(a) (or under section 1372 of prior law) was not in effect.''

Subsec. (d)(3)(F). Pub. L. 104–188, § 1311(b)(1)(C), redesignated subpar. (F) as (E).

Pub. L. 104–188, § 1308(c), added subpar. (F).

Subsec. (f). Pub. L. 104–188, § 1305(a), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows:

''(f) INADVERTENT TERMINATIONS.—If—

''(1) an election under subsection (a) by any corporation was terminated under paragraph (2) or (3) of subsection (d),

''(2) the Secretary determines that the termination was inadvertent,

''(3) no later than a reasonable period of time after discovery of the event resulting in such termination, steps were taken so that the corporation is once more a small business corporation, and

''(4) the corporation, and each person who was a shareholder of the corporation at any time during the period specified pursuant to this subsection, agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period,

then, notwithstanding the terminating event, such corporation shall be treated as continuing to be an S corporation during the period specified by the Secretary.''

1988—Subsec. (d)(3)(D)(v). Pub. L. 100–647, § 1006(f)(6)(A), struck out cl. (v) which related to special rule for options and commodities dealers.

Subsec. (d)(3)(E). Pub. L. 100–647, § 1006(f)(6)(B), added subpar. (E).

Subsec. (e)(5)(B). Pub. L. 100–647, § 1007(g)(9), substituted ''Subsection (d)'' for ''Subsection (d)(2)''.

1984—Subsec. (b)(3)(B). Pub. L. 98–369, § 721(*l*)(2), substituted ''on or before the 15th day of the 3rd month of the following taxable year'' for ''on or before the last day of such taxable year''.

Subsec. (b)(4). Pub. L. 98–369, § 721(*l*)(1), added par. (4).

Subsec. (d)(3)(D)(v). Pub. L. 98–369, § 102(d)(2), added cl. (v).

Subsec. (e)(2). Pub. L. 98–369, § 721(g)(2), substituted ''as provided in paragraph (3) and subparagraphs (C) and (D) of paragraph (6)'' for ''as provided in paragraph (3)''.

Subsec. (e)(3)(B). Pub. L. 98–369, § 721(h), struck out ''All'' in heading, and substituted ''subsection'' for ''paragraph'' and ''S short year and all persons who are shareholders in the corporation on the first day of the C short year'' for ''S termination year'' in text.

Subsec. (e)(6)(C). Pub. L. 98–369, § 721(g)(1), added subpar. (C).

Subsec. (e)(6)(D). Pub. L. 98–369, § 721(t), added subpar. (D).

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 2007 AMENDMENT

Pub. L. 110–28, title VIII, § 8231(b), May 25, 2007, 121 Stat. 197, 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 [May 25, 2007].''

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 413(d) of Pub. L. 109–135, set out as a note under section 1361 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title II, § 231(c)(2), Oct. 22, 2004, 118 Stat. 1434, provided that: ''The amendments made by subsection (b) [amending this section] shall apply to elections and terminations made after December 31, 2004.''

Pub. L. 108–357, title II, § 237(b), Oct. 22, 2004, 118 Stat. 1436, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2004.''

Pub. L. 108–357, title II, § 238(b), Oct. 22, 2004, 118 Stat. 1436, provided that: ''The amendments made by this section [amending this section] shall apply to elections made and terminations made 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

Pub. L. 104–188, title I, § 1305(c), Aug. 20, 1996, 110 Stat. 1780, provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply with respect to elections for taxable years beginning after December 31, 1982.''

Amendment by sections 1308(c) and 1311(b)(1) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1317(a) of Pub. L. 104–188, set out as a note under section 641 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 1984 AMENDMENT

Amendment by section 102(d)(2) of Pub. L. 98–369 applicable to positions established after July 18, 1984, in taxable years ending after that date except as otherwise provided, see section 102(f), (g) of Pub. L. 98–369, set out as a note under section 1256 of this title.

Amendment by section 721(g), (h), (*l*), (t) of Pub. L. 98–369 effective as if included in the Subchapter S Revision Act of 1982, Pub. L. 97–354, except that amendment by section 721(g)(1) is not applicable to certain qualified stock purchases, amendment by section 721(*l*) is applicable to any election under this section (or any corresponding provision of prior law) made after Oct. 19, 1982, and amendment by section 721(t) is not applicable to certain S termination years, see section 721(y) of Pub. L. 98–369, set out as a note under section 1361 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1982, except that in the case of a taxable year beginning during 1982, subsec. (d)(3) of this section and sections 1366(f)(3) and 1375 of this title shall apply, and section 1372(e)(5) of this title as in effect on the day before Oct. 19, 1982, shall not apply, see section 6(a), (b)(3) of Pub. L. 97–354, set out as a note under section 1361 of this title. For additional provisions relating to the treatment of certain elections under prior law for purposes of subsec. (g) of this section, see section 6(e) of Pub. L. 97–354, set out as a note under section 1361 of this title.

TREATMENT OF CERTAIN ELECTIONS UNDER PRIOR LAW

Pub. L. 104–188, title I, § 1317(b), Aug. 20, 1996, 110 Stat. 1787, provided that: ''For purposes of section 1362(g) of the Internal Revenue Code of 1986 (relating to election after termination), any termination under section 1362(d) of such Code in a taxable year beginning before January 1, 1997, shall not be taken into account.''

SUBCHAPTER S ELECTION

Pub. L. 98–369, div. A, title I, § 102(d)(3), July 18, 1984, 98 Stat. 623, as amended by Pub. L. 99–514, § 2, title XVIII, § 1808(a)(2), Oct. 22, 1986, 100 Stat. 2095, 2817, provided that: ''If a commodities dealer or an options dealer—

''(A) becomes a small business corporation (as defined in section 1361(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) at any time before the close of the 75th day after the date of the enactment of this Act [July 18, 1984], and

''(B) makes the election under section 1362(a) of such Code before the close of such 75th day,

then such dealer shall be treated as having received approval for and adopted a taxable year beginning on the first day during 1984 on which it was a small business corporation (as so defined) or such other day as may be permitted under regulations and ending on the date determined under section 1378 of such Code and such election shall be effective for such taxable year.''

§ 1363. Effect of election on corporation

(a) General rule

Except as otherwise provided in this subchapter, an S corporation shall not be subject to the taxes imposed by this chapter.

(b) Computation of corporation's taxable income

The taxable income of an S corporation shall be computed in the same manner as in the case of an individual, except that—

(1) the items described in section 1366(a)(1)(A) shall be separately stated,

(2) the deductions referred to in section 703(a)(2) shall not be allowed to the corporation,

(3) section 248 shall apply, and

(4) section 291 shall apply if the S corporation (or any predecessor) was a C corporation for any of the 3 immediately preceding taxable years.

(c) Elections of the S corporation

(1) In general

Except as provided in paragraph (2), any election affecting the computation of items derived from an S corporation shall be made by the corporation.

(2) Exceptions

In the case of an S corporation, elections under the following provisions shall be made by each shareholder separately—

(A) section 617 (relating to deduction and recapture of certain mining exploration expenditures), and

(B) section 901 (relating to taxes of foreign countries and possessions of the United States).

(d) Recapture of LIFO benefits

(1) In general

If—

(A) an S corporation was a C corporation for the last taxable year before the first taxable year for which the election under section 1362(a) was effective, and

(B) the corporation inventoried goods under the LIFO method for such last taxable year,

the LIFO recapture amount shall be included in the gross income of the corporation for such last taxable year (and appropriate adjustments to the basis of inventory shall be made to take into account the amount included in gross income under this paragraph).

(2) Additional tax payable in installments

(A) In general

Any increase in the tax imposed by this chapter by reason of this subsection shall be payable in 4 equal installments.

(B) Date for payment of installments

The first installment under subparagraph (A) shall be paid on or before the due date (determined without regard to extensions) for the return of the tax imposed by this chapter for the last taxable year for which the corporation was a C corporation and the 3 succeeding installments shall be paid on or before the due date (as so determined) for the corporation's return for the 3 succeeding taxable years.

(C) No interest for period of extension

Notwithstanding section 6601(b), for purposes of section 6601, the date prescribed for the payment of each installment under this paragraph shall be determined under this paragraph.

(3) LIFO recapture amount

For purposes of this subsection, the term ''LIFO recapture amount'' means the amount (if any) by which—

(A) the inventory amount of the inventory asset under the first-in, first-out method authorized by section 471, exceeds

(B) the inventory amount of such assets under the LIFO method.

For purposes of the preceding sentence, inventory amounts shall be determined as of the close of the last taxable year referred to in paragraph (1).

(4) Other definitions

For purposes of this subsection—

(A) LIFO method

The term ''LIFO method'' means the method authorized by section 472.

(B) Inventory assets

The term ''inventory assets'' means stock in trade of the corporation, or other property of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable year.

(C) Method of determining inventory amount

The inventory amount of assets under a method authorized by section 471 shall be determined—

(i) if the corporation uses the retail method of valuing inventories under section 472, by using such method, or

(ii) if clause (i) does not apply, by using cost or market, whichever is lower.

(D) Not treated as member of affiliated group

Except as provided in regulations, the corporation referred to in paragraph (1) shall not be treated as a member of an affiliated group with respect to the amount included in gross income under paragraph (1).

(5) Special rule

Sections 1367(a)(2)(D) and 1371(c)(1) shall not apply with respect to any increase in the tax imposed by reason of this subsection.

(Added Pub. L. 97–354, §2, Oct. 19, 1982, 96 Stat. 1676; amended Pub. L. 98–369, div. A, title VII, §721(a), (b)(1), (p), July 18, 1984, 98 Stat. 966, 970; Pub. L. 99–514, title V, §511(d)(2)(C), title VI, §632(b), title VII, §701(e)(4)(J), Oct. 22, 1986, 100 Stat. 2249, 2277, 2343; Pub. L. 100–203, title X, §10227(a), Dec. 22, 1987, 101 Stat. 1330–416; Pub. L. 100–647, title I, §1006(f)(7), title II, §2004(n), Nov. 10, 1988, 102 Stat. 3407, 3608; Pub. L. 109–135, title IV, §411(a), Dec. 21, 2005, 119 Stat. 2636.)

AMENDMENTS

2005—Subsec. (d)(5). Pub. L. 109–135 added par. (5).

1988—Subsec. (d). Pub. L. 100–647, §1006(f)(7), struck out subsec. (d) which related to distributions of appreciated property.

Subsec. (d)(4)(D). Pub. L. 100–647, §2004(n), added subpar. (D).

Subsec. (e). Pub. L. 100–647, §1006(f)(7), struck out subsec. (e) which provided that subsec. (d) not apply to reorganizations, etc.

1987—Subsec. (d). Pub. L. 100–203 added subsec. (d) relating to recapture of LIFO benefits.

1986—Subsec. (a). Pub. L. 99–514, §701(e)(4)(J), struck out ''and in section 58(d)'' after ''this subchapter''.

Subsec. (c)(2). Pub. L. 99–514, §511(d)(2)(C), redesignated subpars. (B) and (C) as (A) and (B), respectively, and struck out former subpar. (A) which read as follows: ''section 163(d) (relating to limitation on interest on investment indebtedness),''.

Subsec. (e). Pub. L. 99–514, §632(b), amended subsec. (e) generally, substituting ''reorganizations, etc.'' for ''complete liquidations and reorganizations'', in heading and in text struck out reference to property in complete liquidation of the corporation.

1984—Subsec. (b)(4). Pub. L. 98–369, §721(p), added par. (4).

Subsec. (c)(2). Pub. L. 98–369, §721(b)(1), redesignated subpars. (B) to (D) as (A) to (C), respectively, and struck out subpar. (A) which provided ''subsection (b)(5) or (d)(4) of section 108 (relating to income from discharge of indebtedness),''.

Subsec. (d). Pub. L. 98–369, §721(a)(2), substituted ''Except as provided in subsection (e), if'' for ''If''.

Subsec. (e). Pub. L. 98–369, §721(a)(1), added subsec. (e).

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–135, title IV, §411(b), Dec. 21, 2005, 119 Stat. 2636, provided that: ''The amendment made by this section [amending this section] shall take effect as if included in section 10227 of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203].''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1006(f)(7) 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(n) 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, §10227(b), Dec. 22, 1987, 101 Stat. 1330–417, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2) the amendment made by subsection (a) [amending this section] shall apply in the case of elections made after December 17, 1987.

''(2) EXCEPTION.—The amendment made by subsection (a) shall not apply in the case of any election made by a corporation after December 17, 1987, and before January 1, 1989, if, on or before December 17, 1987—

''(A) there was a resolution adopted by the board of directors of such corporation to make an election under subchapter S of chapter 1 of the Internal Revenue Code of 1986, or

''(B) there was a ruling request with respect to the business filed with the Internal Revenue Service expressing an intent to make such an election.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 511(d)(2)(C) 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 632(b) 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)(J) 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 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective as if included in the Subchapter S Revision Act of 1982, Pub. L. 97–354, see section 721(y)(1) of Pub. L. 98–369, set out as a note under section 1361 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as a note under section 1361 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)(J) 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.

PART II—TAX TREATMENT OF SHAREHOLDERS

Sec.

§ 1366. Pass-thru of items to shareholders

(a) Determination of shareholder's tax liability

(1) In general

In determining the tax under this chapter of a shareholder for the shareholder's taxable year in which the taxable year of the S corporation ends (or for the final taxable year of a shareholder who dies, or of a trust or estate which terminates, before the end of the corporation's taxable year), there shall be taken into account the shareholder's pro rata share of the corporation's—

(A) items of income (including tax-exempt income), loss, deduction, or credit the separate treatment of which could affect the liability for tax of any shareholder, and

(B) nonseparately computed income or loss.

For purposes of the preceding sentence, the items referred to in subparagraph (A) shall include amounts described in paragraph (4) or (6) of section 702(a).

(2) Nonseparately computed income or loss defined

For purposes of this subchapter, the term ''nonseparately computed income or loss'' means gross income minus the deductions allowed to the corporation under this chapter, determined by excluding all items described in paragraph (1)(A).

(b) Character passed thru

The character of any item included in a shareholder's pro rata share under paragraph (1) of subsection (a) shall be determined as if such item were realized directly from the source from which realized by the corporation, or incurred in the same manner as incurred by the corporation.

(c) Gross income of a shareholder

In any case where it is necessary to determine the gross income of a shareholder for purposes of this title, such gross income shall include the shareholder's pro rata share of the gross income of the corporation.

(d) Special rules for losses and deductions

(1) Cannot exceed shareholder's basis in stock and debt

The aggregate amount of losses and deductions taken into account by a shareholder under subsection (a) for any taxable year shall not exceed the sum of—

(A) the adjusted basis of the shareholder's stock in the S corporation (determined with regard to paragraphs (1) and (2)(A) of section 1367(a) for the taxable year), and

(B) the shareholder's adjusted basis of any indebtedness of the S corporation to the shareholder (determined without regard to any adjustment under paragraph (2) of section 1367(b) for the taxable year).

(2) Indefinite carryover of disallowed losses and deductions

(A) In general

Except as provided in subparagraph (B), any loss or deduction which is disallowed for

any taxable year by reason of paragraph (1) shall be treated as incurred by the corporation in the succeeding taxable year with respect to that shareholder.

(B) Transfers of stock between spouses or incident to divorce

In the case of any transfer described in section 1041(a) of stock of an S corporation, any loss or deduction described in subparagraph (A) with respect such stock shall be treated as incurred by the corporation in the succeeding taxable year with respect to the transferee.

(3) Carryover of disallowed losses and deductions to post-termination transition period

(A) In general

If for the last taxable year of a corporation for which it was an S corporation a loss or deduction was disallowed by reason of paragraph (1), such loss or deduction shall be treated as incurred by the shareholder on the last day of any post-termination transition period.

(B) Cannot exceed shareholder's basis in stock

The aggregate amount of losses and deductions taken into account by a shareholder under subparagraph (A) shall not exceed the adjusted basis of the shareholder's stock in the corporation (determined at the close of the last day of the post-termination transition period and without regard to this paragraph).

(C) Adjustment in basis of stock

The shareholder's basis in the stock of the corporation shall be reduced by the amount allowed as a deduction by reason of this paragraph.

(D) At-risk limitations

To the extent that any increase in adjusted basis described in subparagraph (B) would have increased the shareholder's amount at risk under section 465 if such increase had occurred on the day preceding the commencement of the post-termination transition period, rules similar to the rules described in subparagraphs (A) through (C) shall apply to any losses disallowed by reason of section 465(a).

(4) Application of limitation on charitable contributions

In the case of any charitable contribution of property to which the second sentence of section 1367(a)(2) applies, paragraph (1) shall not apply to the extent of the excess (if any) of—

(A) the shareholder's pro rata share of such contribution, over

(B) the shareholder's pro rata share of the adjusted basis of such property.

(e) Treatment of family group

If an individual who is a member of the family (within the meaning of section 704(e)(3))[1] of one or more shareholders of an S corporation renders services for the corporation or furnishes capital to the corporation without receiving reasonable compensation therefor, the Secretary shall make such adjustments in the items taken into account by such individual and such shareholders as may be necessary in order to reflect the value of such services or capital.

(f) Special rules

(1) Subsection (a) not to apply to credit allowable under section 34

Subsection (a) shall not apply with respect to any credit allowable under section 34 (relating to certain uses of gasoline and special fuels).

(2) Treatment of tax imposed on built-in gains

If any tax is imposed under section 1374 for any taxable year on an S corporation, for purposes of subsection (a), the amount so imposed shall be treated as a loss sustained by the S corporation during such taxable year. The character of such loss shall be determined by allocating the loss proportionately among the recognized built-in gains giving rise to such tax.

(3) Reduction in pass-thru for tax imposed on excess net passive income

If any tax is imposed under section 1375 for any taxable year on an S corporation, for purposes of subsection (a), each item of passive investment income shall be reduced by an amount which bears the same ratio to the amount of such tax as—

(A) the amount of such item, bears to

(B) the total passive investment income for the taxable year.

(Added Pub. L. 97–354, §2, Oct. 19, 1982, 96 Stat. 1677; amended Pub. L. 98–369, div. A, title IV, §474(r)(26), title VII, §735(c)(16), July 18, 1984, 98 Stat. 844, 985; Pub. L. 99–514, title VI, §632(c)(2), title VII, §701(e)(4)(K), Oct. 22, 1986, 100 Stat. 2277, 2343; Pub. L. 100–647, title I, §1006(f)(5)(E), Nov. 10, 1988, 102 Stat. 3406; Pub. L. 101–239, title VII, §7811(c)(7), Dec. 19, 1989, 103 Stat. 2407; Pub. L. 104–188, title I, §§1302(e), 1307(c)(3)(A), 1309(a)(1), 1312, Aug. 20, 1996, 110 Stat. 1779, 1782, 1783, 1784; Pub. L. 108–357, title II, §235(a), Oct. 22, 2004, 118 Stat. 1435; Pub. L. 110–172, §3(b), Dec. 29, 2007, 121 Stat. 2474.)

REFERENCES IN TEXT

Section 704(e)(3), referred to in subsec. (e), was redesignated section 704(e)(2) of this title by Pub. L. 114–74, title XI, §1102(b), Nov. 2, 2015, 129 Stat. 639.

AMENDMENTS

2007—Subsec. (d)(4). Pub. L. 110–172 added par. (4).

2004—Subsec. (d)(2). Pub. L. 108–357 reenacted heading without change and amended text of par. (2) generally. Prior to amendment, text read as follows: ''Any loss or deduction which is disallowed for any taxable year by reason of paragraph (1) shall be treated as incurred by the corporation in the succeeding taxable year with respect to that shareholder.''

1996—Subsec. (a)(1). Pub. L. 104–188, §1302(e), inserted '', or of a trust or estate which terminates,'' after ''who dies'' in introductory provisions.

Subsec. (d)(1)(A). Pub. L. 104–188, §1309(a)(1), substituted ''paragraphs (1) and (2)(A)'' for ''paragraph (1)''.

Subsec. (d)(3)(D). Pub. L. 104–188, §1312, added subpar. (D).

[1] See References in Text note below.

Subsec. (g). Pub. L. 104–188, § 1307(c)(3)(A), struck out subsec. (g) which provided a cross reference to subchapter D of chapter 63 of this title.

1989—Subsec. (f)(2). Pub. L. 101–239 substituted ''Treatment of tax imposed on built-in gains'' for ''Reduction in pass-thru for tax imposed on built-in gains'' in heading and amended text generally. Prior to amendment, text read as follows: ''If any tax is imposed under section 1374 for any taxable year on an S corporation, for purposes of subsection (a), the amount of each recognized built-in gain (within the meaning of section 1374) for such taxable year shall be reduced by its proportionate share of such tax.''

1988—Subsec. (f)(2). Pub. L. 100–647 substituted ''within the meaning of section 1374'' for ''as defined in section 1374(d)(2)''.

1986—Subsec. (f)(2). Pub. L. 99–514, § 632(c)(2), amended par. (2) generally. Prior to amendment, par. (2), reduction in pass-thru for tax imposed on capital gain, read as follows: ''If any tax is imposed under section 1374 for any taxable year on an S corporation, for purposes of subsection (a)—

''(A) the amount of the corporation's long-term capital gains for the taxable year shall be reduced by the amount of such tax, and

''(B) if the amount of such tax exceeds the amount of such long-term capital gains, the corporation's gains from sales or exchanges of property described in section 1231 shall be reduced by the amount of such excess.

For purposes of the preceding sentence, the term 'long-term capital gain' shall not include any gain from the sale or exchange of property described in section 1231.''

Pub. L. 99–514, § 701(e)(4)(K), struck out ''56 or'' before ''1374''.

1984—Subsec. (f). Pub. L. 98–369, § 474(r)(26), substituted ''section 34'' for ''section 39'' in heading and text.

Subsec. (f)(1). Pub. L. 98–369, § 735(c)(16), substituted ''and special fuels'' for '', special fuels, and lubricating oil''.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–172 effective as if included in the provisions of the Pension Protection Act of 2006, Pub. L. 109–280, to which such amendment relates, see section 3(j) of Pub. L. 110–172, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title II, § 235(b), Oct. 22, 2004, 118 Stat. 1435, as amended by Pub. L. 109–135, title IV, § 403(c), Dec. 21, 2005, 119 Stat. 2620, provided that: ''The amendment made by this section [amending this section] shall apply to transfers after December 31, 2004.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1317(a) of Pub. L. 104–188, set out as a note under section 641 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 632(c)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, but only in cases where the return for the taxable year is filed pursuant to an S election made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, as amended, set out as an Effective Date note under section 336 of this title.

Amendment by section 701(e)(4)(K) 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 1984 AMENDMENT

Amendment by section 474(r)(26) 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 735(c)(16) of Pub. L. 98–369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97–424, to which such amendment relates, see section 736 of Pub. L. 98–369, set out as a note under section 4051 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1982, except that in the case of a taxable year beginning during 1982, subsec. (f)(3) of this section and sections 1362(d)(3) and 1375 of this title shall apply, and section 1372(e)(5) of this title as in effect on the day before Oct. 19, 1982, shall not apply, see section 6(a), (b)(3) of Pub. L. 97–354, set out as a note under section 1361 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)(K) 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.

§ 1367. Adjustments to basis of stock of shareholders, etc.

(a) General rule

(1) Increases in basis

The basis of each shareholder's stock in an S corporation shall be increased for any period by the sum of the following items determined with respect to that shareholder for such period:

(A) the items of income described in subparagraph (A) of section 1366(a)(1),

(B) any nonseparately computed income determined under subparagraph (B) of section 1366(a)(1), and

(C) the excess of the deductions for depletion over the basis of the property subject to depletion.

(2) Decreases in basis

The basis of each shareholder's stock in an S corporation shall be decreased for any period (but not below zero) by the sum of the following items determined with respect to the shareholder for such period:

(A) distributions by the corporation which were not includible in the income of the shareholder by reason of section 1368,

(B) the items of loss and deduction described in subparagraph (A) of section 1366(a)(1),

(C) any nonseparately computed loss determined under subparagraph (B) of section 1366(a)(1),

(D) any expense of the corporation not deductible in computing its taxable income and not properly chargeable to capital account, and

(E) the amount of the shareholder's deduction for depletion for any oil and gas property held by the S corporation to the extent such deduction does not exceed the proportionate share of the adjusted basis of such property allocated to such shareholder under section 613A(c)(11)(B).

The decrease under subparagraph (B) by reason of a charitable contribution (as defined in section 170(c)) of property shall be the amount equal to the shareholder's pro rata share of the adjusted basis of such property.

(b) Special rules

(1) Income items

An amount which is required to be included in the gross income of a shareholder and shown on his return shall be taken into account under subparagraph (A) or (B) of subsection (a)(1) only to the extent such amount is included in the shareholder's gross income on his return, increased or decreased by any adjustment of such amount in a redetermination of the shareholder's tax liability.

(2) Adjustments in basis of indebtedness

(A) Reduction of basis

If for any taxable year the amounts specified in subparagraphs (B), (C), (D), and (E) of subsection (a)(2) exceed the amount which reduces the shareholder's basis to zero, such excess shall be applied to reduce (but not below zero) the shareholder's basis in any indebtedness of the S corporation to the shareholder.

(B) Restoration of basis

If for any taxable year beginning after December 31, 1982, there is a reduction under subparagraph (A) in the shareholder's basis in the indebtedness of an S corporation to a shareholder, any net increase (after the application of paragraphs (1) and (2) of subsection (a)) for any subsequent taxable year shall be applied to restore such reduction in basis before any of it may be used to increase the shareholder's basis in the stock of the S corporation.

(3) Coordination with sections 165(g) and 166(d)

This section and section 1366 shall be applied before the application of sections 165(g) and 166(d) to any taxable year of the shareholder or the corporation in which the security or debt becomes worthless.

(4) Adjustments in case of inherited stock

(A) In general

If any person acquires stock in an S corporation by reason of the death of a decedent or by bequest, devise, or inheritance, section 691 shall be applied with respect to any item of income of the S corporation in the same manner as if the decedent had held directly his pro rata share of such item.

(B) Adjustments to basis

The basis determined under section 1014 of any stock in an S corporation shall be reduced by the portion of the value of the stock which is attributable to items constituting income in respect of the decedent.

(Added Pub. L. 97–354, §2, Oct. 19, 1982, 96 Stat. 1679; amended Pub. L. 98–369, div. A, title VII, §§721(d), (w), 722(e)(2), July 18, 1984, 98 Stat. 967, 971, 974; Pub. L. 104–188, title I, §§1313(a), 1702(h)(14), Aug. 20, 1996, 110 Stat. 1785, 1874; Pub. L. 109–280, title XII, §1203(a), Aug. 17, 2006, 120 Stat. 1066; Pub. L. 110–343, div. C, title III, §307(a), Oct. 3, 2008, 122 Stat. 3869; Pub. L. 111–312, title VII, §752(a), Dec. 17, 2010, 124 Stat. 3321; Pub. L. 112–240, title III, §325(a), Jan. 2, 2013, 126 Stat. 2333; Pub. L. 113–295, div. A, title I, §137(a), Dec. 19, 2014, 128 Stat. 4019; Pub. L. 114–113, div. Q, title I, §115(a), Dec. 18, 2015, 129 Stat. 3049.)

AMENDMENTS

2015—Subsec. (a)(2). Pub. L. 114–113 struck out ''The preceding sentence shall not apply to contributions made in taxable years beginning after December 31, 2014.'' at end of concluding provisions.

2014—Subsec. (a)(2). Pub. L. 113–295 substituted ''December 31, 2014'' for ''December 31, 2013'' in concluding provisions.

2013—Subsec. (a)(2). Pub. L. 112–240 substituted ''December 31, 2013'' for ''December 31, 2011'' in concluding provisions.

2010—Subsec. (a)(2). Pub. L. 111–312 substituted ''December 31, 2011'' for ''December 31, 2009'' in concluding provisions.

2008—Subsec. (a)(2). Pub. L. 110–343 substituted ''December 31, 2009'' for ''December 31, 2007'' in concluding provisions.

2006—Subsec. (a)(2). Pub. L. 109–280, which directed the addition of concluding provisions to section 1367(a)(2), without specifying the act to be amended, was executed to subsec. (a)(2) of this section, which is section 1367 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

1996—Subsec. (a)(2)(E). Pub. L. 104–188, §1702(h)(14), substituted ''section 613A(c)(11)(B)'' for ''section 613A(c)(13)(B)''.

Subsec. (b)(4). Pub. L. 104–188, §1313(a), added par. (4).

1984—Subsec. (a)(2)(E). Pub. L. 98–369, §722(e)(2), substituted ''for any oil and gas property held by the S corporation to the extent such deduction does not exceed the proportionate share of the adjusted basis of such property allocated to such shareholder under section 613A(c)(13)(B)'' for ''under section 611 with respect to oil and gas wells''.

Subsec. (b)(2)(B). Pub. L. 98–369, §721(w), substituted ''for any taxable year beginning after December 31, 1982, there is'' for ''for any taxable year there is''.

Subsec. (b)(3). Pub. L. 98–369, §721(d), inserted ''and 166(d)'' in heading and text.

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114–113, div. Q, title I, §115(b), Dec. 18, 2015, 129 Stat. 3049, provided that: ''The amendment made by this section [amending this section] shall apply to contributions made in taxable years beginning after December 31, 2014.''

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113–295, div. A, title I, §137(b), Dec. 19, 2014, 128 Stat. 4020, provided that: ''The amendment made by this section [amending this section] shall apply to contributions made in taxable years beginning after December 31, 2013.''

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title III, § 325(b), Jan. 2, 2013, 126 Stat. 2333, provided that: ''The amendment made by this section [amending this section] shall apply to contributions made in taxable years beginning after December 31, 2011.''

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, § 752(b), Dec. 17, 2010, 124 Stat. 3321, provided that: ''The amendment made by this section [amending this section] shall apply to contributions made in taxable years beginning after December 31, 2009.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title III, § 307(b), Oct. 3, 2008, 122 Stat. 3869, provided that: ''The amendment made by this section [amending this section] shall apply to contributions made in taxable years beginning after December 31, 2007.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title XII, § 1203(b), Aug. 17, 2006, 120 Stat. 1066, provided that: ''The amendment made by this section [amending this section] shall apply to contributions made in taxable years beginning after December 31, 2005.''

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, § 1313(b), Aug. 20, 1996, 110 Stat. 1785, provided that: ''The amendment made by subsection (a) [amending this section] shall apply in the case of decedents dying after the date of the enactment of this Act [Aug. 20, 1996].''

Amendment by section 1702(h)(14) 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 1984 AMENDMENT

Amendment by section 721(d), (w) of Pub. L. 98–369 effective as if included in the Subchapter S Revision Act of 1982, Pub. L. 97–354, see section 721(y)(1) of Pub. L. 98–369, set out as a note under section 1361 of this title.

Pub. L. 98–369, div. A, title VII, § 722(e)(3)(B), July 18, 1984, 98 Stat. 974, provided that: ''The amendment made by paragraph (2) [amending this section] shall apply to taxable years beginning after December 31, 1982.''

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as a note under section 1361 of this title.

§ 1368. Distributions

(a) General rule

A distribution of property made by an S corporation with respect to its stock to which (but for this subsection) section 301(c) would apply shall be treated in the manner provided in subsection (b) or (c), whichever applies.

(b) S corporation having no earnings and profits

In the case of a distribution described in subsection (a) by an S corporation which has no accumulated earnings and profits—

(1) Amount applied against basis

The distribution shall not be included in gross income to the extent that it does not exceed the adjusted basis of the stock.

(2) Amount in excess of basis

If the amount of the distribution exceeds the adjusted basis of the stock, such excess shall be treated as gain from the sale or exchange of property.

(c) S corporation having earnings and profits

In the case of a distribution described in subsection (a) by an S corporation which has accumulated earnings and profits—

(1) Accumulated adjustments account

That portion of the distribution which does not exceed the accumulated adjustments account shall be treated in the manner provided by subsection (b).

(2) Dividend

That portion of the distribution which remains after the application of paragraph (1) shall be treated as a dividend to the extent it does not exceed the accumulated earnings and profits of the S corporation.

(3) Treatment of remainder

Any portion of the distribution remaining after the application of paragraph (2) of this subsection shall be treated in the manner provided by subsection (b).

Except to the extent provided in regulations, if the distributions during the taxable year exceed the amount in the accumulated adjustments account at the close of the taxable year, for purposes of this subsection, the balance of such account shall be allocated among such distributions in proportion to their respective sizes.

(d) Certain adjustments taken into account

Subsections (b) and (c) shall be applied by taking into account (to the extent proper)—

(1) the adjustments to the basis of the shareholder's stock described in section 1367, and

(2) the adjustments to the accumulated adjustments account which are required by subsection (e)(1).

In the case of any distribution made during any taxable year, the adjusted basis of the stock shall be determined with regard to the adjustments provided in paragraph (1) of section 1367(a) for the taxable year.

(e) Definitions and special rules

For purposes of this section—

(1) Accumulated adjustments account

(A) In general

Except as otherwise provided in this paragraph, the term ''accumulated adjustments account'' means an account of the S corporation which is adjusted for the S period in a manner similar to the adjustments under section 1367 (except that no adjustment shall be made for income (and related expenses) which is exempt from tax under this title and the phrase ''(but not below zero)'' shall be disregarded in section 1367(a)(2)) and no adjustment shall be made for Federal taxes attributable to any taxable year in which the corporation was a C corporation.

(B) Amount of adjustment in the case of redemptions

In the case of any redemption which is treated as an exchange under section 302(a) or 303(a), the adjustment in the accumulated

adjustments account shall be an amount which bears the same ratio to the balance in such account as the number of shares redeemed in such redemption bears to the number of shares of stock in the corporation immediately before such redemption.

(C) Net loss for year disregarded

(i) In general

In applying this section to distributions made during any taxable year, the amount in the accumulated adjustments account as of the close of such taxable year shall be determined without regard to any net negative adjustment for such taxable year.

(ii) Net negative adjustment

For purposes of clause (i), the term ''net negative adjustment'' means, with respect to any taxable year, the excess (if any) of—

(I) the reductions in the account for the taxable year (other than for distributions), over

(II) the increases in such account for such taxable year.

(2) S period

The term ''S period'' means the most recent continuous period during which the corporation has been an S corporation. Such period shall not include any taxable year beginning before January 1, 1983.

(3) Election to distribute earnings first

(A) In general

An S corporation may, with the consent of all of its affected shareholders, elect to have paragraph (1) of subsection (c) not apply to all distributions made during the taxable year for which the election is made.

(B) Affected shareholder

For purposes of subparagraph (A), the term ''affected shareholder'' means any shareholder to whom a distribution is made by the S corporation during the taxable year.

(f) Restricted bank director stock

If a director receives a distribution (not in part or full payment in exchange for stock) from an S corporation with respect to any restricted bank director stock (as defined in section 1361(f)), the amount of such distribution—

(1) shall be includible in gross income of the director, and

(2) shall be deductible by the corporation for the taxable year of such corporation in which or with which ends the taxable year in which such amount in[1] included in the gross income of the director.

(Added Pub. L. 97–354, §2, Oct. 19, 1982, 96 Stat. 1680; amended Pub. L. 97–448, title III, §305(d)(2), Jan. 12, 1983, 96 Stat. 2399; Pub. L. 98–369, div. A, title VII, §721(r), July 18, 1984, 98 Stat. 970; Pub. L. 99–514, title XVIII, §1879(m)(1)(B), Oct. 22, 1986, 100 Stat. 2910; Pub. L. 104–188, title I, §1309(a)(2)–(c), Aug. 20, 1996, 110 Stat. 1783; Pub. L. 110–28, title VIII, §8232(b), May 25, 2007, 121 Stat. 197.)

AMENDMENTS

2007—Subsec. (f). Pub. L. 110–28 added subsec. (f).

1996—Subsec. (d). Pub. L. 104–188, §1309(a)(2), inserted at end ''In the case of any distribution made during any taxable year, the adjusted basis of the stock shall be determined with regard to the adjustments provided in paragraph (1) of section 1367(a) for the taxable year.''

Subsec. (e)(1)(A). Pub. L. 104–188, §1309(c), substituted ''as otherwise provided in this paragraph'' for ''as provided in subparagraph (B)'' and ''section 1367(a)(2)'' for ''section 1367(b)(2)(A)''.

Subsec. (e)(1)(C). Pub. L. 104–188, §1309(b), added subpar. (C).

1986—Subsec. (e)(1)(A). Pub. L. 99–514 inserted ''and no adjustment shall be made for Federal taxes attributable to any taxable year in which the corporation was a C corporation'' before period at end.

1984—Subsec. (c). Pub. L. 98–369, §721(r)(2), inserted ''Except to the extent provided in regulations, if the distributions during the taxable year exceed the amount in the accumulated adjustments account at the close of the taxable year, for purposes of this subsection, the balance of such account shall be allocated among such distributions in proportion to their respective sizes.''

Subsec. (e)(1)(A). Pub. L. 98–369, §721(r)(1), substituted ''(except that no adjustment shall be made for income (and related expenses) which is exempt from tax under this title and the phrase '(but not below zero)' shall be disregarded in section 1367(b)(2)(A))'' for ''(except that no adjustment shall be made for income which is exempt from tax under this title and no adjustment shall be made for any expense not deductible in computing the corporation's taxable income and not properly chargeable to capital account)''.

1983—Subsec. (e)(3). Pub. L. 97–448 added par. (3).

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–28 applicable to taxable years beginning after Dec. 31, 2006, with special rule for treatment as second class of stock, see section 8232(c) of Pub. L. 110–28, set out as a note under section 1361 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1317(a) of Pub. L. 104–188, set out as a note under section 641 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 1879(m)(2) of Pub. L. 99–514, set out as a note under section 1361 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective as if included in the Subchapter S Revision Act of 1982, Pub. L. 97–354, see section 721(y)(1) of Pub. L. 98–369, set out as a note under section 1361 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 97–448, title III, §311(c)(4), Jan. 12, 1983, 96 Stat. 2411, provided that: ''The amendments made by subsection (d) of section 305 [amending this section and sections 221, 1374, and 4975 of this title, enacting provisions set out as a note under section 1361 of this title, and amending provisions set out as a note under section 1361 of this title] shall take effect on the date of the enactment of the Subchapter S Revision Act of 1982 [Oct. 19, 1982].''

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as a note under section 1361 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

[1] So in original. Probably should be ''is''.

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 III—SPECIAL RULES

AMENDMENTS

1996—Pub. L. 104–188, title I, § 1311(b)(2)(D), Aug. 20, 1996, 110 Stat. 1784, substituted ''accumulated'' for ''subchapter C'' in item 1375.

1986—Pub. L. 99–514, title VI, § 632(d), Oct. 22, 1986, 100 Stat. 2277, substituted ''built-in'' for ''capital'' in item 1374.

§ 1371. Coordination with subchapter C

(a) Application of subchapter C rules

Except as otherwise provided in this title, and except to the extent inconsistent with this subchapter, subchapter C shall apply to an S corporation and its shareholders.

(b) No carryover between C year and S year

(1) From C year to S year

No carryforward, and no carryback, arising for a taxable year for which a corporation is a C corporation may be carried to a taxable year for which such corporation is an S corporation.

(2) No carryover from S year

No carryforward, and no carryback, shall arise at the corporate level for a taxable year for which a corporation is an S corporation.

(3) Treatment of S year as elapsed year

Nothing in paragraphs (1) and (2) shall prevent treating a taxable year for which a corporation is an S corporation as a taxable year for purposes of determining the number of taxable years to which an item may be carried back or carried forward.

(c) Earnings and profits

(1) In general

Except as provided in paragraphs (2) and (3) and subsection (d)(3), no adjustment shall be made to the earnings and profits of an S corporation.

(2) Adjustments for redemptions, liquidations, reorganizations, divisives, etc.

In the case of any transaction involving the application of subchapter C to any S corporation, proper adjustment to any accumulated earnings and profits of the corporation shall be made.

(3) Adjustments in case of distributions treated as dividends under section 1368(c)(2)

Paragraph (1) shall not apply with respect to that portion of a distribution which is treated as a dividend under section 1368(c)(2).

(d) Coordination with investment credit recapture

(1) No recapture by reason of election

Any election under section 1362 shall be treated as a mere change in the form of conducting a trade or business for purposes of the second sentence of section 50(a)(4).

(2) Corporation continues to be liable

Notwithstanding an election under section 1362, an S corporation shall continue to be liable for any increase in tax under section 49(b) or 50(a) attributable to credits allowed for taxable years for which such corporation was not an S corporation.

(3) Adjustment to earnings and profits for amount of recapture

Paragraph (1) of subsection (c) shall not apply to any increase in tax under section 49(b) or 50(a) for which the S corporation is liable.

(e) Cash distributions during post-termination transition period

(1) In general

Any distribution of money by a corporation with respect to its stock during a post-termination transition period shall be applied against and reduce the adjusted basis of the stock, to the extent that the amount of the distribution does not exceed the accumulated adjustments account (within the meaning of section 1368(e)).

(2) Election to distribute earnings first

An S corporation may elect to have paragraph (1) not apply to all distributions made during a post-termination transition period described in section 1377(b)(1)(A). Such election shall not be effective unless all shareholders of the S corporation to whom distributions are made by the S corporation during such post-termination transition period consent to such election.

(f) Cash distributions following post-termination transition period

In the case of a distribution of money by an eligible terminated S corporation (as defined in section 481(d)) after the post-termination transition period, the accumulated adjustments account shall be allocated to such distribution, and the distribution shall be chargeable to accumulated earnings and profits, in the same ratio as the amount of such accumulated adjustments account bears to the amount of such accumulated earnings and profits.

(Added Pub. L. 97–354, § 2, Oct. 19, 1982, 96 Stat. 1681; amended Pub. L. 98–369, div. A, title VII, § 721(e), (*o*), (x)(3), July 18, 1984, 98 Stat. 967, 970, 971; Pub. L. 99–514, title XVIII, § 1899A(33), (34), Oct. 22, 1986, 100 Stat. 2960; Pub. L. 101–508, title XI, § 11813(b)(23), Nov. 5, 1990, 104 Stat. 1388–555; Pub. L. 104–188, title I, § 1310, Aug. 20, 1996, 110 Stat. 1784; Pub. L. 115–97, title I, § 13543(b), Dec. 22, 2017, 131 Stat. 2155.)

PRIOR PROVISIONS

A prior section 1371, added Pub. L. 85–866, title I, § 64(a), Sept. 2, 1958, 72 Stat. 1650; amended Pub. L.

86–376, § 2(a), Sept. 23, 1959, 73 Stat. 699; Pub. L. 88–272, title II, § 233(a), Feb. 26, 1964, 78 Stat. 112; Pub. L. 94–455, title IX, § 902(a)(1), (2), (c)(1), (2), Oct. 4, 1976, 90 Stat. 1608, 1609; Pub. L. 95–600, title III, §§ 341, 342, title VII, § 701(y)(1), Nov. 6, 1978, 92 Stat. 2843, 2921; Pub. L. 96–589, § 5(d), Dec. 24, 1980, 94 Stat. 3406; Pub. L. 97–34, title II, §§ 233(a), 234(a), (b), Aug. 13, 1981, 95 Stat. 250, 251; Pub. L. 97–448, title I, § 102(i)(1), Jan. 12, 1983, 96 Stat. 2372, related to definitions applicable to election of small business corporations as to taxable status, prior to the general revision of this subchapter by section 2 of Pub. L. 97–354.

AMENDMENTS

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

1996—Subsec. (a). Pub. L. 104–188 reenacted heading without change and amended text generally. Prior to amendment, text read as follows:

''(1) IN GENERAL.—Except as otherwise provided in this title, and except to the extent inconsistent with this subchapter, subchapter C shall apply to an S corporation and its shareholders.

''(2) S CORPORATION AS SHAREHOLDER TREATED LIKE INDIVIDUAL.—For purposes of subchapter C, an S corporation in its capacity as a shareholder of another corporation shall be treated as an individual.''

1990—Subsec. (d)(1). Pub. L. 101–508, § 11813(b)(23)(A), substituted ''section 50(a)(4)'' for ''section 47(b)''.

Subsec. (d)(2), (3). Pub. L. 101–508, § 11813(b)(23)(B), substituted ''section 49(b) or 50(a)'' for ''section 47''.

1986—Subsec. (e)(1). Pub. L. 99–514, § 1899A(33), inserted ''(within the meaning of section 1368(e))''.

Subsec. (e)(2). Pub. L. 99–514, § 1899A(34), struck out ''(within the meaning of section 1368(e))'' after ''to such election''.

1984—Subsec. (c)(1). Pub. L. 98–369, § 621(e)(2), substituted ''paragraphs (2) and (3) and subsection (d)(3)'' for ''paragraphs (2) and (3)''.

Subsec. (d)(3). Pub. L. 98–369, § 721(e)(1), added par. (3).

Subsec. (e). Pub. L. 98–369, § 721(*o*), amended subsec. (e) generally, designating existing provisions as par. (1) and adding par. (2).

Subsec. (e)(2). Pub. L. 98–369, § 721(x)(3), inserted ''(within the meaning of section 1368(e))''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1317(a) of Pub. L. 104–188, set out as a note under section 641 of this title.

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 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective as if included in the Subchapter S Revision Act of 1982, Pub. L. 97–354, see section 721(y)(1) of Pub. L. 98–369, set out as a note under section 1361 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as a note under section 1361 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.

§ 1372. Partnership rules to apply for fringe benefit purposes

(a) General rule

For purposes of applying the provisions of this subtitle which relate to employee fringe benefits—

(1) the S corporation shall be treated as a partnership, and

(2) any 2-percent shareholder of the S corporation shall be treated as a partner of such partnership.

(b) 2-percent shareholder defined

For purposes of this section, the term ''2-percent shareholder'' means any person who owns (or is considered as owning within the meaning of section 318) on any day during the taxable year of the S corporation more than 2 percent of the outstanding stock of such corporation or stock possessing more than 2 percent of the total combined voting power of all stock of such corporation.

(Added Pub. L. 97–354, § 2, Oct. 19, 1982, 96 Stat. 1682.)

PRIOR PROVISIONS

A prior section 1372, added Pub. L. 85–866, title I, § 64(a), Sept. 2, 1958, 72 Stat. 1650; amended Pub. L. 87–29, § 2, May 4, 1961, 75 Stat. 64; Pub. L. 89–389, §§ 2(b)(2), 3(a), Apr. 14, 1966, 80 Stat. 114; Pub. L. 91–683, § 1(a), Jan. 12, 1971, 84 Stat. 2067; Pub. L. 94–455, title IX, § 902(c)(3), title XIX, §§ 1901(a)(149), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1609, 1788, 1834; Pub. L. 95–600, title III, § 343, Nov. 6, 1978, 92 Stat. 2843; Pub. L. 95–628, § 5(a), (b), Nov. 10, 1978, 92 Stat. 3628, related to manner, effect, termination, etc., of an election not to be subject to taxes imposed under this chapter, prior to the general revision of this subchapter by section 2 of Pub. L. 97–354.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1982, except that in the case of a taxable year beginning during 1982, sections 1362(d)(3), 1366(f)(3), and 1375 of this title shall apply and subsec. (e)(5) of this section as in effect on the day before Oct. 19, 1982, shall not apply, see section 6(a), (b)(3), of Pub. L. 97–354, set out as a note under section 1361 of this title. For additional provisions relating to the treatment of existing fringe benefit plans and the application of this section, see section 6(d) of Pub. L. 97–354, set out as a note under section 1361 of this title.

§ 1373. Foreign income

(a) S corporation treated as partnership, etc.

For purposes of subparts A and F of part III, and part V, of subchapter N (relating to income from sources without the United States)—

(1) an S corporation shall be treated as a partnership, and

(2) the shareholders of such corporation shall be treated as partners of such partnership.

(b) Recapture of overall foreign loss

For purposes of section 904(f) (relating to recapture of overall foreign loss), the making or termination of an election to be treated as an S corporation shall be treated as a disposition of the business.

(Added Pub. L. 97–354, § 2, Oct. 19, 1982, 96 Stat. 1682.)

PRIOR PROVISIONS

A prior section 1373, added Pub. L. 85–866, title I, § 64(a), Sept. 2, 1958, 72 Stat. 1652; amended Pub. L. 89–389, § 2(b)(3), Apr. 14, 1966, 80 Stat. 114; Pub. L. 91–172, title III, § 301(b)(10), Dec. 30, 1969, 83 Stat. 586, related to taxation of corporation undistributed taxable income to shareholders, prior to the general revision of this subchapter by section 2 of Pub. L. 97–354.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as a note under section 1361 of this title.

§ 1374. Tax imposed on certain built-in gains

(a) General rule

If for any taxable year beginning in the recognition period an S corporation has a net recognized built-in gain, there is hereby imposed a tax (computed under subsection (b)) on the income of such corporation for such taxable year.

(b) Amount of tax

(1) In general

The amount of the tax imposed by subsection (a) shall be computed by applying the highest rate of tax specified in section 11(b) to the net recognized built-in gain of the S corporation for the taxable year.

(2) Net operating loss carryforwards from C years allowed

Notwithstanding section 1371(b)(1), any net operating loss carryforward arising in a taxable year for which the corporation was a C corporation shall be allowed for purposes of this section as a deduction against the net recognized built-in gain of the S corporation for the taxable year. For purposes of determining the amount of any such loss which may be carried to subsequent taxable years, the amount of the net recognized built-in gain shall be treated as taxable income. Rules similar to the rules of the preceding sentences of this paragraph shall apply in the case of a capital loss carryforward arising in a taxable year for which the corporation was a C corporation.

(3) Credits

(A) In general

Except as provided in subparagraph (B), no credit shall be allowable under part IV of subchapter A of this chapter (other than under section 34) against the tax imposed by subsection (a).

(B)[1] Business credit carryforwards from C years allowed

Notwithstanding section 1371(b)(1), any business credit carryforward under section 39 arising in a taxable year for which the corporation was a C corporation shall be allowed as a credit against the tax imposed by subsection (a) in the same manner as if it were imposed by section 11. A similar rule shall apply in the case of the minimum tax credit under section 53 to the extent attributable to taxable years for which the corporation was a C corporation.

(c) Limitations

(1) Corporations which were always S corporations

Subsection (a) shall not apply to any corporation if an election under section 1362(a) has been in effect with respect to such corporation for each of its taxable years. Except as provided in regulations, an S corporation and any predecessor corporation shall be treated as 1 corporation for purposes of the preceding sentence.

(2) Limitation on amount of net recognized built-in gain

The amount of the net recognized built-in gain taken into account under this section for any taxable year shall not exceed the excess (if any) of—

(A) the net unrealized built-in gain, over

(B) the net recognized built-in gain for prior taxable years beginning in the recognition period.

(d) Definitions and special rules

For purposes of this section—

(1) Net unrealized built-in gain

The term ''net unrealized built-in gain'' means the amount (if any) by which—

(A) the fair market value of the assets of the S corporation as of the beginning of its 1st taxable year for which an election under section 1362(a) is in effect, exceeds

(B) the aggregate adjusted bases of such assets at such time.

(2) Net recognized built-in gain

(A) In general

The term ''net recognized built-in gain'' means, with respect to any taxable year in the recognition period, the lesser of—

(i) the amount which would be the taxable income of the S corporation for such taxable year if only recognized built-in gains and recognized built-in losses were taken into account, or

(ii) such corporation's taxable income for such taxable year (determined as provided in section 1375(b)(1)(B)).

(B) Carryover

If, for any taxable year described in subparagraph (A), the amount referred to in clause (i) of subparagraph (A) exceeds the amount referred to in clause (ii) of subparagraph (A), such excess shall be treated as a

[1] See Amendment of Subsection (b)(3)(B) note below.

recognized built-in gain in the succeeding taxable year. The preceding sentence shall apply only in the case of a corporation treated as an S corporation by reason of an election made on or after March 31, 1988.

(3) Recognized built-in gain

The term ''recognized built-in gain'' means any gain recognized during the recognition period on the disposition of any asset except to the extent that the S corporation establishes that—

(A) such asset was not held by the S corporation as of the beginning of the 1st taxable year for which it was an S corporation, or

(B) such gain exceeds the excess (if any) of—

(i) the fair market value of such asset as of the beginning of such 1st taxable year, over

(ii) the adjusted basis of the asset as of such time.

(4) Recognized built-in losses

The term ''recognized built-in loss'' means any loss recognized during the recognition period on the disposition of any asset to the extent that the S corporation establishes that—

(A) such asset was held by the S corporation as of the beginning of the 1st taxable year referred to in paragraph (3), and

(B) such loss does not exceed the excess of—

(i) the adjusted basis of such asset as of the beginning of such 1st taxable year, over

(ii) the fair market value of such asset as of such time.

(5) Treatment of certain built-in items

(A) Income items

Any item of income which is properly taken into account during the recognition period but which is attributable to periods before the 1st taxable year for which the corporation was an S corporation shall be treated as a recognized built-in gain for the taxable year in which it is properly taken into account.

(B) Deduction items

Any amount which is allowable as a deduction during the recognition period (determined without regard to any carryover) but which is attributable to periods before the 1st taxable year referred to in subparagraph (A) shall be treated as a recognized built-in loss for the taxable year for which it is allowable as a deduction.

(C) Adjustment to net unrealized built-in gain

The amount of the net unrealized built-in gain shall be properly adjusted for amounts which would be treated as recognized built-in gains or losses under this paragraph if such amounts were properly taken into account (or allowable as a deduction) during the recognition period.

(6) Treatment of certain property

If the adjusted basis of any asset is determined (in whole or in part) by reference to the adjusted basis of any other asset held by the S corporation as of the beginning of the 1st taxable year referred to in paragraph (3)—

(A) such asset shall be treated as held by the S corporation as of the beginning of such 1st taxable year, and

(B) any determination under paragraph (3)(B) or (4)(B) with respect to such asset shall be made by reference to the fair market value and adjusted basis of such other asset as of the beginning of such 1st taxable year.

(7) Recognition period

(A) In general

The term ''recognition period'' means the 5-year period beginning with the 1st day of the 1st taxable year for which the corporation was an S corporation. For purposes of applying this section to any amount includible in income by reason of distributions to shareholders pursuant to section 593(e), the preceding sentence shall be applied without regard to the phrase ''5-year''.

(B) Installment sales

If an S corporation sells an asset and reports the income from the sale using the installment method under section 453, the treatment of all payments received shall be governed by the provisions of this paragraph applicable to the taxable year in which such sale was made.

(8) Treatment of transfer of assets from C corporation to S corporation

(A) In general

Except to the extent provided in regulations, if—

(i) an S corporation acquires any asset, and

(ii) the S corporation's basis in such asset is determined (in whole or in part) by reference to the basis of such asset (or any other property) in the hands of a C corporation,

then a tax is hereby imposed on any net recognized built-in gain attributable to any such assets for any taxable year beginning in the recognition period. The amount of such tax shall be determined under the rules of this section as modified by subparagraph (B).

(B) Modifications

For purposes of this paragraph, the modifications of this subparagraph are as follows:

(i) In general

The preceding paragraphs of this subsection shall be applied by taking into account the day on which the assets were acquired by the S corporation in lieu of the beginning of the 1st taxable year for which the corporation was an S corporation.

(ii) Subsection (c)(1) not to apply

Subsection (c)(1) shall not apply.

(9) Reference to 1st taxable year

Any reference in this section to the 1st taxable year for which the corporation was an S

corporation shall be treated as a reference to the 1st taxable year for which the corporation was an S corporation pursuant to its most recent election under section 1362.

(e) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section including regulations providing for the appropriate treatment of successor corporations.

(Added Pub. L. 97–354, § 2, Oct. 19, 1982, 96 Stat. 1683; amended Pub. L. 97–448, title III, § 305(d)(3), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 98–369, div. A, title I, § 102(d)(1), title IV, § 474(r)(27), title VII, § 721(u), July 18, 1984, 98 Stat. 623, 844, 971; Pub. L. 99–514, title VI, § 632(a), Oct. 22, 1986, 100 Stat. 2275; Pub. L. 100–647, title I, § 1006(f)(1)–(5)(A), Nov. 10, 1988, 102 Stat. 3403, 3404; Pub. L. 101–239, title VII, § 7811(c)(4), (5)(B), (8), Dec. 19, 1989, 103 Stat. 2407, 2408; Pub. L. 105–34, title XVI, § 1601(f)(5)(B), Aug. 5, 1997, 111 Stat. 1091; Pub. L. 111–5, div. B, title I, § 1251(a), Feb. 17, 2009, 123 Stat. 342; Pub. L. 111–240, title II, § 2014(a), Sept. 27, 2010, 124 Stat. 2556; Pub. L. 112–240, title III, § 326(a), (b), Jan. 2, 2013, 126 Stat. 2334; Pub. L. 113–295, div. A, title I, § 138(a), Dec. 19, 2014, 128 Stat. 4020; Pub. L. 114–113, div. Q, title I, § 127(a), Dec. 18, 2015, 129 Stat. 3054; Pub. L. 115–97, title I, §§ 12002(c), 13001(b)(2)(N), Dec. 22, 2017, 131 Stat. 2095, 2097.)

AMENDMENT OF SUBSECTION (b)(3)(B)

Pub. L. 115–97, title I, § 12002(c), (d), Dec. 22, 2017, 131 Stat. 2095, amended subsection (b)(3)(B) of this section, applicable to taxable years beginning after Dec. 31, 2021. After amendment, subsection (b)(3)(B) reads as follows:

(B) Business credit carryforwards from C years allowed

Notwithstanding section 1371(b)(1), any business credit carryforward under section 39 arising in a taxable year for which the corporation was a C corporation shall be allowed as a credit against the tax imposed by subsection (a) in the same manner as if it were imposed by section 11.

See 2017 Amendment note below.

PRIOR PROVISIONS

A prior section 1374, added Pub. L. 85–866, title I, § 64(a), Sept. 2, 1958, 72 Stat. 1653; amended Pub. L. 86–376, § 2(b), Sept. 23, 1959, 73 Stat. 699; Pub. L. 94–455, title XIX, § 1901(a)(150), Oct. 4, 1976, 90 Stat. 1788, related to allowance to shareholders of corporation net operating loss, prior to the general revision of this subchapter by section 2 of Pub. L. 97–354.

AMENDMENTS

2017—Subsec. (b)(3)(B). Pub. L. 115–97, § 12002(c), struck out at end ''A similar rule shall apply in the case of the minimum tax credit under section 53 to the extent attributable to taxable years for which the corporation was a C corporation.''

Subsec. (b)(4). Pub. L. 115–97, § 13001(b)(2)(N), struck out par. (4). Text read as follows: ''For purposes of section 1201(a)—

''(A) the tax imposed by subsection (a) shall be treated as if it were imposed by section 11, and

''(B) the amount of the net recognized built-in gain shall be treated as the taxable income.''

2015—Subsec. (d)(7). Pub. L. 114–113 amended par. (7) generally. Prior to amendment, par. (7) defined recognition period, with special rules for certain years and for distributions to shareholders.

2014—Subsec. (d)(7)(C). Pub. L. 113–295 substituted ''2012, 2013, and 2014'' for ''2012 and 2013'' in heading and ''2012, 2013, or 2014'' for ''2012 or 2013'' in text.

2013—Subsec. (d)(2)(B). Pub. L. 112–240, § 326(b), inserted ''described in subparagraph (A)'' after ''for any taxable year''.

Subsec. (d)(7)(C), (D). Pub. L. 112–240, § 326(a)(1), (2), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (d)(7)(E). Pub. L. 112–240, § 326(a)(3), added subpar. (E).

2010—Subsec. (d)(7)(B). Pub. L. 111–240 amended subpar. (B) generally. Prior to amendment, text read as follows: ''In the case of any taxable year beginning in 2009 or 2010, no tax shall be imposed on the net recognized built-in gain of an S corporation if the 7th taxable year in the recognition period preceded such taxable year. The preceding sentence shall be applied separately with respect to any asset to which paragraph (8) applies.''

2009—Subsec. (d)(7). Pub. L. 111–5 amended par. (7) generally. Prior to amendment, text read as follows: ''The term 'recognition period' means the 10-year period beginning with the 1st day of the 1st taxable year for which the corporation was an S corporation. For purposes of applying this section to any amount includible in income by reason of section 593(e), the preceding sentence shall be applied without regard to the phrase '10-year'.''

1997—Subsec. (d)(7). Pub. L. 105–34 inserted at end ''For purposes of applying this section to any amount includible in income by reason of section 593(e), the preceding sentence shall be applied without regard to the phrase '10-year'.''

1989—Subsec. (b)(3)(B). Pub. L. 101–239, § 7811(c)(8), inserted at end ''A similar rule shall apply in the case of the minimum tax credit under section 53 to the extent attributable to taxable years for which the corporation was a C corporation.''

Subsec. (d)(2)(A)(i). Pub. L. 101–239, § 7811(c)(4), struck out ''(except as provided in subsection (b)(2))'' after ''taxable year if''.

Subsec. (d)(5)(B). Pub. L. 101–239, § 7811(c)(5)(B)(i), inserted ''(determined without regard to any carryover)'' after ''during the recognition period''.

Subsec. (d)(5)(C). Pub. L. 101–239, § 7811(c)(5)(B)(ii), substituted ''which would be treated as recognized built-in gains or losses under this paragraph if such amounts were properly taken into account (or allowable as a deduction) during the recognition period'' for ''treated as recognized built-in gains or losses under this paragraph''.

1988—Subsec. (a). Pub. L. 100–647, § 1006(f)(1), inserted ''net'' before ''recognized''.

Subsec. (b)(1). Pub. L. 100–647, § 1006(f)(2), added par. (1) and struck out former par. (1) which read as follows: ''The tax imposed by subsection (a) shall be a tax computed by applying the highest rate of tax specified in section 11(b) to the lesser of—

''(A) the recognized built-in gains of the S corporation for the taxable year, or

''(B) the amount which would be the taxable income of the corporation for such taxable year if such corporation were not an S corporation.''

Subsec. (b)(2). Pub. L. 100–647, § 1006(f)(2), added par. (2) and struck out former par. (2) which read as follows: ''Notwithstanding section 1371(b)(1), any net operating loss carryforward arising in a taxable year for which the corporation was a C corporation shall be allowed as a deduction against the lesser of the amounts referred to in subparagraph (A) or (B) of paragraph (1). For purposes of determining the amount of any such loss which may be carried to subsequent taxable years, the lesser of the amounts referred to in subparagraph (A) or (B) of paragraph (1) shall be treated as taxable income.''

Subsec. (b)(4)(B). Pub. L. 100–647, § 1006(f)(3), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''the lower of the amounts specified in

subparagraphs (A) and (B) of paragraph (1) shall be treated as the taxable income.''

Subsec. (c)(2). Pub. L. 100–647, §1006(f)(4), which directed amendment of par. (2) by substituting ''net recognized built-in gain'' for ''recognized built-in gains'' wherever appearing, was executed by making the substitution in heading as well as in introductory provisions and in subpar. (B), to reflect the probable intent of Congress.

Subsec. (d)(2) to (9). Pub. L. 100–647, §1006(f)(5)(A), added pars. (2) to (9) and struck out former pars. (2), (3), and (4), which related to recognized built-in gain, recognition period, and taxable income, respectively.

Subsec. (e). Pub. L. 100–647, §1006(f)(5)(A), added subsec. (e).

1986—Pub. L. 99–514 amended section generally, substituting provisions imposing tax on certain built-in gains for provisions imposing tax on certain capital gains which had declared in: subsec. (a), general rule for capital gains tax on S corporations; subsec. (b), amount of tax; subsec. (c), general rule as to exceptions from subsec. (a) in par. (1), exception as to new corporations in par. (2), provisions relating to property with substituted basis in par. (3), and treatment of certain gains of options and commodities dealers in par. (4); and subsec. (d), determination of taxable income of corporation.

1984—Subsec. (b). Pub. L. 98–369, §474(r)(27), substituted ''section 34'' for ''section 39'' in provisions following par. (2).

Subsec. (c)(2). Pub. L. 98–369, §721(u), struck out ''(and any predecessor corporation)'' before ''has been in existence'' in subpar. (A), and inserted provision that to the extent provided in regulations, an S corporation and any predecessor corporation shall be treated as 1 corporation for purposes of this paragraph and paragraph (1).

Subsec. (c)(4). Pub. L. 98–369, §102(d)(1), added par. (4).

1983—Subsec. (d). Pub. L. 97–448 substituted ''this section'' for ''subsections (a)(2) and (b)(2)''.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 12002 of Pub. L. 115–97 applicable in general to taxable years beginning after Dec. 31, 2017, and amendment by section 12002(c) applicable to taxable years beginning after Dec. 31, 2021, see section 12002(d) of Pub. L. 115–97, set out as a note under section 53 of this title.

Amendment by section 13001(b)(2)(N) 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.

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114–113, div. Q, title I, §127(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, §138(b), Dec. 19, 2014, 128 Stat. 4020, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2013.''

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title III, §326(c), Jan. 2, 2013, 126 Stat. 2334, 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

Pub. L. 111–240, title II, §2014(b), Sept. 27, 2010, 124 Stat. 2556, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2010.''

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1251(b), Feb. 17, 2009, 123 Stat. 342, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2008.''

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 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, but only in cases where the return for the taxable year is filed pursuant to an S election made after Dec. 31, 1986, and with provision that, in the case of any taxable year of an S corporation which begins after Dec. 31, 1986, and to which the amendments by section 632 (other than subsec. (b) thereof) of Pub. L. 99–514 do not apply, subsec. (b)(1) of this section (as in effect on the date before Oct. 22, 1986) shall apply as if it read as follows: ''an amount equal to 34 percent of the amount by which the net capital gain of the corporation for the taxable year exceeds $25,000, or'', and with other exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, as amended, set out as an Effective Date note under section 336 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 102(d)(1) of Pub. L. 98–369 applicable to positions established after July 18, 1984, in taxable years ending after that date, except as otherwise provided, see section 102(f), (g) of Pub. L. 98–369 set out as a note under section 1256 of this title.

Amendment by section 474(r)(27) 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 721(u) of Pub. L. 98–369 effective as if included in the Subchapter S Revision Act of 1982, Pub. L. 97–354, see section 721(y)(1) of Pub. L. 98–369, set out as a note under section 1361 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective on date of enactment of Subchapter S Revision Act of 1982 [Oct. 19, 1982], see section 311(c)(4) of Pub. L. 97–448, set out as a note under section 1368 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as a note under section 1361 of this title.

§ 1375. Tax imposed when passive investment income of corporation having accumulated earnings and profits exceeds 25 percent of gross receipts

(a) General rule

If for the taxable year an S corporation has—

(1) accumulated earnings and profits at the close of such taxable year, and

(2) gross receipts more than 25 percent of which are passive investment income,

then there is hereby imposed a tax on the income of such corporation for such taxable year. Such tax shall be computed by multiplying the excess net passive income by the highest rate of tax specified in section 11(b).

(b) Definitions

For purposes of this section—

(1) Excess net passive income

(A) In general

Except as provided in subparagraph (B), the term ''excess net passive income'' means an amount which bears the same ratio to the net passive income for the taxable year as—

(i) the amount by which the passive investment income for the taxable year exceeds 25 percent of the gross receipts for the taxable year, bears to

(ii) the passive investment income for the taxable year.

(B) Limitation

The amount of the excess net passive income for any taxable year shall not exceed the amount of the corporation's taxable income for such taxable year as determined under section 63(a)—

(i) without regard to the deductions allowed by part VIII of subchapter B (other than the deduction allowed by section 248, relating to organization expenditures), and

(ii) without regard to the deduction under section 172.

(2) Net passive income

The term ''net passive income'' means—

(A) passive investment income, reduced by

(B) the deductions allowable under this chapter which are directly connected with the production of such income (other than deductions allowable under section 172 and part VIII of subchapter B).

(3) Passive investment income, etc.

The terms ''passive investment income'' and ''gross receipts'' have the same respective meanings as when used in paragraph (3) of section 1362(d).

(4) Coordination with section 1374

Notwithstanding paragraph (3), the amount of passive investment income shall be determined by not taking into account any recognized built-in gain or loss of the S corporation for any taxable year in the recognition period. Terms used in the preceding sentence shall have the same respective meanings as when used in section 1374.

(c) Credits not allowable

No credit shall be allowed under part IV of subchapter A of this chapter (other than section 34) against the tax imposed by subsection (a).

(d) Waiver of tax in certain cases

If the S corporation establishes to the satisfaction of the Secretary that—

(1) it determined in good faith that it had no accumulated earnings and profits at the close of a taxable year, and

(2) during a reasonable period of time after it was determined that it did have accumulated earnings and profits at the close of such taxable year such earnings and profits were distributed,

the Secretary may waive the tax imposed by subsection (a) for such taxable year.

(Added Pub. L. 97–354, § 2, Oct. 19, 1982, 96 Stat. 1684; amended Pub. L. 98–369, div. A, title IV, § 474(r)(28), title VII, § 721(v), July 18, 1984, 98 Stat. 844, 971; Pub. L. 99–514, title VI, § 632(c)(3), Oct. 22, 1986, 100 Stat. 2277; Pub. L. 100–647, title I, § 1006(f)(5)(B)–(D), Nov. 10, 1988, 102 Stat. 3406; Pub. L. 104–188, title I, § 1311(b)(2)(A)–(C), Aug. 20, 1996, 110 Stat. 1784; Pub. L. 109–135, title IV, § 412(qq), Dec. 21, 2005, 119 Stat. 2640.)

PRIOR PROVISIONS

A prior section 1375, added Pub. L. 85–866, title I, § 64(a), Sept. 2, 1958, 72 Stat. 1654; amended Pub. L. 88–272, title II, §§ 201(d)(13), 233(b), Feb. 26, 1964, 78 Stat. 32, 112; Pub. L. 89–389, §§ 1(a), (b), 2(b)(4), Apr. 14, 1966, 80 Stat. 111, 114; Pub. L. 91–172, title III, § 301(b)(11), Dec. 30, 1969, 83 Stat. 586; Pub. L. 94–455, title XIX, §§ 1901(a)(151), (b)(33)(Q), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1788, 1802, 1834; Pub. L. 95–600, title VII, § 703(j)(6), Nov. 6, 1978, 92 Stat. 2941, related to special rules applicable to distributions of electing small business corporations, prior to the general revision of this subchapter by section 2 of Pub. L. 97–354.

A prior section 1376, added Pub. L. 85–866, title I, § 64(a), Sept. 2, 1958, 72 Stat. 1655, related to adjustment to basis of stock of, and indebtedness owing, shareholders, prior to the general revision of this subchapter by section 2 of Pub. L. 97–354.

AMENDMENTS

2005—Subsec. (d)(1), (2). Pub. L. 109–135 substituted ''accumulated'' for ''subchapter C''.

1996—Pub. L. 104–188, § 1311(b)(2)(C), substituted ''accumulated'' for ''subchapter C'' in section catchline.

Subsec. (a)(1). Pub. L. 104–188, § 1311(b)(2)(A), substituted ''accumulated'' for ''subchapter C''.

Subsec. (b)(3). Pub. L. 104–188, § 1311(b)(2)(B), amended par. (3) generally. Prior to amendment, par. (3) read as follows:

''(3) PASSIVE INVESTMENT INCOME; ETC.—The terms 'subchapter C earnings and profits', 'passive investment income', and 'gross receipts' shall have the same respective meanings as when used in paragraph (3) of section 1362(d).''

1988—Subsec. (b)(1)(B). Pub. L. 100–647, § 1006(f)(5)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''The amount of the excess net passive income for any taxable year shall not exceed the corporation's taxable income for the taxable year (determined in accordance with section 1374(d)(4)).''

Subsec. (b)(4). Pub. L. 100–647, § 1006(f)(5)(C), added par. (4).

Subsec. (c). Pub. L. 100–647, § 1006(f)(5)(D), amended subsec. (c) generally, in heading substituting ''Credits not allowable'' for ''Special rules'', and in text substituting ''No credit'' for ''(1) DISALLOWANCE OF CREDIT.—No credit'', and striking out par. (2) which related to coordination with section 1374.

1986—Subsec. (b)(1)(B). Pub. L. 99–514 substituted ''section 1374(d)(4)'' for ''section 1374(d)''.

1984—Subsec. (c)(1). Pub. L. 98–369, § 474(r)(28), substituted ''section 34'' for ''section 39''.

Subsec. (d). Pub. L. 98–369, § 721(v), added subsec. (d).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1317(a) of Pub. L. 104–188, set out as a note under section 641 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, but only in cases where the return for the taxable year is filed pursuant to an S election made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, as amended, set out as an Effective Date note under section 336 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(28) 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 721(v) of Pub. L. 98–369 effective as if included in the Subchapter S Revision Act of 1982, Pub. L. 97–354, see section 721(y)(1) of Pub. L. 98–369, set out as a note under section 1361 of this title.

EFFECTIVE DATE

This section applicable to taxable years beginning after Dec. 31, 1982, except that in the case of a taxable year beginning during 1982, this section and sections 1362(d)(3) and 1366(f)(3) of this title shall apply, and section 1372(e)(5) of this title as in effect on the day before Oct. 19, 1982, shall not apply, see section 6(a), (b)(3) of Pub. L. 97–354, set out as a note under section 1361 of this title.

PART IV—DEFINITIONS; MISCELLANEOUS

§ 1377. Definitions and special rule

(a) Pro rata share

For purposes of this subchapter—

(1) In general

Except as provided in paragraph (2), each shareholder's pro rata share of any item for any taxable year shall be the sum of the amounts determined with respect to the shareholder—

(A) by assigning an equal portion of such item to each day of the taxable year, and

(B) then by dividing that portion pro rata among the shares outstanding on such day.

(2) Election to terminate year

(A) In general

Under regulations prescribed by the Secretary, if any shareholder terminates the shareholder's interest in the corporation during the taxable year and all affected shareholders and the corporation agree to the application of this paragraph, paragraph (1) shall be applied to the affected shareholders as if the taxable year consisted of 2 taxable years the first of which ends on the date of the termination.

(B) Affected shareholders

For purposes of subparagraph (A), the term ''affected shareholders'' means the shareholder whose interest is terminated and all shareholders to whom such shareholder has transferred shares during the taxable year. If such shareholder has transferred shares to the corporation, the term ''affected shareholders'' shall include all persons who are shareholders during the taxable year.

(b) Post-termination transition period

(1) In general

For purposes of this subchapter, the term ''post-termination transition period'' means—

(A) the period beginning on the day after the last day of the corporation's last taxable year as an S corporation and ending on the later of—

(i) the day which is 1 year after such last day, or

(ii) the due date for filing the return for such last year as an S corporation (including extensions),

(B) the 120-day period beginning on the date of any determination pursuant to an audit of the taxpayer which follows the termination of the corporation's election and which adjusts a subchapter S item of income, loss, or deduction of the corporation arising during the S period (as defined in section 1368(e)(2)), and

(C) the 120-day period beginning on the date of a determination that the corporation's election under section 1362(a) had terminated for a previous taxable year.

(2) Determination defined

For purposes of paragraph (1), the term ''determination'' means—

(A) a determination as defined in section 1313(a), or

(B) an agreement between the corporation and the Secretary that the corporation failed to qualify as an S corporation.

(3) Special rules for audit related post-termination transition periods

(A) No application to carryovers

Paragraph (1)(B) shall not apply for purposes of section 1366(d)(3).

(B) Limitation on application to distributions

Paragraph (1)(B) shall apply to a distribution described in section 1371(e) only to the extent that the amount of such distribution does not exceed the aggregate increase (if any) in the accumulated adjustments account (within the meaning of section 1368(e)) by reason of the adjustments referred to in such paragraph.

(c) Manner of making elections, etc.

Any election under this subchapter, and any revocation under section 1362(d)(1), shall be made in such manner as the Secretary shall by regulations prescribe.

(Added Pub. L. 97–354, § 2, Oct. 19, 1982, 96 Stat. 1685; amended Pub. L. 104–188, title I, §§ 1306–1307(b), Aug. 20, 1996, 110 Stat. 1780; Pub. L. 108–311, title IV, § 407(a), Oct. 4, 2004, 118 Stat. 1190.)

PRIOR PROVISIONS

A prior section 1377, added Pub. L. 85–866, title I, § 64(a), Sept. 2, 1958, 72 Stat. 1656; amended Pub. L.

94–455, title IX, §902(b)(1), title XIX, §1901(b)(32)(B)(iv), Oct. 4, 1976, 90 Stat. 1608, 1800, related to special rules applicable to earnings and profits of electing small business corporations, prior to the general revision of this subchapter by section 2 of Pub. L. 97–354.

AMENDMENTS

2004—Subsec. (b)(3). Pub. L. 108–311 added par. (3).

1996—Subsec. (a)(2). Pub. L. 104–188, §1306, reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Under regulations prescribed by the Secretary, if any shareholder terminates his interest in the corporation during the taxable year and all persons who are shareholders during the taxable year agree to the application of this paragraph, paragraph (1) shall be applied as if the taxable year consisted of 2 taxable years the first of which ends on the date of the termination.''

Subsec. (b)(1)(A) to (C). Pub. L. 104–188, §1307(a), struck out ''and'' at end of subpar. (A)(ii), added subpar. (B), and redesignated former subpar. (B) as (C).

Subsec. (b)(2)(A) to (C). Pub. L. 104–188, §1307(b), added subpar. (A), redesignated subpar. (C) as (B), and struck out former subpars. (A) and (B) which read as follows:

''(A) a court decision which becomes final,

''(B) a closing agreement, or''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 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 407(c) of Pub. L. 108–311, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1996 AMENDMENTS

Pub. L. 105–34, title XVI, §1601(c)(2), Aug. 5, 1997, 111 Stat. 1087, provided that:

''(A) Notwithstanding section 1317 of the Small Business Job Protection Act of 1996 [Pub. L. 104–188, enacting provisions set out as notes under sections 641 and 1362 of this title], the amendments made by subsections (a) and (b) of section 1307 of such Act [amending this section] shall apply to determinations made after December 31, 1996.

''(B) In no event shall the 120-day period referred to in section 1377(b)(1)(B) of the Internal Revenue Code of 1986 (as added by such section 1307) expire before the end of the 120-day period beginning on the date of the enactment of this Act [Aug. 5, 1997].''

Amendment by Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1317(a) of Pub. L. 104–188, set out as a note under section 641 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as a note under section 1361 of this title.

§ 1378. Taxable year of S corporation

(a) General rule

For purposes of this subtitle, the taxable year of an S corporation shall be a permitted year.

(b) Permitted year defined

For purposes of this section, the term ''permitted year'' means a taxable year which—

(1) is a year ending December 31, or

(2) is any other accounting period for which the corporation establishes a business purpose to the satisfaction of the Secretary.

For purposes of paragraph (2), any deferral of income to shareholders shall not be treated as a business purpose.

(Added Pub. L. 97–354, §2, Oct. 19, 1982, 96 Stat. 1685; amended Pub. L. 98–369, div. A, title VII, §721(m), (q), July 18, 1984, 98 Stat. 969, 970; Pub. L. 99–514, title VIII, §806(b), Oct. 22, 1986, 100 Stat. 2363.)

PRIOR PROVISIONS

A prior section 1378, added Pub. L. 89–389, §2(a), Apr. 14, 1966, 80 Stat. 113; amended Pub. L. 91–172, title V, §511(c)(4), Dec. 30, 1969, 83 Stat. 638; Pub. L. 94–455, title XIX, §1901(a)(152), (b)(33)(R), Oct. 4, 1976, 90 Stat. 1789, 1802, related to tax imposed on certain capital gains, prior to the general revision of this subchapter by section 2 of Pub. L. 97–354.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–514, §806(b)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''For purposes of this subtitle—

''(1) an S corporation shall not change its taxable year to any accounting period other than a permitted year, and

''(2) no corporation may make an election under section 1362(a) for any taxable year unless such taxable year is a permitted year.''

Subsec. (b). Pub. L. 99–514, §806(b)(2), inserted at end ''For purposes of paragraph (2), any deferral of income to shareholders shall not be treated as a business purpose.''

Subsec. (c). Pub. L. 99–514, §806(b)(3), struck out subsec. (c) which required existing S corporations to use permitted year after 50-percent shift in ownership.

1984—Subsec. (c)(1). Pub. L. 98–369, §721(m), substituted ''which includes December 31, 1982 (or which is an S corporation for a taxable year beginning during 1983 by reason of an election made on or before October 19, 1982)'' for ''which includes December 31, 1982''.

Subsec. (c)(3)(B)(i). Pub. L. 98–369, §721(q), substituted ''who (or whose estate) held'' for ''who held''.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title VIII, §806(e), Oct. 22, 1986, 100 Stat. 2364, as amended by Pub. L. 100–647, title I, §1008(e)(7), (8), (10), Nov. 10, 1988, 102 Stat. 3441, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 267, 441, and 706 of this title] shall apply to taxable years beginning after December 31, 1986.

''(2) CHANGE IN ACCOUNTING PERIOD.—In the case of any partnership, S corporation, or personal service corporation required by the amendments made by this section to change its accounting period for the taxpayer's first taxable year beginning after December 31, 1986—

''(A) such change shall be treated as initiated by the partnership, S corporation, or personal service corporation,

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

''(C) with respect to any partner or shareholder of an S corporation which is required to include the items from more than 1 taxable year of the partnership or S corporation in any 1 taxable year, income in excess of expenses of such partnership or corporation for the short taxable year required by such amendments shall be taken into account ratably in each of the first 4 taxable years beginning after December 31, 1986, unless such partner or shareholder elects to include all such income in the the [sic] partner's or shareholder's taxable year with or within which the partnership's or S corporation's short taxable year ends.

Subparagraph (C) shall apply to a shareholder of an S corporation only if such corporation was an S corporation for a taxable year beginning in 1986.

''(3) BASIS, ETC. RULES—

''(A) BASIS RULE.—The adjusted basis of any partner's interest in a partnership or shareholder's stock in an S corporation shall be determined as if all of the income to be taken into account ratably in the 4 taxable years referred to in paragraph (2)(C) were in-

cluded in gross income for the 1st of such taxable years.

''(B) TREATMENT OF DISPOSITIONS.—If any interest in a partnership or stock in an S corporation is disposed of before the last taxable year in the spread period, all amounts which would be included in the gross income of the partner or shareholder for subsequent taxable years in the spread period under paragraph (2)(C) and attributable to the interest or stock disposed of shall be included in gross income for the taxable year in which the disposition occurs. For purposes of the preceding sentence, the term 'spread period' means the period consisting of the 4 taxable years referred to in paragraph (2)(C).''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective as if included in Subchapter S Revision Act of 1982, Pub. L. 97–354, see section 721(y)(1) of Pub. L. 98–369, set out as a note under section 1361 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as a note under section 1361 of this title.

CONSTRUCTION OF SECTION 806 OF PUB. L. 99–514

Pub. L. 100–647, title I, §1008(e)(9), Nov. 10, 1988, 102 Stat. 3441, provided that: ''Nothing in section 806 of the Reform Act [Pub. L. 99–514, amending this section and sections 267, 441, and 706 of this title and enacting provisions set out above] or in any legislative history relating thereto shall be construed as requiring the Secretary of the Treasury or his delegate to permit an automatic change of a taxable year.''

§ 1379. Transitional rules on enactment

(a) Old elections

Any election made under section 1372(a) (as in effect before the enactment of the Subchapter S Revision Act of 1982) shall be treated as an election made under section 1362.

(b) References to prior law included

Any references in this title to a provision of this subchapter shall, to the extent not inconsistent with the purposes of this subchapter, include a reference to the corresponding provision as in effect before the enactment of the Subchapter S Revision Act of 1982.

(c) Distributions of undistributed taxable income

If a corporation was an electing small business corporation for the last preenactment year, subsections (f) and (d) of section 1375 (as in effect before the enactment of the Subchapter S Revision Act of 1982) shall continue to apply with respect to distributions of undistributed taxable income for any taxable year beginning before January 1, 1983.

(d) Carryforwards

If a corporation was an electing small business corporation for the last preenactment year and is an S corporation for the 1st postenactment year, any carryforward to the 1st postenactment year which arose in a taxable year for which the corporation was an electing small business corporation shall be treated as arising in the 1st postenactment year.

(e) Preenactment and postenactment years defined

For purposes of this subsection—

(1) Last preenactment year

The term ''last preenactment year'' means the last taxable year of a corporation which begins before January 1, 1983.

(2) 1st postenactment year

The term ''1st postenactment year'' means the 1st taxable year of a corporation which begins after December 31, 1982.

(Added Pub. L. 97–354, §2, Oct. 19, 1982, 96 Stat. 1686; amended Pub. L. 98–369, div. A, title VII, §721(n), July 18, 1984, 98 Stat. 969.)

REFERENCES IN TEXT

The enactment of the Subchapter S Revision Act of 1982, referred to in subsecs. (a) to (c), is the enactment of Pub. L. 97–354, which was approved Oct. 19, 1982.

PRIOR PROVISIONS

A prior section 1379, added Pub. L. 91–172, title V, §531(a), Dec. 30, 1969, 83 Stat. 654; amended Pub. L. 93–406, title II, §2001(b), Sept. 2, 1974, 88 Stat. 952; Pub. L. 97–34, title III, §312(c)(6), Aug. 13, 1981, 95 Stat. 284; Pub. L. 97–248, title II, §238(c), Sept. 3, 1982, 96 Stat. 513, related to certain qualified pension, etc., plans, prior to the general revision of this subchapter by section 2 of Pub. L. 97–354.

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–369 struck out ''In applying this subchapter to any taxable year beginning after December 31, 1982,'' and substituted ''Any references in this title to a provision'' for ''any reference in this subchapter to another provision''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective as if included in Subchapter S Revision Act of 1982, Pub. L. 97–354, see section 721(y)(1) of Pub. L. 98–369, set out as a note under section 1361 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, except that this section as in effect before Oct. 19, 1982, to remain in effect for years beginning before Jan. 1, 1984, see section 6(a), (b)(1) of Pub. L. 97–354, set out as a note under section 1361 of this title.

COORDINATION OF REPEALS OF CERTAIN SECTIONS

Subsec. (b) of this section as in effect on day before Sept. 3, 1982, inapplicable to any section 401(j) plan, see section 713(d)(8) of Pub. L. 98–369, set out as a note under section 404 of this title.

Subchapter T—Cooperatives and Their Patrons

AMENDMENTS

1966—Pub. L. 89–809, title II, §211(b)(5), Nov. 13, 1966, 80 Stat. 1582, inserted ''and per-unit retain allocations'' in heading of part II.

1962—Pub. L. 87–834, §17(a), Oct. 16, 1962, 76 Stat. 1045, added headings of subchapter T and of parts I to III.

PART I—TAX TREATMENT OF COOPERATIVES

Sec.

AMENDMENTS

1966—Pub. L. 89–809, title II, § 211(a)(8), Nov. 13, 1966, 80 Stat. 1582, inserted ''or nonqualified per-unit retain certificates'' in item 1383.

1962—Pub. L. 87–834, § 17(a), Oct. 16, 1962, 76 Stat. 1045, added heading of part I and items 1381 to 1383.

§ 1381. Organizations to which part applies

(a) In general

This part shall apply to—

(1) any organization exempt from tax under section 521 (relating to exemption of farmers' cooperatives from tax), and

(2) any corporation operating on a cooperative basis other than an organization—

(A) which is exempt from tax under this chapter,

(B) which is subject to the provisions of—

(i) part II of subchapter H (relating to mutual savings banks, etc.), or

(ii) subchapter L (relating to insurance companies), or

(C) which is engaged in furnishing electric energy, or providing telephone service, to persons in rural areas.

(b) Tax on certain farmers' cooperatives

An organization described in subsection (a)(1) shall be subject to the tax imposed by section 11.

(c) Cross reference

For treatment of income from load loss transactions of organizations described in subsection (a)(2)(C), see section 501(c)(12)(H).

(Added Pub. L. 87–834, § 17(a), Oct. 16, 1962, 76 Stat. 1045; amended Pub. L. 108–357, title III, § 319(d), Oct. 22, 2004, 118 Stat. 1472; Pub. L. 115–97, title I, § 13001(b)(2)(O), Dec. 22, 2017, 131 Stat. 2097.)

AMENDMENTS

2017—Subsec. (b). Pub. L. 115–97 substituted ''tax imposed by section 11'' for ''taxes imposed by section 11 or 1201''.

2004—Subsec. (c). Pub. L. 108–357 added subsec. (c).

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 2004 AMENDMENT

Amendment by 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.

EFFECTIVE DATE

Pub. L. 87–834, § 17(c), Oct. 16, 1962, 76 Stat. 1051, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) FOR THE COOPERATIVES.—Except as provided in paragraph (3), the amendments made by subsections (a) and (b) [enacting this subchapter, amending sections 521 and 6072 of this title, and repealing section 522 of this title] shall apply to taxable years of organizations described in section 1381(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)) beginning after December 31, 1962.

''(2) FOR THE PATRONS.—Except as provided in paragraph (3), section 1385 of the Internal Revenue Code of 1986 (as added by subsection (a)) shall apply with respect to any amount received from any organization described in section 1381(a) of such Code, to the extent that such amount is paid by such organization in a taxable year of such organization beginning after December 31, 1962.

''(3) APPLICATION OF EXISTING LAW.—In the case of any money, written notice of allocation, or other property paid by any organization described in section 1381(a)—

''(A) before the first day of the first taxable year of such organization beginning after December 31, 1962, or

''(B) on or after such first day with respect to patronage occurring before such first day,

the tax treatment of such money, written notice of allocation, or other property (including the tax treatment of gain or loss on the redemption, sale, or other disposition of such written notice of allocation) by any person shall be made under the Internal Revenue Code of 1986 without regard to subchapter T of chapter 1 of such Code [this subchapter].''

§ 1382. Taxable income of cooperatives

(a) Gross income

Except as provided in subsection (b), the gross income of any organization to which this part applies shall be determined without any adjustment (as a reduction in gross receipts, an increase in cost of goods sold, or otherwise) by reason of any allocation or distribution to a patron out of the net earnings of such organization or by reason of any amount paid to a patron as a per-unit retain allocation (as defined in section 1388(f)).

(b) Patronage dividends and per-unit retain allocations

In determining the taxable income of an organization to which this part applies, there shall not be taken into account amounts paid during the payment period for the taxable year—

(1) as patronage dividends (as defined in section 1388(a)), to the extent paid in money, qualified written notices of allocation (as defined in section 1388(c)), or other property (except nonqualified written notices of allocation (as defined in section 1388(d))) with respect to patronage occurring during such taxable year;

(2) in money or other property (except written notices of allocation) in redemption of a nonqualified written notice of allocation which was paid as a patronage dividend during the payment period for the taxable year during which the patronage occurred;

(3) as per-unit retain allocations (as defined in section 1388(f)), to the extent paid in money, qualified per-unit retain certificates (as defined in section 1388(h)), or other property (except nonqualified per-unit retain certificates, as defined in section 1388(i)) with respect to marketing occurring during such taxable year; or

(4) in money or other property (except per-unit retain certificates) in redemption of a nonqualified per-unit retain certificate which was paid as a per-unit retain allocation during the payment period for the taxable year during which the marketing occurred.

For purposes of this title, any amount not taken into account under the preceding sentence shall, in the case of an amount described in paragraph (1) or (2), be treated in the same manner as an item of gross income and as a deduction there-

from, and in the case of an amount described in paragraph (3) or (4), be treated as a deduction in arriving at gross income.

(c) Deduction for nonpatronage distributions, etc.

In determining the taxable income of an organization described in section 1381(a)(1), there shall be allowed as a deduction (in addition to other deductions allowable under this chapter)—

(1) amounts paid during the taxable year as dividends on its capital stock; and

(2) amounts paid during the payment period for the taxable year—

(A) in money, qualified written notices of allocation, or other property (except nonqualified written notices of allocation) on a patronage basis to patrons with respect to its earnings during such taxable year which are derived from business done for the United States or any of its agencies or from sources other than patronage, or

(B) in money or other property (except written notices of allocation) in redemption of a nonqualified written notice of allocation which was paid, during the payment period for the taxable year during which the earnings were derived, on a patronage basis to a patron with respect to earnings derived from business or sources described in subparagraph (A).

(d) Payment period for each taxable year

For purposes of subsections (b) and (c)(2), the payment period for any taxable year is the period beginning with the first day of such taxable year and ending with the fifteenth day of the ninth month following the close of such year. For purposes of subsections (b)(1) and (c)(2)(A), a qualified check issued during the payment period shall be treated as an amount paid in money during such period if endorsed and cashed on or before the 90th day after the close of such period.

(e) Products marketed under pooling arrangements

For purposes of subsection (b), in the case of a pooling arrangement for the marketing of products—

(1) the patronage shall (to the extent provided in regulations prescribed by the Secretary) be treated as patronage occurring during the taxable year in which the pool closes, and

(2) the marketing of products shall be treated as occurring during any of the taxable years in which the pool is open.

(f) Treatment of earnings received after patronage occurred

If any portion of the earnings from business done with or for patrons is includible in the organization's gross income for a taxable year after the taxable year during which the patronage occurred, then for purposes of applying paragraphs (1) and (2) of subsection (b) to such portion the patronage shall, to the extent provided in regulations prescribed by the Secretary, be considered to have occurred during the taxable year of the organization during which such earnings are includible in gross income.

(g) Use of completed crop pool method of accounting

(1) In general

An organization described in section 1381(a) which is engaged in pooling arrangements for the marketing of products may compute its taxable income with respect to any pool opened prior to March 1, 1978, under the completed crop pool method of accounting if—

(A) the organization has computed its taxable income under such method for the 10 taxable years ending with its first taxable year beginning after December 31, 1976, and

(B) with respect to the pool, the organization has entered into an agreement with the United States or any of its agencies which includes provisions to the effect that—

(i) the United States or such agency shall provide a loan to the organization with the products comprising the pool serving as collateral for such loan,

(ii) the organization shall use an amount equal to the proceeds of such loan to make price support advances to eligible producers (as determined by the United States or such agency), to defray costs of handling, processing, and storing such products, or to pay all or part of any administrative costs associated with the price support program,

(iii) an amount equal to the net proceeds (as determined under such agreement) from the sale or exchange of the products in the pool shall be used to repay such loan until such loan is repaid in full (or all the products in the pool are disposed of), and

(iv) the net gains (as determined under such agreement) from the sale or exchange of such products shall be distributed to eligible producers, except to the extent that the United States or such agency permits otherwise.

(2) Completed crop pool method of accounting defined

For purposes of this subsection, the term ''completed crop pool method of accounting'' means a method of accounting under which gain or loss is computed separately for each crop year pool in the year in which the last of the products in the pool are disposed of.

(Added Pub. L. 87–834, §17(a), Oct. 16, 1962, 76 Stat. 1046; amended Pub. L. 89–809, title II, §211(a)(1)–(4), Nov. 13, 1966, 80 Stat. 1580, 1581; Pub. L. 91–172, title IX, §911(a), Dec. 30, 1969, 83 Stat. 722; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–345, §3, Aug. 15, 1978, 92 Stat. 483.)

AMENDMENTS

1978—Subsec. (g). Pub. L. 95–345 added subsec. (g).

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

1969—Subsec. (b)(3). Pub. L. 91–172 expanded the category of per-unit retain allocations that may not be taken into account in determining the taxable income of an organization, by including per-unit retain allocations paid for in money or other property (except nonqualified per-unit retain certificates as defined in section 1388(i) of this section).

1966—Subsec. (a). Pub. L. 89–809, §211(a)(1), inserted reference to amounts paid to patrons as a per-unit retain allocation as defined in section 1388(f).

Subsec. (b). Pub. L. 89–809, § 211(a)(2), inserted ''and per-unit retain allocations'' in heading, added pars. (3) and (4), and, in text following par. (4), inserted provisions making existing text applicable only to amounts described in pars. (1) and (2) and inserted text covering the treatment of amounts described in pars. (3) and (4).

Subsec. (e). Pub. L. 89–809, § 211(a)(3), inserted provision that the marketing of products shall be treated as occurring during any of the taxable years in which the pool is open.

Subsec. (f). Pub. L. 89–809, § 211(a)(4), substituted ''paragraphs (1) and (2) of subsection (b)'' for ''subsection (b)''.

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title IX, § 911(c), Dec. 30, 1969, 83 Stat. 722, provided that: ''The amendments made by this section [amending this section and section 1388 of this title] shall apply to per-unit retain allocations made after October 9, 1969.''

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89–809, title II, § 211(e), Nov. 13, 1966, 80 Stat. 1584, provided that:

''(1) The amendments made by subsections (a), (b), and (c) [amending this section and sections 1383, 1385, and 1388 of this title] shall apply to per-unit retain allocations made during taxable years of an organization described in section 1381(a) (relating to organizations to which part I of subchapter T of chapter 1 applies) beginning after April 30, 1966, with respect to products delivered during such years.

''(2) The amendments made by subsection (d) [amending section 6044 of this title] shall apply with respect to calendar years after 1966.''

EFFECTIVE DATE

Section 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 a note under section 1381 of this title.

§ 1383. Computation of tax where cooperative redeems nonqualified written notices of allocation or nonqualified per-unit retain certificates

(a) General rule

If, under section 1382(b)(2) or (4), or (c)(2)(B), a deduction is allowable to an organization for the taxable year for amounts paid in redemption of nonqualified written notices of allocation or nonqualified per-unit retain certificates, then the tax imposed by this chapter on such organization for the taxable year shall be the lesser of the following:

(1) the tax for the taxable year computed with such deduction; or

(2) an amount equal to—

(A) the tax for the taxable year computed without such deduction, minus

(B) the decrease in tax under this chapter for any prior taxable year (or years) which would result solely from treating such nonqualified written notices of allocation or nonqualified per-unit retain certificates as qualified written notices of allocation or qualified per-unit retain certificates (as the case may be).

(b) Special rules

(1) If the decrease in tax ascertained under subsection (a)(2)(B) exceeds the tax for the taxable year (computed without the deduction described in subsection (a)) such excess shall be considered to be a payment of tax on the last day prescribed by law for the payment of tax for the taxable year, and shall be refunded or credited in the same manner as if it were an overpayment for such taxable year.

(2) For purposes of determining the decrease in tax under subsection (a)(2)(B), the stated dollar amount of any nonqualified written notice of allocation or nonqualified per-unit retain certificate which is to be treated under such subsection as a qualified written notice of allocation or qualified per-unit retain certificate (as the case may be) shall be the amount paid in redemption of such written notice of allocation or per-unit retain certificate which is allowable as a deduction under section 1382(b)(2) or (4), or (c)(2)(B) for the taxable year.

(3) If the tax imposed by this chapter for the taxable year is the amount determined under subsection (a)(2), then the deduction described in subsection (a) shall not be taken into account for any purpose of this subtitle other than for purposes of this section.

(Added Pub. L. 87–834, § 17(a), Oct. 16, 1962, 76 Stat. 1047; amended Pub. L. 89–809, title II, § 211(a)(5)–(7), Nov. 13, 1966, 80 Stat. 1581.)

AMENDMENTS

1966—Pub. L. 89–809, § 211(a)(5), inserted ''or nonqualified per-unit retain certificates'' in section catchline.

Subsec. (a). Pub. L. 89–809, § 211(a)(6), substituted ''section 1382(b)(2) or (4)'' for ''1382(b)(2)'' and inserted references to per-unit retain certificates.

Subsec. (b)(2). Pub. L. 89–809, § 211(a)(7), substituted ''section 1382(b)(2) or (4)'' for ''section 1382(b)(2)'' and inserted references to per-unit retain certificates.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable to per-unit retain allocations made during taxable years of an organization described in section 1381(a) of this title (relating to organizations to which part I of subchapter T of chapter 1 applies) beginning after Apr. 30, 1966, with respect to products delivered during such years, see section 211(e)(1) of Pub. L. 89–809, set out as a note under section 1382 of this title.

EFFECTIVE DATE

Section 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 a note under section 1381 of this title.

PART II—TAX TREATMENT BY PATRONS OF PATRONAGE DIVIDENDS AND PER-UNIT RETAIN ALLOCATIONS

Sec.
1385. Amounts includible in patron's gross income.

AMENDMENTS

1962—Pub. L. 87–834, § 17(a), Oct. 16, 1962, 76 Stat. 1048, added heading of part II and item 1385.

§ 1385. Amounts includible in patron's gross income

(a) General rule

Except as otherwise provided in subsection (b), each person shall include in gross income—

(1) the amount of any patronage dividend which is paid in money, a qualified written no-

tice of allocation, or other property (except a nonqualified written notice of allocation), and which is received by him during the taxable year from an organization described in section 1381(a),

(2) any amount, described in section 1382(c)(2)(A) (relating to certain nonpatronage distributions by tax-exempt farmers' cooperatives), which is paid in money, a qualified written notice of allocation, or other property (except a nonqualified written notice of allocation), and which is received by him during the taxable year from an organization described in section 1381(a)(1), and

(3) the amount of any per-unit retain allocation which is paid in qualified per-unit retain certificates and which is received by him during the taxable year from an organization described in section 1381(a).

(b) Exclusion from gross income

Under regulations prescribed by the Secretary, the amount of any patronage dividend, and any amount received on the redemption, sale, or other disposition of a nonqualified written notice of allocation which was paid as a patronage dividend, shall not be included in gross income to the extent that such amount—

(1) is properly taken into account as an adjustment to basis of property, or

(2) is attributable to personal, living, or family items.

(c) Treatment of certain nonqualified written notices of allocation and certain nonqualified per-unit retain certificates

(1) Application of subsection

This subsection shall apply to—

(A) any nonqualified written notice of allocation which—

(i) was paid as a patronage dividend, or

(ii) was paid by an organization described in section 1381(a)(1) on a patronage basis with respect to earnings derived from business or sources described in section 1382(c)(2)(A), and

(B) any nonqualified per-unit retain certificate which was paid as a per-unit retain allocation.

(2) Basis; amount of gain

In the case of any nonqualified written notice of allocation or nonqualified per-unit retain certificate to which this subsection applies, for purposes of this chapter—

(A) the basis of such written notice of allocation or per-unit retain certificate in the hands of the patron to whom such written notice of allocation or per-unit retain certificate was paid shall be zero,

(B) the basis of such written notice of allocation or per-unit retain certificate which was acquired from a decedent shall be its basis in the hands of the decedent, and

(C) gain on the redemption, sale, or other disposition of such written notice of allocation or per-unit retain certificate by any person shall, to the extent that the stated dollar amount of such written notice of allocation or per-unit retain certificate exceeds its basis, be considered as ordinary income.

(Added Pub. L. 87–834, §17(a), Oct. 16, 1962, 76 Stat. 1048; amended Pub. L. 89–809, title II, §211(b)(1)–(4), Nov. 13, 1966, 80 Stat. 1582; Pub. L. 94–455, title XIX, §§1901(b)(3)(I), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1793, 1834.)

AMENDMENTS

1976—Subsec. (b). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c)(2)(C). 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''.

1966—Subsec. (a)(3). Pub. L. 89–809, §211(b)(1), added par. (3).

Subsec. (c). Pub. L. 89–809, §211(b)(2)–(4), inserted ''and certain nonqualified per-unit retain certificates'' in heading, inserted provisions to par. (1) for the application of the subsection to any nonqualified per-unit retain certificates which were paid as per-unit retain allocations, and inserted references to per-unit retain certificates in par. (2).

EFFECTIVE DATE OF 1976 AMENDMENT

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 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable to per-unit retain allocations made during taxable years of an organization described in section 1381(a) of this title (relating to organizations to which part I of subchapter T of chapter 1 applies) beginning after Apr. 30, 1966, with respect to products delivered during such years, see section 211(e)(1) of Pub. L. 89–809, set out as a note under section 1382 of this title.

EFFECTIVE DATE

Section 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 a note under section 1381 of this title.

PART III—DEFINITIONS; SPECIAL RULES

AMENDMENTS

1962—Pub. L. 87–834, §17(a), Oct. 16, 1962, 76 Stat. 1049, added heading of part III and item 1388.

§ 1388. Definitions; special rules

(a) Patronage dividend

For purposes of this subchapter, the term ''patronage dividend'' means an amount paid to a patron by an organization to which part I of this subchapter applies—

(1) on the basis of quantity or value of business done with or for such patron,

(2) under an obligation of such organization to pay such amount, which obligation existed before the organization received the amount so paid, and

(3) which is determined by reference to the net earnings of the organization from business done with or for its patrons.

Such term does not include any amount paid to a patron to the extent that (A) such amount is out of earnings other than from business done with or for patrons, or (B) such amount is out of earnings from business done with or for other

patrons to whom no amounts are paid, or to whom smaller amounts are paid, with respect to substantially identical transactions. For purposes of paragraph (3), net earnings shall not be reduced by amounts paid during the year as dividends on capital stock or other proprietary capital interests of the organization to the extent that the articles of incorporation or bylaws of such organization or other contract with patrons provide that such dividends are in addition to amounts otherwise payable to patrons which are derived from business done with or for patrons during the taxable year.

(b) Written notice of allocation

For purposes of this subchapter, the term ''written notice of allocation'' means any capital stock, revolving fund certificate, retain certificate, certificate of indebtedness, letter of advice, or other written notice, which discloses to the recipient the stated dollar amount allocated to him by the organization and the portion thereof, if any, which constitutes a patronage dividend.

(c) Qualified written notice of allocation

(1) Defined

For purposes of this subchapter, the term ''qualified written notice of allocation'' means—

(A) a written notice of allocation which may be redeemed in cash at its stated dollar amount at any time within a period beginning on the date such written notice of allocation is paid and ending not earlier than 90 days from such date, but only if the distributee receives written notice of the right of redemption at the time he receives such written notice of allocation; and

(B) a written notice of allocation which the distributee has consented, in the manner provided in paragraph (2), to take into account at its stated dollar amount as provided in section 1385(a).

Such term does not include any written notice of allocation which is paid as part of a patronage dividend or as part of a payment described in section 1382(c)(2)(A), unless 20 percent or more of the amount of such patronage dividend, or such payment, is paid in money or by qualified check.

(2) Manner of obtaining consent

A distributee shall consent to take a written notice of allocation into account as provided in paragraph (1)(B) only by—

(A) making such consent in writing,

(B) obtaining or retaining membership in the organization after—

(i) such organization has adopted (after October 16, 1962) a bylaw providing that membership in the organization constitutes such consent, and

(ii) he has received a written notification and copy of such bylaw, or

(C) if neither subparagraph (A) nor (B) applies, endorsing and cashing a qualified check, paid as a part of the patronage dividend or payment of which such written notice of allocation is also a part, on or before the 90th day after the close of the payment period for the taxable year of the organization for which such patronage dividend or payment is paid.

(3) Period for which consent is effective

(A) General rule

Except as provided in subparagraph (B)—

(i) a consent described in paragraph (2)(A) shall be a consent with respect to all patronage of the distributee with the organization occurring (determined with the application of section 1382(e)) during the taxable year of the organization during which such consent is made and all subsequent taxable years of the organization; and

(ii) a consent described in paragraph (2)(B) shall be a consent with respect to all patronage of the distributee with the organization occurring (determined without the application of section 1382(e)) after he received the notification and copy described in paragraph (2)(B)(ii).

(B) Revocation, etc.

(i) Any consent described in paragraph (2)(A) may be revoked (in writing) by the distributee at any time. Any such revocation shall be effective with respect to patronage occurring on or after the first day of the first taxable year of the organization beginning after the revocation is filed with such organization; except that in the case of a pooling arrangement described in section 1382(e), a revocation made by a distributee shall not be effective as to any pool with respect to which the distributee has been a patron before such revocation.

(ii) Any consent described in paragraph (2)(B) shall not be effective with respect to any patronage occurring (determined without the application of section 1382(e)) after the distributee ceases to be a member of the organization or after the bylaws of the organization cease to contain the provision described in paragraph (2)(B)(i).

(4) Qualified check

For purposes of this subchapter, the term ''qualified check'' means only a check (or other instrument which is redeemable in money) which is paid as a part of a patronage dividend, or as a part of a payment described in section 1382(c)(2)(A), to a distributee who has not given consent as provided in paragraph (2)(A) or (B) with respect to such patronage dividend or payment, and on which there is clearly imprinted a statement that the endorsement and cashing of the check (or other instrument) constitutes the consent of the payee to include in his gross income, as provided in the Federal income tax laws, the stated dollar amount of the written notice of allocation which is a part of the patronage dividend or payment of which such qualified check is also a part. Such term does not include any check (or other instrument) which is paid as part of a patronage dividend or payment which does not include a written notice of allocation (other than a written notice of allocation described in paragraph (1)(A)).

(d) Nonqualified written notice of allocation

For purposes of this subchapter, the term ''nonqualified written notice of allocation'' means a written notice of allocation which is not described in subsection (c) or a qualified check which is not cashed on or before the 90th day after the close of the payment period for the taxable year for which the distribution of which it is a part is paid.

(e) Determination of amount paid or received

For purposes of this subchapter, in determining amounts paid or received—

(1) property (other than a written notice of allocation or a per-unit retain certificate) shall be taken into account at its fair market value, and

(2) a qualified written notice of allocation or qualified per-unit retain certificate shall be taken into account at its stated dollar amount.

(f) Per-unit retain allocation

For purposes of this subchapter, the term ''per-unit retain allocation'' means any allocation, by an organization to which part I of this subchapter applies, to a patron with respect to products marketed for him, the amount of which is fixed without reference to the net earnings of the organization pursuant to an agreement between the organization and the patron.

(g) Per-unit retain certificate

For purposes of this subchapter, the term ''per-unit retain certificate'' means any written notice which discloses to the recipient the stated dollar amount of a per-unit retain allocation to him by the organization.

(h) Qualified per-unit retain certificate

(1) Defined

For purposes of this subchapter, the term ''qualified per-unit retain certificate'' means any per-unit retain certificate which the distributee has agreed, in the manner provided in paragraph (2), to take into account at its stated dollar amount as provided in section 1385(a).

(2) Manner of obtaining agreement

A distributee shall agree to take a per-unit retain certificate into account as provided in paragraph (1) only by—

(A) making such agreement in writing, or

(B) obtaining or retaining membership in the organization after—

(i) such organization has adopted (after November 13, 1966) a bylaw providing that membership in the organization constitutes such agreement, and

(ii) he has received a written notification and copy of such bylaw.

(3) Period for which agreement is effective

(A) General rule

Except as provided in subparagraph (B)—

(i) an agreement described in paragraph (2)(A) shall be an agreement with respect to all products delivered by the distributee to the organization during the taxable year of the organization during which such agreement is made and all subsequent taxable years of the organization; and

(ii) an agreement described in paragraph (2)(B) shall be an agreement with respect to all products delivered by the distributee to the organization after he received the notification and copy described in paragraph (2)(B)(ii).

(B) Revocation, etc.

(i) Any agreement described in paragraph (2)(A) may be revoked (in writing) by the distributee at any time. Any such revocation shall be effective with respect to products delivered by the distributee on or after the first day of the first taxable year of the organization beginning after the revocation is filed with the organization; except that in the case of a pooling arrangement described in section 1382(e) a revocation made by a distributee shall not be effective as to any products which were delivered to the organization by the distributee before such revocation.

(ii) Any agreement described in paragraph (2)(B) shall not be effective with respect to any products delivered after the distributee ceases to be a member of the organization or after the bylaws of the organization cease to contain the provision described in paragraph (2)(B)(i).

(i) Nonqualified per-unit retain certificate

For purposes of this subchapter, the term ''nonqualified per-unit retain certificate'' means a per-unit retain certificate which is not described in subsection (h).

(j) Special rules for the netting of gains and losses by cooperatives

For purposes of this subchapter, in the case of any organization to which part I of this subchapter applies—

(1) Optional netting of patronage gains and losses permitted

The net earnings of such organization may, at its option, be determined by offsetting patronage losses (including any patronage loss carried to such year) which are attributable to 1 or more allocation units (whether such units are functional, divisional, departmental, geographic, or otherwise) against patronage earnings of 1 or more other such allocation units.

(2) Certain netting permitted after section 381 transactions

If such an organization acquires the assets of another such organization in a transaction described in section 381(a), the acquiring organization may, in computing its net earnings for taxable years ending after the date of acquisition, offset losses of 1 or more allocation units of the acquiring or acquired organization against earnings of the acquired or acquiring organization, respectively, but only to the extent—

(A) such earnings are properly allocable to periods after the date of acquisition, and

(B) such earnings could have been offset by such losses if such earnings and losses had been derived from allocation units of the same organization.

(3) Notice requirements

(A) In general

In the case of any organization which exercises its option under paragraph (1) for any taxable year, such organization shall, on or before the 15th day of the 9th month following the close of such taxable year, provide to its patrons a written notice which—

(i) states that the organization has offset earnings and losses from 1 or more of its allocation units and that such offset may have affected the amount which is being distributed to its patrons,

(ii) states generally the identity of the offsetting allocation units, and

(iii) states briefly what rights, if any, its patrons may have to additional financial information of such organization under terms of its charter, articles of incorporation, or bylaws, or under any provision of law.

(B) Certain information need not be provided

An organization may exclude from the information required to be provided under clause (ii) of subparagraph (A) any detailed or specific data regarding earnings or losses of such units which such organization determines would disclose commercially sensitive information which—

(i) could result in a competitive disadvantage to such organization, or

(ii) could create a competitive advantage to the benefit of a competitor of such organization.

(C) Failure to provide sufficient notice

If the Secretary determines that an organization failed to provide sufficient notice under this paragraph—

(i) the Secretary shall notify such organization, and

(ii) such organization shall, upon receipt of such notification, provide to its patrons a revised notice meeting the requirements of this paragraph.

Any such failure shall not affect the treatment of the organization under any provision of this subchapter or section 521.

(4) Patronage earnings or losses defined

For purposes of this subsection, the terms ''patronage earnings'' and ''patronage losses'' means[1] earnings and losses, respectively, which are derived from business done with or for patrons of the organization.

(k) Cooperative marketing includes value-added processing involving animals

For purposes of section 521 and this subchapter, the marketing of the products of members or other producers shall include the feeding of such products to cattle, hogs, fish, chickens, or other animals and the sale of the resulting animals or animal products.

(Added Pub. L. 87–834, §17(a), Oct. 16, 1962, 76 Stat. 1049; amended Pub. L. 89–809, title II, §211(c), Nov. 13, 1966, 80 Stat. 1582; Pub. L. 91–172, title IX, §911(b), Dec. 30, 1969, 83 Stat. 722; Pub. L. 94–455, title XIX, §1901(a)(153), Oct. 4, 1976, 90 Stat. 1789; Pub. L. 95–600, title III, §316(b)(3), Nov. 6, 1978, 92 Stat. 2830; Pub. L. 99–272, title XIII, §13210(a), Apr. 7, 1986, 100 Stat. 323; Pub. L. 101–508, title XI, §11813(b)(24), Nov. 5, 1990, 104 Stat. 1388–555; Pub. L. 108–357, title III, §§312(a), 316(a), Oct. 22, 2004, 118 Stat. 1467, 1469.)

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–357, §312(a), inserted at end of concluding provisions ''For purposes of paragraph (3), net earnings shall not be reduced by amounts paid during the year as dividends on capital stock or other proprietary capital interests of the organization to the extent that the articles of incorporation or bylaws of such organization or other contract with patrons provide that such dividends are in addition to amounts otherwise payable to patrons which are derived from business done with or for patrons during the taxable year.''

Subsec. (k). Pub. L. 108–357, §316(a), added subsec. (k).

1990—Subsec. (k). Pub. L. 101–508 struck out subsec. (k) which cross-referenced section 46(h) for provisions relating to apportionment of investment credit between cooperative organizations and their patrons.

1986—Subsecs. (j), (k). Pub. L. 99–272 added subsec. (j) and redesignated former subsec. (j) as (k).

1978—Subsec. (j). Pub. L. 95–600 added subsec. (j).

1976—Subsec. (c)(2)(B)(i). Pub. L. 94–455, §1901(a)(153)(A), substituted ''October 16, 1962'' for ''the date of the enactment of the Revenue Act of 1962''.

Subsec. (h)(2)(B)(i). Pub. L. 94–455, §1901(a)(153)(B), substituted ''November 13, 1966'' for ''the date of the enactment of this subsection''.

1969—Subsec. (f). Pub. L. 91–172 struck out reference to allocations made by organizations other than by payment of money or other property except per-unit retain certificates.

1966—Subsec. (e). Pub. L. 89–809, §211(c)(1), inserted references to per-unit retain certificates.

Subsecs. (f) to (i). Pub. L. 89–809, §211(c)(2), added subsecs. (f) to (i).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title III, §312(b), Oct. 22, 2004, 118 Stat. 1467, provided that: ''The amendment made by this section [amending this section] shall apply to distributions in taxable years beginning after the date of the enactment of this Act [Oct. 22, 2004].''

Amendment by section 316(a) of Pub. L. 108–357 applicable to taxable years beginning after Oct. 22, 2004, see section 316(c) of Pub. L. 108–357, set out as a note under section 521 of this title.

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 1986 AMENDMENT

Pub. L. 99–272, title XIII, §13210(c), Apr. 7, 1986, 100 Stat. 324, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 521 of this title] shall apply to taxable years beginning after December 31, 1962.

''(2) NOTIFICATION REQUIREMENT.—The provisions of section 1388(j)(3) of the Internal Revenue Code of 1954 [now 1986] (as added by subsection (a)) shall apply to taxable years beginning on or after the date of the enactment of this Act [Apr. 7, 1986].

[1] So in original. Probably should be ''mean''.

''(3) NO INFERENCE.—Nothing in the amendments made by this section [amending this section and section 521 of this title] shall be construed to infer that a change in law is intended as to whether any patronage earnings may or not be offset by nonpatronage losses, and any determination of such issue shall be made as if such amendments had not been enacted.''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable to taxable years ending after October 31, 1978, see section 316(c) of Pub. L. 95–600, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to per-unit retain allocations made after Oct. 9, 1969, see section 911(c) of Pub. L. 91–172, set out as a note under section 1382 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable to per-unit retain allocations made during taxable years of an organization described in section 1381(a) of this title (relating to organizations to which part I of subchapter T of chapter 1 applies) beginning after Apr. 30, 1966, with respect to products delivered during such years, see section 211(e)(1) of Pub. L. 89–809, set out as a note under section 1382 of this title.

EFFECTIVE DATE

Section 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 a note under section 1381 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.

PER-UNIT RETAIN CERTIFICATES COVERED BY WRITTEN AGREEMENTS BETWEEN OCT. 14, 1965, AND NOV. 13, 1966: TRANSITION TREATMENT OF BY-LAW PROVISIONS

Pub. L. 89–809, title II, § 211(f), Nov. 13, 1966, 80 Stat. 1584, provided that a written agreement between a patron and a cooperative association which met certain qualifications and was entered into after Oct. 14, 1965 and before Nov. 13, 1966, and which was in effect on Nov. 13, 1966, was to be treated for purposes of subsec. (h) of this section as if entered into after Nov. 13, 1966.

Subchapter U—Designation and Treatment of Empowerment Zones, Enterprise Communities, and Rural Development Investment Areas

PRIOR PROVISIONS

A prior subchapter U consisted of sections 1391 to 1397, prior to repeal by Pub. L. 99–514, title XIII, § 1303(a), Oct. 22, 1986, 100 Stat. 2658.

AMENDMENTS

1997—Pub. L. 105–34, title II, § 226(b)(1), Aug. 5, 1997, 111 Stat. 824, added items for parts IV and V and struck out former item for part IV ''Regulations''.

PART I—DESIGNATION

§ 1391. Designation procedure

(a) In general

From among the areas nominated for designation under this section, the appropriate Secretaries may designate empowerment zones and enterprise communities.

(b) Number of designations

(1) Enterprise communities

The appropriate Secretaries may designate in the aggregate 95 nominated areas as enterprise communities under this section, subject to the availability of eligible nominated areas. Of that number, not more than 65 may be designated in urban areas and not more than 30 may be designated in rural areas.

(2) Empowerment zones

The appropriate Secretaries may designate in the aggregate 11 nominated areas as empowerment zones under this section, subject to the availability of eligible nominated areas. Of that number, not more than 8 may be designated in urban areas and not more than 3 may be designated in rural areas. If 8 empowerment zones are designated in urban areas, no less than 1 shall be designated in an urban area the most populous city of which has a population of 500,000 or less and no less than 1 shall be a nominated area which includes areas in 2 States and which has a population of 50,000 or less. The Secretary of Housing and Urban Development shall designate empowerment zones located in urban areas in such a manner that the aggregate population of all such zones does not exceed 1,000,000.

(c) Period designations may be made

A designation may be made under subsection (a) only after 1993 and before 1996.

(d) Period for which designation is in effect

(1) In general

Any designation under this section shall remain in effect during the period beginning on the date of the designation and ending on the earliest of—

(A)(i) in the case of an empowerment zone, December 31, 2016, or

(ii) in the case of an enterprise community, the close of the 10th calendar year beginning on or after such date of designation,

(B) the termination date designated by the State and local governments as provided for in their nomination, or

(C) the date the appropriate Secretary revokes the designation.

(2) Revocation of designation

The appropriate Secretary may revoke the designation under this section of an area if such Secretary determines that the local government or the State in which it is located—

(A) has modified the boundaries of the area, or

(B) is not complying substantially with, or fails to make progress in achieving the benchmarks set forth in, the strategic plan under subsection (f)(2).

(e) Limitations on designations

No area may be designated under this section unless—

(1) the area is nominated by 1 or more local governments and the State or States in which it is located for designation under this section,

(2) such State or States and the local governments have the authority—

(A) to nominate the area for designation under this section, and

(B) to provide the assurances described in paragraph (3),

(3) such State or States and the local governments provide written assurances satisfactory to the appropriate Secretary that the strategic plan described in the application under subsection (f)(2) for such area will be implemented,

(4) the appropriate Secretary determines that any information furnished is reasonably accurate, and

(5) such State or States and local governments certify that no portion of the area nominated is already included in an empowerment zone or in an enterprise community or in an area otherwise nominated to be designated under this section.

(f) Application

No area may be designated under this section unless the application for such designation—

(1) demonstrates that the nominated area satisfies the eligibility criteria described in section 1392,

(2) includes a strategic plan for accomplishing the purposes of this subchapter that—

(A) describes the coordinated economic, human, community, and physical development plan and related activities proposed for the nominated area,

(B) describes the process by which the affected community is a full partner in the process of developing and implementing the plan and the extent to which local institutions and organizations have contributed to the planning process,

(C) identifies the amount of State, local, and private resources that will be available in the nominated area and the private/public partnerships to be used, which may include participation by, and cooperation with, universities, medical centers, and other private and public entities,

(D) identifies the funding requested under any Federal program in support of the proposed economic, human, community, and physical development and related activities,

(E) identifies baselines, methods, and benchmarks for measuring the success of carrying out the strategic plan, including the extent to which poor persons and families will be empowered to become economically self-sufficient, and

(F) does not include any action to assist any establishment in relocating from one area outside the nominated area to the nominated area, except that assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary is permitted if—

(i) the establishment of the new branch, affiliate, or subsidiary will not result in a decrease in employment in the area of original location or in any other area where the existing business entity conducts business operations, and

(ii) there is no reason to believe that the new branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where the existing business entity conducts business operation, and

(3) includes such other information as may be required by the appropriate Secretary.

(g) Additional designations permitted

(1) In general

In addition to the areas designated under subsection (a), the appropriate Secretaries may designate in the aggregate an additional 20 nominated areas as empowerment zones under this section, subject to the availability of eligible nominated areas. Of that number, not more than 15 may be designated in urban areas and not more than 5 may be designated in rural areas.

(2) Period designations may be made and take effect

A designation may be made under this subsection after the date of the enactment of this subsection and before January 1, 1999.

(3) Modifications to eligibility criteria, etc.

(A) Poverty rate requirement

(i) In general

A nominated area shall be eligible for designation under this subsection only if the poverty rate for each population census tract within the nominated area is not less than 20 percent and the poverty rate for at least 90 percent of the population census tracts within the nominated area is not less than 25 percent.

(ii) Treatment of census tracts with small populations

A population census tract with a population of less than 2,000 shall be treated as having a poverty rate of not less than 25 percent if—

(I) more than 75 percent of such tract is zoned for commercial or industrial use, and

(II) such tract is contiguous to 1 or more other population census tracts which have a poverty rate of not less than 25 percent (determined without regard to this clause).

(iii) Exception for developable sites

Clause (i) shall not apply to up to 3 noncontiguous parcels in a nominated area which may be developed for commercial or industrial purposes. The aggregate area of

noncontiguous parcels to which the preceding sentence applies with respect to any nominated area shall not exceed 2,000 acres.

(iv) Certain provisions not to apply

Section 1392(a)(4) (and so much of paragraphs (1) and (2) of section 1392(b) as relate to section 1392(a)(4)) shall not apply to an area nominated for designation under this subsection.

(v) Special rule for rural empowerment zone

The Secretary of Agriculture may designate not more than 1 empowerment zone in a rural area without regard to clause (i) if such area satisfies emigration criteria specified by the Secretary of Agriculture.

(B) Size limitation

(i) In general

The parcels described in subparagraph (A)(iii) shall not be taken into account in determining whether the requirement of subparagraph (A) or (B) of section 1392(a)(3) is met.

(ii) Special rule for rural areas

If a population census tract (or equivalent division under section 1392(b)(4)) in a rural area exceeds 1,000 square miles or includes a substantial amount of land owned by the Federal, State, or local government, the nominated area may exclude such excess square mileage or governmentally owned land and the exclusion of that area will not be treated as violating the continuous boundary requirement of section 1392(a)(3)(B).

(C) Aggregate population limitation

The aggregate population limitation under the last sentence of subsection (b)(2) shall not apply to a designation under paragraph (1).

(D) Previously designated enterprise communities may be included

Subsection (e)(5) shall not apply to any enterprise community designated under subsection (a) that is also nominated for designation under this subsection.

(E) Indian reservations may be nominated

(i) In general

Section 1393(a)(4) shall not apply to an area nominated for designation under this subsection.

(ii) Special rule

An area in an Indian reservation shall be treated as nominated by a State and a local government if it is nominated by the reservation governing body (as determined by the Secretary of[1] Interior).

(h) Additional designations permitted

(1) In general

In addition to the areas designated under subsections (a) and (g), the appropriate Secretaries may designate in the aggregate an additional 9 nominated areas as empowerment zones under this section, subject to the availability of eligible nominated areas. Of that number, not more than seven may be designated in urban areas and not more than 2 may be designated in rural areas.

(2) Period designations may be made and take effect

A designation may be made under this subsection after the date of the enactment of this subsection and before January 1, 2002.

(3) Modifications to eligibility criteria, etc.

The rules of subsection (g)(3) shall apply to designations under this subsection.

(4) Empowerment zones which become renewal communities

The number of areas which may be designated as empowerment zones under this subsection shall be increased by 1 for each area which ceases to be an empowerment zone by reason of section 1400E(e). Each additional area designated by reason of the preceding sentence shall have the same urban or rural character as the area it is replacing.

(Added Pub. L. 103–66, title XIII, §13301(a), Aug. 10, 1993, 107 Stat. 543; amended Pub. L. 105–34, title IX, §§951(a), 952(a), (d), Aug. 5, 1997, 111 Stat. 885–887; Pub. L. 106–554, §1(a)(7) [title I, §§111, 112, title III, §319(13)], Dec. 21, 2000, 114 Stat. 2763, 2763A–600, 2763A–601, 2763A–646; Pub. L. 111–312, title VII, §753(a), Dec. 17, 2010, 124 Stat. 3321; Pub. L. 112–240, title III, §327(a), Jan. 2, 2013, 126 Stat. 2334; Pub. L. 113–295, div. A, title I, §139(a), Dec. 19, 2014, 128 Stat. 4020; Pub. L. 114–113, div. Q, title I, §171(a)(1), Dec. 18, 2015, 129 Stat. 3069.)

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (g)(2), is the date of enactment of Pub. L. 105–34, which was approved Aug. 5, 1997.

The date of the enactment of this subsection, referred to in subsec. (h)(2), is the date of enactment of Pub. L. 106–554, which was approved Dec. 21, 2000.

PRIOR PROVISIONS

A prior section 1391, added Pub. L. 95–600, title VI, §601(a), Nov. 6, 1978, 92 Stat. 2892; amended Pub. L. 96–222, title I, §106(a)(4), Apr. 1, 1980, 94 Stat. 221; Pub. L. 96–595, §3(a)(1), (2), Dec. 24, 1980, 94 Stat. 3465, defined terms used in former subchapter U, prior to repeal by Pub. L. 99–514, title XIII, §1303(a), Oct. 22, 1986, 100 Stat. 2658.

AMENDMENTS

2015—Subsec. (d)(1)(A)(i). Pub. L. 114–113 substituted ''December 31, 2016'' for ''December 31, 2014''.

2014—Subsec. (d)(1)(A)(i). Pub. L. 113–295 substituted ''December 31, 2014'' for ''December 31, 2013''.

2013—Subsec. (d)(1)(A)(i). Pub. L. 112–240 substituted ''December 31, 2013'' for ''December 31, 2011''.

2010—Subsec. (d)(1)(A)(i). Pub. L. 111–312, §753(a)(1), substituted ''December 31, 2011'' for ''December 31, 2009''.

Subsec. (h)(2). Pub. L. 111–312, §753(a)(2), struck out at end ''Subject to subparagraphs (B) and (C) of subsection (d)(1), such designations shall remain in effect during the period beginning on January 1, 2002, and ending on December 31, 2009.''

2000—Subsec. (d)(1)(A). Pub. L. 106–554, §1(a)(7) [title I, §112], amended subpar. (A) generally. Prior to amend-

[1] So in original. Probably should be followed by ''the''.

ment, subpar. (A) read as follows: ''the close of the 10th calendar year beginning on or after such date of designation,''.

Subsec. (g)(3)(C). Pub. L. 106–554, §1(a)(7) [title III, §319(13)], substituted ''paragraph (1)'' for ''paragraph (1)(B)''.

Subsec. (h). Pub. L. 106–554, §1(a)(7) [title I, §111], added subsec. (h).

1997—Subsec. (b)(2). Pub. L. 105–34, §951(a)(3), substituted ''1,000,000'' for ''750,000''.

Pub. L. 105–34, §951(a)(2), which directed substitution of ''8'' for ''6'', was executed by making the substitution both places ''6'' appeared, to reflect the probable intent of Congress.

Pub. L. 105–34, §951(a)(1), substituted ''11'' for ''9''.

Subsec. (c). Pub. L. 105–34, §952(d)(2), substituted ''subsection (a)'' for ''this section''.

Subsecs. (e), (f). Pub. L. 105–34, §952(d)(1), substituted ''this section'' for ''subsection (a)'' in introductory provisions.

Subsec. (g). Pub. L. 105–34, §952(a), added subsec. (g).

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114–113, div. Q, title I, §171(e)(1), Dec. 18, 2015, 129 Stat. 3071, provided that: ''The amendment made by subsection (a) [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, §139(c), Dec. 19, 2014, 128 Stat. 4020, provided that: ''The amendment made by this section [amending this section] shall apply to periods after December 31, 2013.''

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112–240 applicable to periods after Dec. 31, 2011, see section 327(d) of Pub. L. 112–240, set out as a note under section 1202 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–312 applicable to periods after Dec. 31, 2009, see section 753(d) of Pub. L. 111–312, set out as a note under section 1202 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title IX, §951(c), Aug. 5, 1997, 111 Stat. 885, provided that: ''The amendments made by this section [amending this section and section 1396 of this title] shall take effect on the date of the enactment of this Act [Aug. 5, 1997], except that designations of new empowerment zones made pursuant to such amendments shall be made during the 180-day period beginning on the date of the enactment of this Act. No designation pursuant to such amendments shall take effect before January 1, 2000.''

TREATMENT OF CERTAIN TERMINATION DATES SPECIFIED IN NOMINATIONS

Pub. L. 114–113, div. Q, title I, §171(a)(2), Dec. 18, 2015, 129 Stat. 3069, provided that: ''In the case of a designation of an empowerment zone the nomination for which included a termination date which is contemporaneous with the date specified in subparagraph (A)(i) of section 1391(d)(1) of the Internal Revenue Code of 1986 (as in effect before the enactment of this Act [Dec. 18, 2015]), subparagraph (B) of such section shall not apply with respect to such designation if, after the date of the enactment of this section, the entity which made such nomination amends the nomination to provide for a new termination date in such manner as the Secretary of the Treasury (or the Secretary's designee) may provide.''

Pub. L. 113–295, div. A, title I, §139(b), Dec. 19, 2014, 128 Stat. 4020, provided that: ''In the case of a designation of an empowerment zone the nomination for which included a termination date which is contemporaneous with the date specified in subparagraph (A)(i) of section 1391(d)(1) of the Internal Revenue Code of 1986 (as in effect before the enactment of this Act [Dec. 19, 2014]), subparagraph (B) of such section shall not apply with respect to such designation if, after the date of the enactment of this section, the entity which made such nomination amends the nomination to provide for a new termination date in such manner as the Secretary of the Treasury (or the Secretary's designee) may provide.''

Pub. L. 112–240, title III, §327(c), Jan. 2, 2013, 126 Stat. 2334, provided that: ''In the case of a designation of an empowerment zone the nomination for which included a termination date which is contemporaneous with the date specified in subparagraph (A)(i) of section 1391(d)(1) of the Internal Revenue Code of 1986 (as in effect before the enactment of this Act [Jan. 2, 2013]), subparagraph (B) of such section shall not apply with respect to such designation if, after the date of the enactment of this section, the entity which made such nomination amends the nomination to provide for a new termination date in such manner as the Secretary of the Treasury (or the Secretary's designee) may provide.''

Pub. L. 111–312, title VII, §753(c), Dec. 17, 2010, 124 Stat. 3321, provided that: ''In the case of a designation of an empowerment zone the nomination for which included a termination date which is contemporaneous with the date specified in subparagraph (A)(i) of section 1391(d)(1) of the Internal Revenue Code of 1986 (as in effect before the enactment of this Act [Dec. 17, 2010]), subparagraph (B) of such section shall not apply with respect to such designation if, after the date of the enactment of this section [Dec. 17, 2010], the entity which made such nomination amends the nomination to provide for a new termination date in such manner as the Secretary of the Treasury (or the Secretary's designee) may provide.''

§ 1392. Eligibility criteria

(a) In general

A nominated area shall be eligible for designation under section 1391 only if it meets the following criteria:

(1) Population

The nominated area has a maximum population of—

(A) in the case of an urban area, the lesser of—

(i) 200,000, or

(ii) the greater of 50,000 or 10 percent of the population of the most populous city located within the nominated area, and

(B) in the case of a rural area, 30,000.

(2) Distress

The nominated area is one of pervasive poverty, unemployment, and general distress.

(3) Size

The nominated area—

(A) does not exceed 20 square miles if an urban area or 1,000 square miles if a rural area,

(B) has a boundary which is continuous, or, except in the case of a rural area located in more than 1 State, consists of not more than 3 noncontiguous parcels,

(C)(i) in the case of an urban area, is located entirely within no more than 2 contiguous States, and

(ii) in the case of a rural area, is located entirely within no more than 3 contiguous States, and

(D) does not include any portion of a central business district (as such term is used

for purposes of the most recent Census of Retail Trade) unless the poverty rate for each population census tract in such district is not less than 35 percent (30 percent in the case of an enterprise community).

(4) Poverty rate

The poverty rate—

(A) for each population census tract within the nominated area is not less than 20 percent,

(B) for at least 90 percent of the population census tracts within the nominated area is not less than 25 percent, and

(C) for at least 50 percent of the population census tracts within the nominated area is not less than 35 percent.

(b) Special rules relating to determination of poverty rate

For purposes of subsection (a)(4)—

(1) Treatment of census tracts with small populations

(A) Tracts with no population

In the case of a population census tract with no population—

(i) such tract shall be treated as having a poverty rate which meets the requirements of subparagraphs (A) and (B) of subsection (a)(4), but

(ii) such tract shall be treated as having a zero poverty rate for purposes of applying subparagraph (C) thereof.

(B) Tracts with populations of less than 2,000

A population census tract with a population of less than 2,000 shall be treated as having a poverty rate which meets the requirements of subparagraphs (A) and (B) of subsection (a)(4) if more than 75 percent of such tract is zoned for commercial or industrial use.

(2) Discretion to adjust requirements for enterprise communities

In determining whether a nominated area is eligible for designation as an enterprise community, the appropriate Secretary may, where necessary to carry out the purposes of this subchapter, reduce by 5 percentage points one of the following thresholds for not more than 10 percent of the population census tracts (or, if fewer, 5 population census tracts) in the nominated area:

(A) The 20 percent threshold in subsection (a)(4)(A).

(B) The 25 percent threshold in subsection (a)(4)(B).

(C) The 35 percent threshold in subsection (a)(4)(C).

If the appropriate Secretary elects to reduce the threshold under subparagraph (C), such Secretary may (in lieu of applying the preceding sentence) reduce by 10 percentage points the threshold under subparagraph (C) for 3 population census tracts.

(3) Each noncontiguous area must satisfy poverty rate rule

A nominated area may not include a noncontiguous parcel unless such parcel separately meets (subject to paragraphs (1) and (2)) the criteria set forth in subsection (a)(4).

(4) Areas not within census tracts

In the case of an area which is not tracted for population census tracts, the equivalent county divisions (as defined by the Bureau of the Census for purposes of defining poverty areas) shall be used for purposes of determining poverty rates.

(c) Factors to consider

From among the nominated areas eligible for designation under section 1391 by the appropriate Secretary, such appropriate Secretary shall make designations of empowerment zones and enterprise communities on the basis of—

(1) the effectiveness of the strategic plan submitted pursuant to section 1391(f)(2) and the assurances made pursuant to section 1391(e)(3), and

(2) criteria specified by the appropriate Secretary.

(d) Special eligibility for nominated areas located in Alaska or Hawaii

A nominated area in Alaska or Hawaii shall be treated as meeting the requirements of paragraphs (2), (3), and (4) of subsection (a) if for each census tract or block group within such area 20 percent or more of the families have income which is 50 percent or less of the statewide median family income (as determined under section 143).

(Added Pub. L. 103–66, title XIII, §13301(a), Aug. 10, 1993, 107 Stat. 545; amended Pub. L. 105–34, title IX, §954, Aug. 5, 1997, 111 Stat. 888.)

PRIOR PROVISIONS

A prior section 1392, added Pub. L. 95–600, title VI, §601(a), Nov. 6, 1978, 92 Stat. 2893; amended Pub. L. 96–222, title I, §106(a)(5), Apr. 1, 1980, 94 Stat. 221; Pub. L. 96–595, §3(a)(3), (4), Dec. 24, 1980, 94 Stat. 3465, related to election by general stock ownership corporations not to be subject to taxes imposed by this chapter, prior to repeal by Pub. L. 99–514, title XIII, §1303(a), Oct. 22, 1986, 100 Stat. 2658.

AMENDMENTS

1997—Subsec. (d). Pub. L. 105–34 added subsec. (d).

§ 1393. Definitions and special rules

(a) In general

For purposes of this subchapter—

(1) Appropriate Secretary

The term ''appropriate Secretary'' means—

(A) the Secretary of Housing and Urban Development in the case of any nominated area which is located in an urban area, and

(B) the Secretary of Agriculture in the case of any nominated area which is located in a rural area.

(2) Rural area

The term ''rural area'' means any area which is—

(A) outside of a metropolitan statistical area (within the meaning of section 143(k)(2)(B)), or

(B) determined by the Secretary of Agriculture, after consultation with the Secretary of Commerce, to be a rural area.

(3) Urban area

The term ''urban area'' means an area which is not a rural area.

(4) Special rules for Indian reservations

(A) In general

No empowerment zone or enterprise community may include any area within an Indian reservation.

(B) Indian reservation defined

The term ''Indian reservation'' has the meaning given such term by section 168(j)(6).

(5) Local government

The term ''local government'' means—

(A) any county, city, town, township, parish, village, or other general purpose political subdivision of a State, and

(B) any combination of political subdivisions described in subparagraph (A) recognized by the appropriate Secretary.

(6) Nominated area

The term ''nominated area'' means an area which is nominated by 1 or more local governments and the State or States in which it is located for designation under section 1391.

(7) Governments

If more than 1 State or local government seeks to nominate an area under this part, any reference to, or requirement of, this subchapter shall apply to all such governments.

(8) Special rule

An area shall be treated as nominated by a State and a local government if it is nominated by an economic development corporation chartered by the State.

(9) Use of census data

Population and poverty rate shall be determined by the most recent decennial census data available.

(b) Empowerment zone; enterprise community

For purposes of this title, the terms ''empowerment zone'' and ''enterprise community'' mean areas designated as such under section 1391.

(Added Pub. L. 103–66, title XIII, § 13301(a), Aug. 10, 1993, 107 Stat. 547.)

PRIOR PROVISIONS

A prior section 1393, added Pub. L. 95–600, title VI, § 601(a), Nov. 6, 1978, 92 Stat. 2894; amended Pub. L. 96–595, § 3(a)(5), (6), (8), Dec. 24, 1980, 94 Stat. 3465, related to taxation of general stock ownership corporation taxable income to shareholders, prior to repeal by Pub. L. 99–514, title XIII, § 1303(a), Oct. 22, 1986, 100 Stat. 2658.

PART II—TAX-EXEMPT FACILITY BONDS FOR EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES

§ 1394. Tax-exempt enterprise zone facility bonds

(a) In general

For purposes of part IV of subchapter B of this chapter (relating to tax exemption requirements for State and local bonds), the term ''exempt facility bond'' includes any bond issued as part of an issue 95 percent or more of the net proceeds (as defined in section 150(a)(3)) of which are to be used to provide any enterprise zone facility.

(b) Enterprise zone facility

For purposes of this section—

(1) In general

The term ''enterprise zone facility'' means any qualified zone property the principal user of which is an enterprise zone business, and any land which is functionally related and subordinate to such property.

(2) Qualified zone property

The term ''qualified zone property'' has the meaning given such term by section 1397D; except that—

(A) the references to empowerment zones shall be treated as including references to enterprise communities, and

(B) section 1397D(a)(2) shall be applied by substituting ''an amount equal to 15 percent of the adjusted basis'' for ''an amount equal to the adjusted basis''.

(3) Enterprise zone business

(A) In general

Except as modified in this paragraph, the term ''enterprise zone business'' has the meaning given such term by section 1397C.

(B) Modifications

In applying section 1397C for purposes of this section—

(i) Businesses in enterprise communities eligible

(I) In general

Except as provided in subclause (II), references in section 1397C to empowerment zones shall be treated as including references to enterprise communities.

(II) Special rule for employee residence test

For purposes of subsection[1] (b)(6) and (c)(5) of section 1397C, an employee shall be treated as a resident of an empowerment zone if such employee is a resident of an empowerment zone, an enterprise community, or a qualified low-income community within an applicable nominating jurisdiction.

(ii) Waiver of requirements during startup period

A business shall not fail to be treated as an enterprise zone business during the startup period if—

(I) as of the beginning of the startup period, it is reasonably expected that such business will be an enterprise zone business (as defined in section 1397C as modified by this paragraph) at the end of such period, and

(II) such business makes bona fide efforts to be such a business.

[1] So in original. Probably should be ''subsections''.

(iii) Reduced requirements after testing period

A business shall not fail to be treated as an enterprise zone business for any taxable year beginning after the testing period by reason of failing to meet any requirement of subsection (b) or (c) of section 1397C if at least 35 percent of the employees of such business for such year are residents of an empowerment zone, an enterprise community, or a qualified low-income community within an applicable nominating jurisdiction. The preceding sentence shall not apply to any business which is not a qualified business by reason of paragraph (1), (4), or (5) of section 1397C(d).

(C) Qualified low-income community

For purposes of subparagraph (B)—

(i) In general

The term ''qualified low-income community'' means any population census tract if—

(I) the poverty rate for such tract is at least 20 percent, or

(II) the median family income for such tract does not exceed 80 percent of statewide median family income (or, in the case of a tract located within a metropolitan area, metropolitan area median family income if greater).

Subclause (II) shall be applied using possessionwide median family income in the case of census tracts located within a possession of the United States.

(ii) Targeted populations

The Secretary shall prescribe regulations under which 1 or more targeted populations (within the meaning of section 103(20) of the Riegle Community Development and Regulatory Improvement Act of 1994) may be treated as qualified low-income communities.

(iii) Areas not within census tracts

In the case of an area which is not tracted for population census tracts, the equivalent county divisions (as defined by the Bureau of the Census for purposes of defining poverty areas) shall be used for purposes of determining poverty rates and median family income.

(iv) Modification of income requirement for census tracts within high migration rural counties

(I) In general

In the case of a population census tract located within a high migration rural county, clause (i)(II) shall be applied to areas not located within a metropolitan area by substituting ''85 percent'' for ''80 percent''.

(II) High migration rural county

For purposes of this clause, the term ''high migration rural county'' means any county which, during the 20-year period ending with the year in which the most recent census was conducted, has a net out-migration of inhabitants from the county of at least 10 percent of the population of the county at the beginning of such period.

(D) Other definitions relating to subparagraph (B)

For purposes of subparagraph (B)—

(i) Startup period

The term ''startup period'' means, with respect to any property being provided for any business, the period before the first taxable year beginning more than 2 years after the later of—

(I) the date of issuance of the issue providing such property, or

(II) the date such property is first placed in service after such issuance (or, if earlier, the date which is 3 years after the date described in subclause (I)).

(ii) Testing period

The term ''testing period'' means the first 3 taxable years beginning after the startup period.

(iii) Applicable nominating jurisdiction

The term ''applicable nominating jurisdiction'' means, with respect to any empowerment zone or enterprise community, any local government that nominated such community for designation under section 1391.

(E) Portions of business may be enterprise zone business

The term ''enterprise zone business'' includes any trades or businesses which would qualify as an enterprise zone business (determined after the modifications of subparagraph (B)) if such trades or businesses were separately incorporated.

(c) Limitation on amount of bonds

(1) In general

Subsection (a) shall not apply to any issue if the aggregate amount of outstanding enterprise zone facility bonds allocable to any person (taking into account such issue) exceeds—

(A) $3,000,000 with respect to any 1 empowerment zone or enterprise community, or

(B) $20,000,000 with respect to all empowerment zones and enterprise communities.

(2) Aggregate enterprise zone facility bond benefit

For purposes of paragraph (1), the aggregate amount of outstanding enterprise zone facility bonds allocable to any person shall be determined under rules similar to the rules of section 144(a)(10), taking into account only bonds to which subsection (a) applies.

(d) Acquisition of land and existing property permitted

The requirements of sections 147(c)(1)(A) and 147(d) shall not apply to any bond described in subsection (a).

(e) Penalty for ceasing to meet requirements

(1) Failures corrected

An issue which fails to meet 1 or more of the requirements of subsections (a) and (b) shall be treated as meeting such requirements if—

(A) the issuer and any principal user in good faith attempted to meet such requirements, and

(B) any failure to meet such requirements is corrected within a reasonable period after such failure is first discovered.

(2) Loss of deductions where facility ceases to be qualified

No deduction shall be allowed under this chapter for interest on any financing provided from any bond to which subsection (a) applies with respect to any facility to the extent such interest accrues during the period beginning on the first day of the calendar year which includes the date on which—

(A) substantially all of the facility with respect to which the financing was provided ceases to be used in an empowerment zone or enterprise community, or

(B) the principal user of such facility ceases to be an enterprise zone business (as defined in subsection (b)).

(3) Exception if zone ceases

Paragraphs (1) and (2) shall not apply solely by reason of the termination or revocation of a designation as an empowerment zone or an enterprise community.

(4) Exception for bankruptcy

Paragraphs (1) and (2) shall not apply to any cessation resulting from bankruptcy.

(f) Bonds for empowerment zones

(1) In general

In the case of an empowerment zone facility bond—

(A) such bond shall not be treated as a private activity bond for purposes of section 146, and

(B) subsection (c) of this section shall not apply.

(2) Limitation on amount of bonds

(A) In general

Paragraph (1) shall apply to an empowerment zone facility bond only if such bond is designated for purposes of this subsection by the local government which nominated the area to which such bond relates.

(B) Limitation on bonds designated

The aggregate face amount of bonds which may be designated under subparagraph (A) with respect to any empowerment zone shall not exceed—

(i) $60,000,000 if such zone is in a rural area,

(ii) $130,000,000 if such zone is in an urban area and the zone has a population of less than 100,000, and

(iii) $230,000,000 if such zone is in an urban area and the zone has a population of at least 100,000.

(C) Special rules

(i) Coordination with limitation in subsection (c)

Bonds to which paragraph (1) applies shall not be taken into account in applying the limitation of subsection (c) to other bonds.

(ii) Current refunding not taken into account

In the case of a refunding (or series of refundings) of a bond designated under this paragraph, the refunding obligation shall be treated as designated under this paragraph (and shall not be taken into account in applying subparagraph (B)) if—

(I) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

(II) the refunded bond is redeemed not later than 90 days after the date of issuance of the refunding bond.

(3) Empowerment zone facility bond

For purposes of this subsection, the term ''empowerment zone facility bond'' means any bond which would be described in subsection (a) if—

(A) in the case of obligations issued before January 1, 2002, only empowerment zones designated under section 1391(g) were taken into account under sections 1397C and 1397D, and

(B) in the case of obligations issued after December 31, 2001, all empowerment zones (other than the District of Columbia Enterprise Zone) were taken into account under sections 1397C and 1397D.

(Added Pub. L. 103–66, title XIII, § 13301(a), Aug. 10, 1993, 107 Stat. 548; amended Pub. L. 104–188, title I, § 1703(n)(7), Aug. 20, 1996, 110 Stat. 1877; Pub. L. 105–34, title IX, §§ 953(a), 955(a), (b), Aug. 5, 1997, 111 Stat. 887, 889, 890; Pub. L. 106–554, § 1(a)(7) [title I, §§ 115(a), 116(b)(3), (4)], Dec. 21, 2000, 114 Stat. 2763, 2763A–601, 2763A–603; Pub. L. 107–147, title IV, § 417(16), Mar. 9, 2002, 116 Stat. 56; Pub. L. 113–295, div. A, title II, § 220(*o*), (p), Dec. 19, 2014, 128 Stat. 4036; Pub. L. 114–113, div. Q, title I, § 171(b)–(d), Dec. 18, 2015, 129 Stat. 3070, 3071.)

REFERENCES IN TEXT

Section 103(20) of the Riegle Community Development and Regulatory Improvement Act of 1994, referred to in subsec. (b)(3)(C)(ii), is classified to section 4702(20) of Title 12, Banks and Banking.

PRIOR PROVISIONS

A prior section 1394, added Pub. L. 95–600, title VI, § 601(a), Nov. 6, 1978, 92 Stat. 2895; amended Pub. L. 96–595, § 3(a)(6)–(8), Dec. 24, 1980, 94 Stat. 3465, related to rules applicable to distributions of an electing general stock ownership corporation, prior to repeal by Pub. L. 99–514, title XIII, § 1303(a), Oct. 22, 1986, 100 Stat. 2658.

A prior section 1395, added Pub. L. 95–600, title VI, § 601(a), Nov. 6, 1978, 92 Stat. 2895, related to adjustment to basis of stock of shareholders, prior to repeal by Pub. L. 99–514, title XIII, § 1303(a), Oct. 22, 1986, 100 Stat. 2658.

AMENDMENTS

2015—Subsec. (b)(3)(B)(i). Pub. L. 114–113, § 171(b), designated existing provisions as subcl. (I), inserted heading, substituted ''Except as provided in subclause (II), references'' for ''References'', and added subcl. (II).

Subsec. (b)(3)(B)(iii). Pub. L. 114–113, § 171(d)(1), substituted '', an enterprise community, or a qualified low-income community within an applicable nominating jurisdiction'' for ''or an enterprise community''.

Subsec. (b)(3)(C). Pub. L. 114–113, § 171(c)(1), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (b)(3)(D). Pub. L. 114–113, §171(c)(1), (d)(2), redesignated subpar. (C) as (D) and substituted ''Other definitions'' for ''Definitions'' in heading. Former subpar. (D) redesignated (E).

Subsec. (b)(3)(D)(iii). Pub. L. 114–113, §171(c)(2), added cl. (iii).

Subsec. (b)(3)(E). Pub. L. 114–113, §171(c)(1), redesignated subpar. (D) as (E).

2014—Subsec. (f). Pub. L. 113–295, §220(*o*), struck out ''designated under section 1391(g)'' after ''empowerment zones'' in heading.

Subsec. (f)(1), (2)(A). Pub. L. 113–295, §220(p), substituted ''an empowerment zone facility bond'' for ''a new empowerment zone facility bond''.

2002—Subsec. (c)(2). Pub. L. 107–147 substituted ''paragraph (1)'' for ''subparagraph (A)''.

2000—Subsec. (b)(2). Pub. L. 106–554, §1(a)(7) [title I, §116(b)(3)(A)], substituted ''section 1397D'' for ''section 1397C'' in introductory provisions.

Subsec. (b)(2)(B). Pub. L. 106–554, §1(a)(7) [title I, §116(b)(3)(B)], substituted ''section 1397D(a)(2)'' for ''section 1397C(a)(2)''.

Subsec. (b)(3). Pub. L. 106–554, §1(a)(7) [title I, §116(b)(4)(A)], substituted ''section 1397C'' for ''section 1397B'' wherever appearing.

Subsec. (b)(3)(B)(iii). Pub. L. 106–554, §1(a)(7) [title I, §116(b)(4)(B)], substituted ''section 1397C(d)'' for ''section 1397B(d)''.

Subsec. (f)(3). Pub. L. 106–554, §1(a)(7) [title I, §115(a)], amended heading and text of par. (3) generally. Prior to amendment, text read as follows: ''For purposes of this subsection, the term 'new empowerment zone facility bond' means any bond which would be described in subsection (a) if only empowerment zones designated under section 1391(g) were taken into account under sections 1397B and 1397C.''

1997—Subsec. (b)(2). Pub. L. 105–34, §955(b), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''The term 'qualified zone property' has the meaning given such term by section 1397C; except that the references to empowerment zones shall be treated as including references to enterprise communities.''

Subsec. (b)(3). Pub. L. 105–34, §955(b), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: ''The term 'enterprise zone business' has the meaning given to such term by section 1397B, except that—

''(A) references to empowerment zones shall be treated as including references to enterprise communities, and

''(B) such term includes any trades or businesses which would qualify as an enterprise zone business (determined after the modification of subparagraph (A)) if such trades or businesses were separately incorporated.''

Subsec. (f). Pub. L. 105–34, §953(a), added subsec. (f).

1996—Subsec. (e)(2). Pub. L. 104–188, which directed that par. (2) be amended by striking ''(i)'' and inserting ''(A)'' and by striking ''(ii)'' and inserting ''(B)'', could not be executed, because par. (2) contained neither ''(i)'' nor ''(ii)''.

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114–113, div. Q, title I, §171(e)(2), Dec. 18, 2015, 129 Stat. 3071, provided that: ''The amendments made by subsections (b), (c), and (d) [amending this section] shall apply to bonds issued after December 31, 2015.''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(7) [title I, §115(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–602, provided that: ''The amendments made by this section [amending this section] shall apply to obligations issued after December 31, 2001.''

Amendment by section 1(a)(7) [title I, §116(b)(3), (4)] of Pub. L. 106–554 applicable to qualified empowerment zone assets acquired after Dec. 21, 2000, see section 1(a)(7) [title I, §116(c)] of Pub. L. 106–554, set out as a note under section 1016 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title IX, §953(b), Aug. 5, 1997, 111 Stat. 888, provided that: ''The amendment made by this section [amending this section] shall apply to obligations issued after the date of the enactment of this Act [Aug. 5, 1997].''

Pub. L. 105–34, title IX, §955(c), Aug. 5, 1997, 111 Stat. 890, provided that: ''The amendments made by this section [amending this section] shall apply to obligations issued after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§13001–13444, to which such amendment relates, see section 1703(*o*) of Pub. L. 104–188, set out as a note under section 39 of this title.

PART III—ADDITIONAL INCENTIVES FOR EMPOWERMENT ZONES

AMENDMENTS

2000—Pub. L. 106–554, §1(a)(7) [title I, §116(b)(6)], Dec. 21, 2000, 114 Stat. 2763, 2763A–604, added items for subparts C and D and struck out former item for subpart C ''General provisions''.

SUBPART A—EMPOWERMENT ZONE EMPLOYMENT CREDIT

§ 1396. Empowerment zone employment credit

(a) Amount of credit

For purposes of section 38, the amount of the empowerment zone employment credit determined under this section with respect to any employer for any taxable year is the applicable percentage of the qualified zone wages paid or incurred during the calendar year which ends with or within such taxable year.

(b) Applicable percentage

For purposes of this section, the applicable percentage is 20 percent.

(c) Qualified zone wages

(1) In general

For purposes of this section, the term ''qualified zone wages'' means any wages paid or incurred by an employer for services performed by an employee while such employee is a qualified zone employee.

(2) Only first $15,000 of wages per year taken into account

With respect to each qualified zone employee, the amount of qualified zone wages which may be taken into account for a calendar year shall not exceed $15,000.

(3) Coordination with work opportunity credit

(A) In general

The term ''qualified zone wages'' shall not include wages taken into account in determining the credit under section 51.

(B) Coordination with paragraph (2)

The $15,000 amount in paragraph (2) shall be reduced for any calendar year by the amount of wages paid or incurred during such year which are taken into account in determining the credit under section 51.

(d) Qualified zone employee

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, the term ''qualified zone employee'' means, with respect to any period, any employee of an employer if—

(A) substantially all of the services performed during such period by such employee for such employer are performed within an empowerment zone in a trade or business of the employer, and

(B) the principal place of abode of such employee while performing such services is within such empowerment zone.

(2) Certain individuals not eligible

The term ''qualified zone employee'' shall not include—

(A) any individual described in subparagraph (A), (B), or (C) of section 51(i)(1),

(B) any 5-percent owner (as defined in section 416(i)(1)(B)),

(C) any individual employed by the employer for less than 90 days,

(D) any individual employed by the employer at any facility described in section 144(c)(6)(B), and

(E) any individual employed by the employer in a trade or business the principal activity of which is farming (within the meaning of subparagraph (A) or (B) of section 2032A(e)(5)), but only if, as of the close of the taxable year, the sum of—

(i) the aggregate unadjusted bases (or, if greater, the fair market value) of the assets owned by the employer which are used in such a trade or business, and

(ii) the aggregate value of assets leased by the employer which are used in such a trade or business (as determined under regulations prescribed by the Secretary),

exceeds $500,000.

(3) Special rules related to termination of employment

(A) In general

Paragraph (2)(C) shall not apply to—

(i) a termination of employment of an individual who before the close of the period referred to in paragraph (2)(C) becomes disabled to perform the services of such employment unless such disability is removed before the close of such period and the taxpayer fails to offer reemployment to such individual, or

(ii) a termination of employment of an individual if it is determined under the applicable State unemployment compensation law that the termination was due to the misconduct of such individual.

(B) Changes in form of business

For purposes of paragraph (2)(C), the employment relationship between the taxpayer and an employee shall not be treated as terminated—

(i) by a transaction to which section 381(a) applies if the employee continues to be employed by the acquiring corporation, or

(ii) by reason of a mere change in the form of conducting the trade or business of the taxpayer if the employee continues to be employed in such trade or business and the taxpayer retains a substantial interest in such trade or business.

(Added Pub. L. 103–66, title XIII, § 13301(a), Aug. 10, 1993, 107 Stat. 549; amended Pub. L. 104–188, title I, § 1201(e)(4), Aug. 20, 1996, 110 Stat. 1772; Pub. L. 105–34, title IX, §§ 951(b), 952(b), Aug. 5, 1997, 111 Stat. 885, 887; Pub. L. 106–554, § 1(a)(7) [title I, § 113(a), (b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–601.)

REFERENCES IN TEXT

The Taxpayer Relief Act of 1997, referred to in subsec. (b)(2), is Pub. L. 105–34, Aug. 5, 1997, 111 Stat. 788. For complete classification of this Act to the Code, see Tables.

PRIOR PROVISIONS

A prior section 1396, added Pub. L. 95–600, title VI, § 601(a), Nov. 6, 1978, 92 Stat. 2895; amended Pub. L. 96–595, § 3(a)(6), (9), (10), Dec. 24, 1980, 94 Stat. 3465, related to minimum distributions by an electing general stock ownership corporation, prior to repeal by Pub. L. 99–514, title XIII, § 1303(a), Oct. 22, 1986, 100 Stat. 2658.

AMENDMENTS

2000—Subsec. (b). Pub. L. 106–554, § 1(a)(7) [title I, § 113(a)], amended subsec. (b) generally, substituting provisions establishing an applicable percentage of 20 percent for provisions setting out tables for determining the applicable percentage.

Subsec. (e). Pub. L. 106–554, § 1(a)(7) [title I, § 113(b)], struck out heading and text of subsec. (e). Text read as follows: ''This section shall be applied without regard to any empowerment zone designated under section 1391(g).''

1997—Subsec. (b). Pub. L. 105–34 substituted ''For purposes of this section—

''(1) IN GENERAL.—Except as provided in paragraph (2), the term 'applicable percentage' means the percentage determined in accordance with the following table:''

for ''For purposes of this section, the term 'applicable percentage' means the percentage determined in accordance with the following table:'' and added par. (2).

Subsec. (e). Pub. L. 105–34, § 952(b), added subsec. (e).

1996—Subsec. (c)(3). Pub. L. 104–188 substituted ''work opportunity credit'' for ''targeted jobs credit'' in heading.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(7) [title I, § 113(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–601, provided that: ''The amendments made by this section [amending this section and section 1400 of this title] shall apply to wages paid or incurred after December 31, 2001.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 951(b) of Pub. L. 105–34 effective Aug. 5, 1997, except that designations of new empowerment zones made pursuant to amendments by section 951 of Pub. L. 105–34 to be made during 180-day period beginning Aug. 5, 1997, and no designation pursuant to such amendments to take effect before Jan. 1, 2000, see section 951(c) of Pub. L. 105–34, set out as a note under section 1391 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to individuals who begin work for the employer after Sept. 30, 1996, see section 1201(g) of Pub. L. 104–188, set out as a note under section 38 of this title.

§ 1397. Other definitions and special rules

(a) Wages

For purposes of this subpart—

(1) In general

The term ''wages'' has the same meaning as when used in section 51.

(2) Certain training and educational benefits

(A) In general

The following amounts shall be treated as wages paid to an employee:

(i) Any amount paid or incurred by an employer which is excludable from the gross income of an employee under section 127, but only to the extent paid or incurred to a person not related to the employer.

(ii) In the case of an employee who has not attained the age of 19, any amount paid or incurred by an employer for any youth training program operated by such employer in conjunction with local education officials.

(B) Related person

A person is related to any other person if the person bears a relationship to such other person specified in section 267(b) or 707(b)(1), or such person and such other person are engaged in trades or businesses under common control (within the meaning of subsections (a) and (b) of section 52). For purposes of the preceding sentence, in applying section 267(b) or 707(b)(1), ''10 percent'' shall be substituted for ''50 percent''.

(b) Controlled groups

For purposes of this subpart—

(1) all employers treated as a single employer under subsection (a) or (b) of section 52 shall be treated as a single employer for purposes of this subpart, and

(2) the credit (if any) determined under section 1396 with respect to each such employer shall be its proportionate share of the wages giving rise to such credit.

(c) Certain other rules made applicable

For purposes of this subpart, rules similar to the rules of section 51(k) and subsections (c), (d), and (e) of section 52 shall apply.

(Added Pub. L. 103–66, title XIII, § 13301(a), Aug. 10, 1993, 107 Stat. 551.)

PRIOR PROVISIONS

A prior section 1397, added Pub. L. 95–600, title VI, § 601(a), Nov. 6, 1978, 92 Stat. 2895, related to special rules applicable to an electing general stock ownership corporation, prior to repeal by Pub. L. 99–514, title XIII, § 1303(a), Oct. 22, 1986, 100 Stat. 2658.

SUBPART B—ADDITIONAL EXPENSING

§ 1397A. Increase in expensing under section 179

(a) General rule

In the case of an enterprise zone business, for purposes of section 179—

(1) the limitation under section 179(b)(1) shall be increased by the lesser of—

(A) $35,000, or

(B) the cost of section 179 property which is qualified zone property placed in service during the taxable year, and

(2) the amount taken into account under section 179(b)(2) with respect to any section 179 property which is qualified zone property shall be 50 percent of the cost thereof.

(b) Recapture

Rules similar to the rules under section 179(d)(10) shall apply with respect to any qualified zone property which ceases to be used in an empowerment zone by an enterprise zone business.

(Added Pub. L. 103–66, title XIII, § 13301(a), Aug. 10, 1993, 107 Stat. 552; amended Pub. L. 105–34, title IX, § 952(c), Aug. 5, 1997, 111 Stat. 887; Pub. L. 106–554, § 1(a)(7) [title I, § 114(a), (b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–601.)

AMENDMENTS

2000—Subsec. (a)(1)(A). Pub. L. 106–554, § 1(a)(7) [title I, § 114(a)], substituted ''$35,000'' for ''$20,000''.

Subsec. (c). Pub. L. 106–554, § 1(a)(7) [title I, § 114(b)], struck out heading and text of subsec. (c). Text read as follows: ''For purposes of this section, qualified zone property shall not include any property substantially all of the use of which is in any parcel described in section 1391(g)(3)(A)(iii).''

1997—Subsec. (c). Pub. L. 105–34 added subsec. (c).

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(7) [title I, § 114(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–601, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2001.''

SUBPART C—NONRECOGNITION OF GAIN ON ROLLOVER OF EMPOWERMENT ZONE INVESTMENTS

AMENDMENTS

2000—Pub. L. 106–554, § 1(a)(7) [title I, § 116(a)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–602, added subpart C heading and item 1397B. Former subpart C, consisting of sections 1397B and 1397C, redesignated D.

§ 1397B. Nonrecognition of gain on rollover of empowerment zone investments

(a) Nonrecognition of gain

In the case of any sale of a qualified empowerment zone asset held by the taxpayer for more than 1 year and with respect to which such taxpayer elects the application of this section, gain from such sale shall be recognized only to the extent that the amount realized on such sale exceeds—

(1) the cost of any qualified empowerment zone asset (with respect to the same zone as the asset sold) purchased by the taxpayer during the 60-day period beginning on the date of such sale, reduced by

(2) any portion of such cost previously taken into account under this section.

(b) Definitions and special rules

For purposes of this section—

(1) Qualified empowerment zone asset

(A) In general

The term ''qualified empowerment zone asset'' means any property which would be a qualified community asset (as defined in section 1400F) if in section 1400F—

(i) references to empowerment zones were substituted for references to renewal communities,

(ii) references to enterprise zone businesses (as defined in section 1397C) were substituted for references to renewal community businesses,

(iii) the date of the enactment of this paragraph were substituted for ''December 31, 2001'' each place it appears, and

(iv) the day after the date set forth in section 1391(d)(1)(A)(i) were substituted for ''January 1, 2010'' each place it appears.

(B) Treatment of DC zone

The District of Columbia Enterprise Zone shall not be treated as an empowerment zone for purposes of this section.

(2) Certain gain not eligible for rollover

This section shall not apply to—

(A) any gain which is treated as ordinary income for purposes of this subtitle, and

(B) any gain which is attributable to real property, or an intangible asset, which is not an integral part of an enterprise zone business.

(3) Purchase

A taxpayer shall be treated as having purchased any property if, but for paragraph (4), the unadjusted basis of such property in the hands of the taxpayer would be its cost (within the meaning of section 1012).

(4) Basis adjustments

If gain from any sale is not recognized by reason of subsection (a), such gain shall be applied to reduce (in the order acquired) the basis for determining gain or loss of any qualified empowerment zone asset which is purchased by the taxpayer during the 60-day period described in subsection (a). This paragraph shall not apply for purposes of section 1202.

(5) Holding period

For purposes of determining whether the nonrecognition of gain under subsection (a) applies to any qualified empowerment zone asset which is sold—

(A) the taxpayer's holding period for such asset and the asset referred to in subsection (a)(1) shall be determined without regard to section 1223, and

(B) only the first year of the taxpayer's holding period for the asset referred to in subsection (a)(1) shall be taken into account for purposes of paragraphs (2)(A)(iii), (3)(C), and (4)(A)(iii) of section 1400F(b).

(Added Pub. L. 106–554, §1(a)(7) [title I, §116(a)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–602; amended Pub. L. 113–295, div. A, title II, §206(c), Dec. 19, 2014, 128 Stat. 4027.)

REFERENCES IN TEXT

The date of the enactment of this paragraph, referred to in subsec. (b)(1)(A)(iii), is the date of enactment of Pub. L. 106–554, which was approved Dec. 21, 2000.

PRIOR PROVISIONS

A prior section 1397B was renumbered section 1397C of this title.

AMENDMENTS

2014—Subsec. (b)(1)(A)(iv). Pub. L. 113–295 added cl. (iv).

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–295 effective as if included in the provisions of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. 111–312, to which such amendment relates, see section 206(d) of Pub. L. 113–295, set out as a note under section 32 of this title.

EFFECTIVE DATE

Section applicable to qualified empowerment zone assets acquired after Dec. 21, 2000, see section 1(a)(7) [title I, §116(c)] of Pub. L. 106–554, set out as an Effective Date of 2000 Amendment note under section 1016 of this title.

SUBPART D—GENERAL PROVISIONS

Sec.
1397C. Enterprise zone business defined.
1397D. Qualified zone property defined.

AMENDMENTS

2000—Pub. L. 106–554, §1(a)(7) [title I, §116(a)(1), (b)(7)], Dec. 21, 2000, 114 Stat. 2763, 2763A–602, 2763A–604, redesignated subpart C of this part as this subpart and items for sections 1397B and 1397C as 1397C and 1397D, respectively.

§ 1397C. Enterprise zone business defined

(a) In general

For purposes of this part, the term ''enterprise zone business'' means—

(1) any qualified business entity, and

(2) any qualified proprietorship.

(b) Qualified business entity

For purposes of this section, the term ''qualified business entity'' means, with respect to any taxable year, any corporation or partnership if for such year—

(1) every trade or business of such entity is the active conduct of a qualified business within an empowerment zone,

(2) at least 50 percent of the total gross income of such entity is derived from the active conduct of such business,

(3) a substantial portion of the use of the tangible property of such entity (whether owned or leased) is within an empowerment zone,

(4) a substantial portion of the intangible property of such entity is used in the active conduct of any such business,

(5) a substantial portion of the services performed for such entity by its employees are performed in an empowerment zone,

(6) at least 35 percent of its employees are residents of an empowerment zone,

(7) less than 5 percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to collectibles (as defined in section 408(m)(2)) other than collectibles that are held primarily for sale to customers in the ordinary course of such business, and

(8) less than 5 percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to nonqualified financial property.

(c) Qualified proprietorship

For purposes of this section, the term ''qualified proprietorship'' means, with respect to any taxable year, any qualified business carried on by an individual as a proprietorship if for such year—

(1) at least 50 percent of the total gross income of such individual from such business is derived from the active conduct of such business in an empowerment zone,

(2) a substantial portion of the use of the tangible property of such individual in such business (whether owned or leased) is within an empowerment zone,

(3) a substantial portion of the intangible property of such business is used in the active conduct of such business,

(4) a substantial portion of the services performed for such individual in such business by employees of such business are performed in an empowerment zone,

(5) at least 35 percent of such employees are residents of an empowerment zone,

(6) less than 5 percent of the average of the aggregate unadjusted bases of the property of such individual which is used in such business is attributable to collectibles (as defined in section 408(m)(2)) other than collectibles that are held primarily for sale to customers in the ordinary course of such business, and

(7) less than 5 percent of the average of the aggregate unadjusted bases of the property of such individual which is used in such business is attributable to nonqualified financial property.

For purposes of this subsection, the term ''employee'' includes the proprietor.

(d) Qualified business

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, the term ''qualified business'' means any trade or business.

(2) Rental of real property

The rental to others of real property located in an empowerment zone shall be treated as a qualified business if and only if—

(A) the property is not residential rental property (as defined in section 168(e)(2)), and

(B) at least 50 percent of the gross rental income from the real property is from enterprise zone businesses.

For purposes of subparagraph (B), the lessor of the property may rely on a lessee's certification that such lessee is an enterprise zone business.

(3) Rental of tangible personal property

The rental to others of tangible personal property shall be treated as a qualified business if and only if at least 50 percent of the rental of such property is by enterprise zone businesses or by residents of an empowerment zone.

(4) Treatment of business holding intangibles

The term ''qualified business'' shall not include any trade or business consisting predominantly of the development or holding of intangibles for sale or license.

(5) Certain businesses excluded

The term ''qualified business'' shall not include—

(A) any trade or business consisting of the operation of any facility described in section 144(c)(6)(B), and

(B) any trade or business the principal activity of which is farming (within the meaning of subparagraphs[1] (A) or (B) of section 2032A(e)(5)), but only if, as of the close of the taxable year, the sum of—

(i) the aggregate unadjusted bases (or, if greater, the fair market value) of the assets owned by the taxpayer which are used in such a trade or business, and

(ii) the aggregate value of assets leased by the taxpayer which are used in such a trade or business,

exceeds $500,000.

For purposes of subparagraph (B), rules similar to the rules of section 1397(b) shall apply.

(e) Nonqualified financial property

For purposes of this section, the term ''nonqualified financial property'' means debt, stock, partnership interests, options, futures contracts, forward contracts, warrants, notional principal contracts, annuities, and other similar property specified in regulations; except that such term shall not include—

(1) reasonable amounts of working capital held in cash, cash equivalents, or debt instruments with a term of 18 months or less, or

(2) debt instruments described in section 1221(a)(4).

(f) Treatment of businesses straddling census tract lines

For purposes of this section, if—

(1) a business entity or proprietorship uses real property located within an empowerment zone,

(2) the business entity or proprietorship also uses real property located outside the empowerment zone,

(3) the amount of real property described in paragraph (1) is substantial compared to the amount of real property described in paragraph (2), and

(4) the real property described in paragraph (2) is contiguous to part or all of the real property described in paragraph (1),

then all the services performed by employees, all business activities, all tangible property, and all intangible property of the business entity or

[1] So in original. Probably should be ''subparagraph''.

proprietorship that occur in or is located on the real property described in paragraphs (1) and (2) shall be treated as occurring or situated in an empowerment zone.

(Added Pub. L. 103–66, title XIII, § 13301(a), Aug. 10, 1993, 107 Stat. 552, § 1397B; amended Pub. L. 104–188, title I, § 1703(m), Aug. 20, 1996, 110 Stat. 1877; Pub. L. 105–34, title IX, § 956(a), Aug. 5, 1997, 111 Stat. 890; Pub. L. 106–170, title V, § 532(c)(4), Dec. 17, 1999, 113 Stat. 1931; renumbered § 1397C, Pub. L. 106–554, § 1(a)(7) [title I, § 116(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–602.)

PRIOR PROVISIONS

A prior section 1397C was renumbered section 1397D of this title.

AMENDMENTS

2000—Pub. L. 106–554 renumbered section 1397B of this title as this section.

1999—Subsec. (e)(2). Pub. L. 106–170 substituted ''section 1221(a)(4)'' for ''section 1221(4)''.

1997—Subsec. (b)(2). Pub. L. 105–34, § 956(a)(1), substituted ''50 percent'' for ''80 percent''.

Subsec. (b)(3). Pub. L. 105–34, § 956(a)(2), substituted ''a substantial portion'' for ''substantially all''.

Subsec. (b)(4). Pub. L. 105–34, § 956(a)(2), (3), substituted ''a substantial portion'' for ''substantially all'' and struck out '', and exclusively related to,'' after ''entity is used in''.

Subsec. (b)(5). Pub. L. 105–34, § 956(a)(2), substituted ''a substantial portion'' for ''substantially all''.

Subsec. (c)(1). Pub. L. 105–34, § 956(a)(1), substituted ''50 percent'' for ''80 percent''.

Subsec. (c)(2). Pub. L. 105–34, § 956(a)(2), substituted ''a substantial portion'' for ''substantially all''.

Subsec. (c)(3). Pub. L. 105–34, § 956(a)(2), (3), substituted ''a substantial portion'' for ''substantially all'' and struck out '', and exclusively related to,'' after ''business is used in''.

Subsec. (c)(4). Pub. L. 105–34, § 956(a)(2), substituted ''a substantial portion'' for ''substantially all''.

Subsec. (d)(2). Pub. L. 105–34, § 956(a)(4), inserted concluding provisions.

Subsec. (d)(3). Pub. L. 105–34, § 956(a)(5), substituted ''at least 50 percent'' for ''substantially all''.

Subsec. (f). Pub. L. 105–34, § 956(a)(6), added subsec. (f).

1996—Subsec. (d)(5)(B). Pub. L. 104–188 struck out ''preceding'' before ''taxable year'' in introductory provisions.

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 IX, § 956(b), Aug. 5, 1997, 111 Stat. 891, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to taxable years beginning on or after the date of the enactment of this Act [Aug. 5, 1997].

''(2) SPECIAL RULE FOR ENTERPRISE ZONE FACILITY BONDS.—For purposes of section 1394(b) of the Internal Revenue Code of 1986, the amendments made by this section shall apply to obligations issued after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§ 13001–13444, to which such amendment relates, see section 1703(*o*) of Pub. L. 104–188, set out as a note under section 39 of this title.

§ 1397D. Qualified zone property defined

(a) General rule

For purposes of this part—

(1) In general

The term ''qualified zone property'' means any property to which section 168 applies (or would apply but for section 179) if—

(A) such property was acquired by the taxpayer by purchase (as defined in section 179(d)(2)) after the date on which the designation of the empowerment zone took effect,

(B) the original use of which in an empowerment zone commences with the taxpayer, and

(C) substantially all of the use of which is in an empowerment zone and is in the active conduct of a qualified business by the taxpayer in such zone.

(2) Special rule for substantial renovations

In the case of any property which is substantially renovated by the taxpayer, the requirements of subparagraphs (A) and (B) of paragraph (1) shall be treated as satisfied. For purposes of the preceding sentence, property shall be treated as substantially renovated by the taxpayer if, during any 24-month period beginning after the date on which the designation of the empowerment zone took effect, additions to basis with respect to such property in the hands of the taxpayer exceed the greater of (i) an amount equal to the adjusted basis at the beginning of such 24-month period in the hands of the taxpayer, or (ii) $5,000.

(b) Special rules for sale-leasebacks

For purposes of subsection (a)(1)(B), if property is sold and leased back by the taxpayer within 3 months after the date such property was originally placed in service, such property shall be treated as originally placed in service not earlier than the date on which such property is used under the leaseback.

(Added Pub. L. 103–66, title XIII, § 13301(a), Aug. 10, 1993, 107 Stat. 554, § 1397C; renumbered § 1397D, Pub. L. 106–554, § 1(a)(7) [title I, § 116(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–602.)

PRIOR PROVISIONS

A prior section 1397D was renumbered section 1397F of this title.

AMENDMENTS

2000—Pub. L. 106–554 renumbered section 1397C of this title as this section.

PART IV—INCENTIVES FOR EDUCATION ZONES

Sec.
[1397E. Repealed.]

AMENDMENTS

2017—Pub. L. 115–97, title I, § 13404(c)(1), Dec. 22, 2017, 131 Stat. 2138, struck out item 1397E ''Credit to holders of qualified zone academy bonds''.

1997—Pub. L. 105–34, title II, § 226(a), Aug. 5, 1997, 111 Stat. 820, added part IV heading and item 1397E. Former part IV, consisting of section 1397D, redesignated V.

[§ 1397E. Repealed. Pub. L. 115–97, title I, § 13404(c)(1), Dec. 22, 2017, 131 Stat. 2138]

Section, added Pub. L. 105–34, title II, § 226(a), Aug. 5, 1997, 111 Stat. 821; amended Pub. L. 105–206, title VI, § 6004(g)(2)–(4), July 22, 1998, 112 Stat. 796; Pub. L. 106–78, title VII, § 752(b)(11), Oct. 22, 1999, 113 Stat. 1169; Pub. L. 106–170, title V, § 509, Dec. 17, 1999, 113 Stat. 1924; Pub. L. 107–110, title X, § 1076(t), Jan. 8, 2002, 115 Stat. 2092; Pub. L. 107–147, title VI, § 608(a), Mar. 9, 2002, 116 Stat. 60; Pub. L. 108–311, title III, § 304(a), title IV, § 406(c), Oct. 4, 2004, 118 Stat. 1179, 1189; Pub. L. 109–58, title XIII, § 1303(c)(2), (3), Aug. 8, 2005, 119 Stat. 997; Pub. L. 109–432, div. A, title I, § 107(a), (b)(1), Dec. 20, 2006, 120 Stat. 2938; Pub. L. 110–234, title XV, § 15316(c)(2), May 22, 2008, 122 Stat. 1511; Pub. L. 110–246, § 4(a), title XV, § 15316(c)(2), June 18, 2008, 122 Stat. 1664, 2273; Pub. L. 110–343, div. C, title III, § 313(b)(3), Oct. 3, 2008, 122 Stat. 3872; Pub. L. 111–5, div. B, title I, § 1531(c)(3), Feb. 17, 2009, 123 Stat. 360; Pub. L. 114–95, title IX, § 9215(uu)(3), Dec. 10, 2015, 129 Stat. 2183, related to credit to holders of qualified zone academy bonds.

EFFECTIVE DATE OF REPEAL

Repeal applicable to bonds issued after Dec. 31, 2017, see section 13404(d) of Pub. L. 115–97, set out as a note under former section 54 of this title.

PART V—REGULATIONS

Sec.
1397F. Regulations.

AMENDMENTS

1997—Pub. L. 105–34, title II, § 226(a), (b)(2), Aug. 5, 1997, 111 Stat. 820, 824, redesignated part IV of this subchapter as this part and item 1397D as 1397F.

§ 1397F. Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of parts II and III, including—

(1) regulations limiting the benefit of parts II and III in circumstances where such benefits, in combination with benefits provided under other Federal programs, would result in an activity being 100 percent or more subsidized by the Federal Government,

(2) regulations preventing abuse of the provisions of parts II and III, and

(3) regulations dealing with inadvertent failures of entities to be enterprise zone businesses.

(Added Pub. L. 103–66, title XIII, § 13301(a), Aug. 10, 1993, 107 Stat. 555, § 1397D; renumbered § 1397F, Pub. L. 105–34, title II, § 226(a), Aug. 5, 1997, 111 Stat. 820; amended Pub. L. 105–206, title VI, § 6004(g)(1), July 22, 1998, 112 Stat. 796.)

AMENDMENTS

1998—Pub. L. 105–206 amended directory language of Pub. L. 105–34, § 226(a). See 1997 Amendment note below.

1997—Pub. L. 105–34, § 226(a), as amended by Pub. L. 105–206, renumbered section 1397D of this title as this section.

Subchapter V—Title 11 Cases

Sec.
1398. Rules relating to individuals' title 11 cases.
1399. No separate taxable entities for partnerships, corporations, etc.

AMENDMENTS

1980—Pub. L. 96–589, § 3(a)(1), Dec. 24, 1980, 94 Stat. 3397, added subchapter V heading ''Title 11 Cases'' and items 1398 and 1399.

§ 1398. Rules relating to individuals' title 11 cases

(a) Cases to which section applies

Except as provided in subsection (b), this section shall apply to any case under chapter 7 (relating to liquidations) or chapter 11 (relating to reorganizations) of title 11 of the United States Code in which the debtor is an individual.

(b) Exceptions where case is dismissed, etc.

(1) Section does not apply where case is dismissed

This section shall not apply if the case under chapter 7 or 11 of title 11 of the United States Code is dismissed.

(2) Section does not apply at partnership level

For purposes of subsection (a), a partnership shall not be treated as an individual, but the interest in a partnership of a debtor who is an individual shall be taken into account under this section in the same manner as any other interest of the debtor.

(c) Computation and payment of tax; basic standard deduction

(1) Computation and payment of tax

Except as otherwise provided in this section, the taxable income of the estate shall be computed in the same manner as for an individual. The tax shall be computed on such taxable income and shall be paid by the trustee.

(2) Tax rates

The tax on the taxable income of the estate shall be determined under subsection (d) of section 1.

(3) Basic standard deduction

In the case of an estate which does not itemize deductions, the basic standard deduction for the estate for the taxable year shall be the same as for a married individual filing a separate return for such year.

(d) Taxable year of debtors

(1) General rule

Except as provided in paragraph (2), the taxable year of the debtor shall be determined without regard to the case under title 11 of the United States Code to which this section applies.

(2) Election to terminate debtor's year when case commences

(A) In general

Notwithstanding section 442, the debtor may (without the approval of the Secretary) elect to treat the debtor's taxable year which includes the commencement date as 2 taxable years—

(i) the first of which ends on the day before the commencement date, and

(ii) the second of which begins on the commencement date.

(B) Spouse may join in election

In the case of a married individual (within the meaning of section 7703), the spouse may elect to have the debtor's election under subparagraph (A) also apply to the spouse, but only if the debtor and the spouse file a

joint return for the taxable year referred to in subparagraph (A)(i).

(C) No election where debtor has no assets

No election may be made under subparagraph (A) by a debtor who has no assets other than property which the debtor may treat as exempt property under section 522 of title 11 of the United States Code.

(D) Time for making election

An election under subparagraph (A) or (B) may be made only on or before the due date for filing the return for the taxable year referred to in subparagraph (A)(i). Any such election, once made, shall be irrevocable.

(E) Returns

A return shall be made for each of the taxable years specified in subparagraph (A).

(F) Annualization

For purposes of subsections (b), (c), and (d) of section 443, a return filed for either of the taxable years referred to in subparagraph (A) shall be treated as a return made under paragraph (1) of subsection (a) of section 443.

(3) Commencement date defined

For purposes of this subsection, the term ''commencement date'' means the day on which the case under title 11 of the United States Code to which this section applies commences.

(e) Treatment of income, deductions, and credits

(1) Estate's share of debtor's income

The gross income of the estate for each taxable year shall include the gross income of the debtor to which the estate is entitled under title 11 of the United States Code. The preceding sentence shall not apply to any amount received or accrued by the debtor before the commencement date (as defined in subsection (d)(3)).

(2) Debtor's share of debtor's income

The gross income of the debtor for any taxable year shall not include any item to the extent that such item is included in the gross income of the estate by reason of paragraph (1).

(3) Rule for making determinations with respect to deductions, credits, and employment taxes

Except as otherwise provided in this section, the determination of whether or not any amount paid or incurred by the estate—

(A) is allowable as a deduction or credit under this chapter, or

(B) is wages for purposes of subtitle C,

shall be made as if the amount were paid or incurred by the debtor and as if the debtor were still engaged in the trades and businesses, and in the activities, the debtor was engaged in before the commencement of the case.

(f) Treatment of transfers between debtor and estate

(1) Transfer to estate not treated as disposition

A transfer (other than by sale or exchange) of an asset from the debtor to the estate shall not be treated as a disposition for purposes of any provision of this title assigning tax consequences to a disposition, and the estate shall be treated as the debtor would be treated with respect to such asset.

(2) Transfer from estate to debtor not treated as disposition

In the case of a termination of the estate, a transfer (other than by sale or exchange) of an asset from the estate to the debtor shall not be treated as a disposition for purposes of any provision of this title assigning tax consequences to a disposition, and the debtor shall be treated as the estate would be treated with respect to such asset.

(g) Estate succeeds to tax attributes of debtor

The estate shall succeed to and take into account the following items (determined as of the first day of the debtor's taxable year in which the case commences) of the debtor—

(1) Net operating loss carryovers

The net operating loss carryovers determined under section 172.

(2) Charitable contributions carryovers

The carryover of excess charitable contributions determined under section 170(d)(1).

(3) Recovery of tax benefit items

Any amount to which section 111 (relating to recovery of tax benefit items) applies.

(4) Credit carryovers, etc.

The carryovers of any credit, and all other items which, but for the commencement of the case, would be required to be taken into account by the debtor with respect to any credit.

(5) Capital loss carryovers

The capital loss carryover determined under section 1212.

(6) Basis, holding period, and character of assets

In the case of any asset acquired (other than by sale or exchange) by the estate from the debtor, the basis, holding period, and character it had in the hands of the debtor.

(7) Method of accounting

The method of accounting used by the debtor.

(8) Other attributes

Other tax attributes of the debtor, to the extent provided in regulations prescribed by the Secretary as necessary or appropriate to carry out the purposes of this section.

(h) Administration, liquidation, and reorganization expenses; carryovers and carrybacks of certain excess expenses

(1) Administration, liquidation, and reorganization expenses

Any administrative expense allowed under section 503 of title 11 of the United States Code, and any fee or charge assessed against the estate under chapter 123 of title 28 of the United States Code, to the extent not disallowed under any other provision of this title, shall be allowed as a deduction.

(2) Carryback and carryover of excess administrative costs, etc., to estate taxable years

(A) Deduction allowed

There shall be allowed as a deduction for the taxable year an amount equal to the aggregate of (i) the administrative expense carryovers to such year, plus (ii) the administrative expense carrybacks to such year.

(B) Administrative expense loss, etc.

If a net operating loss would be created or increased for any estate taxable year if section 172(c) were applied without the modification contained in paragraph (4) of section 172(d), then the amount of the net operating loss so created (or the amount of the increase in the net operating loss) shall be an administrative expense loss for such taxable year which shall be an administrative expense carryback to each of the 3 preceding taxable years and an administrative expense carryover to each of the 7 succeeding taxable years.

(C) Determination of amount carried to each taxable year

The portion of any administrative expense loss which may be carried to any other taxable year shall be determined under section 172(b)(2), except that for each taxable year the computation under section 172(b)(2) with respect to the net operating loss shall be made before the computation under this paragraph.

(D) Administrative expense deductions allowed only to estate

The deductions allowable under this chapter solely by reason of paragraph (1), and the deduction provided by subparagraph (A) of this paragraph, shall be allowable only to the estate.

(i) Debtor succeeds to tax attributes of estate

In the case of a termination of an estate, the debtor shall succeed to and take into account the items referred to in paragraphs (1), (2), (3), (4), (5), and (6) of subsection (g) in a manner similar to that provided in such paragraphs (but taking into account that the transfer is from the estate to the debtor instead of from the debtor to the estate). In addition, the debtor shall succeed to and take into account the other tax attributes of the estate, to the extent provided in regulations prescribed by the Secretary as necessary or appropriate to carry out the purposes of this section.

(j) Other special rules

(1) Change of accounting period without approval

Notwithstanding section 442, the estate may change its annual accounting period one time without the approval of the Secretary.

(2) Treatment of certain carrybacks

(A) Carrybacks from estate

If any carryback year of the estate is a taxable year before the estate's first taxable year, the carryback to such carryback year shall be taken into account for the debtor's taxable year corresponding to the carryback year.

(B) Carrybacks from debtor's activities

The debtor may not carry back to a taxable year before the debtor's taxable year in which the case commences any carryback from a taxable year ending after the case commences.

(C) Carryback and carryback year defined

For purposes of this paragraph—

(i) Carryback

The term ''carryback'' means a net operating loss carryback under section 172 or a carryback of any credit provided by part IV of subchapter A.

(ii) Carryback year

The term ''carryback year'' means the taxable year to which a carryback is carried.

(Added Pub. L. 96–589, §3(a)(1), Dec. 24, 1980, 94 Stat. 3397; amended Pub. L. 99–514, title I, §104(b)(14), title XIII, §1301(j)(8), title XVIII, §1812(a)(5), Oct. 22, 1986, 100 Stat. 2105, 2658, 2833.)

REFERENCES IN TEXT

Part IV of subchapter A, referred to in subsec. (j)(2)(C)(i), probably means part IV of subchapter A of chapter 1 of this title.

AMENDMENTS

1986—Subsec. (c). Pub. L. 99–514, §104(b)(14)(A), substituted ''basic standard deduction'' for ''zero bracket amount'' in heading.

Subsec. (c)(3). Pub. L. 99–514, §104(b)(14)(B), amended par. (3) generally, substituting ''Basic standard deduction'' for ''Amount of zero bracket amount'' in heading and substituting ''In the case of an estate which does not itemize deductions, the basic standard deduction for the estate'' for ''The amount of the estate's zero bracket amount'' in text.

Subsec. (d)(2)(B). Pub. L. 99–514, §1301(j)(8), substituted ''section 7703'' for ''section 143''.

Subsec. (g)(3). Pub. L. 99–514, §1812(a)(5), amended par. (3) generally. Prior to amendment, par. (3), recovery exclusion, read as follows: ''Any recovery exclusion under section 111 (relating to recovery of bad debts, prior taxes, and delinquency amounts).''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(b)(14) 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 1301(j)(8) of 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.

Amendment by section 1812(a)(5) 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

Subchapter applicable to bankruptcy cases commencing more than 90 days after Dec. 24, 1980, see section 7(b) of Pub. L. 96–589, set out as an Effective Date of 1980 Amendment note under section 108 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.

§ 1399. No separate taxable entities for partnerships, corporations, etc.

Except in any case to which section 1398 applies, no separate taxable entity shall result from the commencement of a case under title 11 of the United States Code.

(Added Pub. L. 96–589, § 3(a)(1), Dec. 24, 1980, 94 Stat. 3400.)

Subchapter W—District of Columbia Enterprise Zone

Sec.
1400. Establishment of DC Zone.
1400A. Tax-exempt economic development bonds.
1400B. Zero percent capital gains rate.
1400C. First-time homebuyer credit for District of Columbia.

§ 1400. Establishment of DC Zone

(a) In general

For purposes of this title—

(1) the applicable DC area is hereby designated as the District of Columbia Enterprise Zone, and

(2) except as otherwise provided in this subchapter, the District of Columbia Enterprise Zone shall be treated as an empowerment zone designated under subchapter U.

(b) Applicable DC area

For purposes of subsection (a), the term ''applicable DC area'' means the area consisting of—

(1) the census tracts located in the District of Columbia which are part of an enterprise community designated under subchapter U before the date of the enactment of this subchapter, and

(2) all other census tracts—

(A) which are located in the District of Columbia, and

(B) for which the poverty rate is not less than than[1] 20 percent as determined on the basis of the 1990 census.

(c) District of Columbia Enterprise Zone

For purposes of this subchapter, the terms ''District of Columbia Enterprise Zone'' and ''DC Zone'' mean the District of Columbia Enterprise Zone designated by subsection (a).

(d) Special rule for application of employment credit

With respect to the DC Zone, section 1396(d)(1)(B) (relating to empowerment zone employment credit) shall be applied by substituting ''the District of Columbia'' for ''such empowerment zone''.

(e) Special rule for application of enterprise zone business definition

For purposes of this subchapter and for purposes of applying subchapter U with respect to the DC Zone, section 1397C shall be applied without regard to subsections (b)(6) and (c)(5) thereof.

(f) Time for which designation applicable

(1) In general

The designation made by subsection (a) shall apply for the period beginning on January 1, 1998, and ending on December 31, 2011.

(2) Coordination with DC enterprise community designated under subchapter U

The designation under subchapter U of the census tracts referred to in subsection (b)(1) as an enterprise community shall terminate on December 31, 2011.

(Added Pub. L. 105–34, title VII, § 701(a), Aug. 5, 1997, 111 Stat. 863; amended Pub. L. 105–206, title VI, § 6008(a), July 22, 1998, 112 Stat. 811; Pub. L. 106–554, § 1(a)(7) [title I, §§ 113(c), 116(b)(5), 164(a)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–601, 2763A–603, 2763A–625; Pub. L. 108–311, title III, § 310(a), Oct. 4, 2004, 118 Stat. 1180; Pub. L. 109–432, div. A, title I, § 110(a)(1), Dec. 20, 2006, 120 Stat. 2939; Pub. L. 110–343, div. C, title III, § 322(a)(1), Oct. 3, 2008, 122 Stat. 3873; Pub. L. 111–312, title VII, § 754(a), Dec. 17, 2010, 124 Stat. 3321.)

REFERENCES IN TEXT

The date of the enactment of this subchapter, referred to in subsec. (b)(1), is the date of enactment of Pub. L. 105–34, which was approved Aug. 5, 1997.

AMENDMENTS

2010—Subsec. (f). Pub. L. 111–312 substituted ''2011'' for ''2009'' in pars. (1) and (2).

2008—Subsec. (f). Pub. L. 110–343 substituted ''2009'' for ''2007'' in pars. (1) and (2).

2006—Subsec. (f). Pub. L. 109–432 substituted ''2007'' for ''2005'' in pars. (1) and (2).

2004—Subsec. (f). Pub. L. 108–311 substituted ''2005'' for ''2003'' in pars. (1) and (2).

2000—Subsec. (d). Pub. L. 106–554, § 1(a)(7) [title I, § 113(c)], amended heading and text of subsec. (d) generally, striking out par. (1) designation and heading and par. (2), which provided that there would be no decrease of empowerment zone employment credit in 2002.

Subsec. (e). Pub. L. 106–554, § 1(a)(7) [title I, § 116(b)(5)], substituted ''section 1397C'' for ''section 1397B''.

Subsec. (f). Pub. L. 106–554, § 1(a)(7) [title I, § 164(a)(1)], substituted ''2003'' for ''2002'' in pars. (1) and (2).

1998—Subsec. (b)(2)(B). Pub. L. 105–206 inserted ''as determined on the basis of the 1990 census'' after ''percent''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, § 754(e), Dec. 17, 2010, 124 Stat. 3322, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 1400A to 1400C of this title] shall apply to periods after December 31, 2009.

''(2) TAX-EXEMPT DC EMPOWERMENT ZONE BONDS.—The amendment made by subsection (b) [amending section 1400A of this title] shall apply to bonds issued after December 31, 2009.

''(3) ACQUISITION DATES FOR ZERO-PERCENT CAPITAL GAINS RATE.—The amendments made by subsection (c) [amending section 1400B of this title] shall apply to property acquired or substantially improved after December 31, 2009.

''(4) HOMEBUYER CREDIT.—The amendment made by subsection (d) [amending section 1400C of this title] shall apply to homes purchased after December 31, 2009.''

[1] So in original. The second ''than'' probably should not appear.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title III, §322(a)(2), Oct. 3, 2008, 122 Stat. 3873, provided that: ''The amendments made by this subsection [amending this section] shall apply to periods beginning after December 31, 2007.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, §110(a)(2), Dec. 20, 2006, 120 Stat. 2939, provided that: ''The amendments made by this subsection [amending this section] shall apply to periods beginning after December 31, 2005.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–311, title III, §310(e), Oct. 4, 2004, 118 Stat. 1180, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 1400A to 1400C and 1400F of this title] shall take effect on January 1, 2004.

''(2) TAX-EXEMPT ECONOMIC DEVELOPMENT BONDS.—The amendment made by subsection (b) [amending section 1400A of this title] shall apply to obligations issued after the date of the enactment of this Act [Oct. 4, 2004].''

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by section 1(a)(7) [title I, §113(c)] of Pub. L. 106–554 applicable to wages paid or incurred after Dec. 31, 2001, see section 1(a)(7) [title I, §113(d)] of Pub. L. 106–554, set out as a note under section 1396 of this title.

Amendment by section 1(a)(7) [title I, §116(b)(5)] of Pub. L. 106–554 applicable to qualified empowerment zone assets acquired after Dec. 21, 2000, see section 1(a)(7) [title I, §116(c)] of Pub. L. 106–554, set out as a note under section 1016 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.

§ 1400A. Tax-exempt economic development bonds

(a) In general

In the case of the District of Columbia Enterprise Zone, subparagraph (A) of section 1394(c)(1) (relating to limitation on amount of bonds) shall be applied by substituting ''$15,000,000'' for ''$3,000,000'' and section 1394(b)(3)(B)(iii) shall be applied without regard to the employee residency requirement.

(b) Period of applicability

This section shall apply to bonds issued during the period beginning on January 1, 1998, and ending on December 31, 2011.

(Added Pub. L. 105–34, title VII, §701(a), Aug. 5, 1997, 111 Stat. 864; amended Pub. L. 105–206, title VI, §6008(b), July 22, 1998, 112 Stat. 811; Pub. L. 106–554, §1(a)(7) [title I, §164(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–625; Pub. L. 108–311, title III, §310(b), Oct. 4, 2004, 118 Stat. 1180; Pub. L. 109–432, div. A, title I, §110(b)(1), Dec. 20, 2006, 120 Stat. 2939; Pub. L. 110–343, div. C, title III, §322(b)(1), Oct. 3, 2008, 122 Stat. 3873; Pub. L. 111–312, title VII, §754(b), Dec. 17, 2010, 124 Stat. 3321.)

AMENDMENTS

2010—Subsec. (b). Pub. L. 111–312 substituted ''2011'' for ''2009''.

2008—Subsec. (b). Pub. L. 110–343 substituted ''2009'' for ''2007''.

2006—Subsec. (b). Pub. L. 109–432 substituted ''2007'' for ''2005''.

2004—Subsec. (b). Pub. L. 108–311 substituted ''2005'' for ''2003''.

2000—Subsec. (b). Pub. L. 106–554 substituted ''2003'' for ''2002''.

1998—Subsec. (a). Pub. L. 105–206 inserted before the period at end ''and section 1394(b)(3)(B)(iii) shall be applied without regard to the employee residency requirement''.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–312 applicable to bonds issued after Dec. 31, 2009, see section 754(e)(2) of Pub. L. 111–312, set out as a note under section 1400 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title III, §322(b)(2), Oct. 3, 2008, 122 Stat. 3874, provided that: ''The amendment made by this subsection [amending this section] shall apply to bonds issued after December 31, 2007.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, §110(b)(2), Dec. 20, 2006, 120 Stat. 2939, provided that: ''The amendment made by this subsection [amending this section] shall apply to bonds issued after December 31, 2005.''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 applicable to obligations issued after Oct. 4, 2004, see section 310(e)(2) of Pub. L. 108–311, set out as a note under section 1400 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.

§ 1400B. Zero percent capital gains rate

(a) Exclusion

Gross income shall not include qualified capital gain from the sale or exchange of any DC Zone asset held for more than 5 years.

(b) DC Zone asset

For purposes of this section—

(1) In general

The term ''DC Zone asset'' means—

(A) any DC Zone business stock,

(B) any DC Zone partnership interest, and

(C) any DC Zone business property.

(2) DC Zone business stock

(A) In general

The term ''DC Zone business stock'' means any stock in a domestic corporation which is originally issued after December 31, 1997, if—

(i) such stock is acquired by the taxpayer, before January 1, 2012, at its original issue (directly or through an underwriter) solely in exchange for cash,

(ii) as of the time such stock was issued, such corporation was a DC Zone business (or, in the case of a new corporation, such corporation was being organized for purposes of being a DC Zone business), and

(iii) during substantially all of the taxpayer's holding period for such stock, such corporation qualified as a DC Zone business.

(B) Redemptions

A rule similar to the rule of section 1202(c)(3) shall apply for purposes of this paragraph.

(3) DC Zone partnership interest

The term ''DC Zone partnership interest'' means any capital or profits interest in a domestic partnership which is originally issued after December 31, 1997, if—

(A) such interest is acquired by the taxpayer, before January 1, 2012, from the partnership solely in exchange for cash,

(B) as of the time such interest was acquired, such partnership was a DC Zone business (or, in the case of a new partnership, such partnership was being organized for purposes of being a DC Zone business), and

(C) during substantially all of the taxpayer's holding period for such interest, such partnership qualified as a DC Zone business.

A rule similar to the rule of paragraph (2)(B) shall apply for purposes of this paragraph.

(4) DC Zone business property

(A) In general

The term ''DC Zone business property'' means tangible property if—

(i) such property was acquired by the taxpayer by purchase (as defined in section 179(d)(2)) after December 31, 1997, and before January 1, 2012,

(ii) the original use of such property in the DC Zone commences with the taxpayer, and

(iii) during substantially all of the taxpayer's holding period for such property, substantially all of the use of such property was in a DC Zone business of the taxpayer.

(B) Special rule for buildings which are substantially improved

(i) In general

The requirements of clauses (i) and (ii) of subparagraph (A) shall be treated as met with respect to—

(I) property which is substantially improved by the taxpayer before January 1, 2012, and

(II) any land on which such property is located.

(ii) Substantial improvement

For purposes of clause (i), property shall be treated as substantially improved by the taxpayer only if, during any 24-month period beginning after December 31, 1997, additions to basis with respect to such property in the hands of the taxpayer exceed the greater of—

(I) an amount equal to the adjusted basis of such property at the beginning of such 24-month period in the hands of the taxpayer, or

(II) $5,000.

(5) Treatment of DC Zone termination

The termination of the designation of the DC Zone shall be disregarded for purposes of determining whether any property is a DC Zone asset.

(6) Treatment of subsequent purchasers, etc.

The term ''DC Zone asset'' includes any property which would be a DC Zone asset but for paragraph (2)(A)(i), (3)(A), or (4)(A)(i) or (ii) in the hands of the taxpayer if such property was a DC Zone asset in the hands of a prior holder.

(7) 5-year safe harbor

If any property ceases to be a DC Zone asset by reason of paragraph (2)(A)(iii), (3)(C), or (4)(A)(iii) after the 5-year period beginning on the date the taxpayer acquired such property, such property shall continue to be treated as meeting the requirements of such paragraph; except that the amount of gain to which subsection (a) applies on any sale or exchange of such property shall not exceed the amount which would be qualified capital gain had such property been sold on the date of such cessation.

(c) DC Zone business

For purposes of this section, the term ''DC Zone business'' means any enterprise zone business (as defined in section 1397C), determined—

(1) after the application of section 1400(e),

(2) by substituting ''80 percent'' for ''50 percent'' in subsections (b)(2) and (c)(1) of section 1397C, and

(3) by treating no area other than the DC Zone as an empowerment zone or enterprise community.

(d) Treatment of zone as including census tracts with 10 percent poverty rate

For purposes of applying this section (and for purposes of applying this subchapter and subchapter U with respect to this section), the DC Zone shall be treated as including all census tracts—

(1) which are located in the District of Columbia, and

(2) for which the poverty rate is not less than 10 percent as determined on the basis of the 1990 census.

(e) Other definitions and special rules

For purposes of this section—

(1) Qualified capital gain

Except as otherwise provided in this subsection, the term ''qualified capital gain'' means any gain recognized on the sale or exchange of—

(A) a capital asset, or

(B) property used in the trade or business (as defined in section 1231(b)).

(2) Gain before 1998 or after 2016 not qualified

The term ''qualified capital gain'' shall not include any gain attributable to periods before January 1, 1998, or after December 31, 2016.

(3) Certain gain not qualified

The term ''qualified capital gain'' shall not include any gain which would be treated as ordinary income under section 1245 or under section 1250 if section 1250 applied to all depreciation rather than the additional depreciation.

(4) Intangibles and land not integral part of DC Zone business

The term ''qualified capital gain'' shall not include any gain which is attributable to real

property, or an intangible asset, which is not an integral part of a DC Zone business.

(5) Related party transactions

The term ''qualified capital gain'' shall not include any gain attributable, directly or indirectly, in whole or in part, to a transaction with a related person. For purposes of this paragraph, persons are related to each other if such persons are described in section 267(b) or 707(b)(1).

(f) Certain other rules to apply

Rules similar to the rules of subsections (g), (h), (i)(2), and (j) of section 1202 shall apply for purposes of this section.

(g) Sales and exchanges of interests in partnerships and S corporations which are DC Zone businesses

In the case of the sale or exchange of an interest in a partnership, or of stock in an S corporation, which was a DC Zone business during substantially all of the period the taxpayer held such interest or stock, the amount of qualified capital gain shall be determined without regard to—

(1) any gain which is attributable to real property, or an intangible asset, which is not an integral part of a DC Zone business, and

(2) any gain attributable to periods before January 1, 1998, or after December 31, 2016.

(Added Pub. L. 105–34, title VII, §701(a), Aug. 5, 1997, 111 Stat. 864; amended Pub. L. 105–206, title VI, §6008(c), July 22, 1998, 112 Stat. 811; Pub. L. 106–554, §1(a)(7) [title I, §§116(b)(5), 164(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–603, 2763A–625; Pub. L. 108–311, title III, §310(c)(1)–(2)(B), Oct. 4, 2004, 118 Stat. 1180; Pub. L. 109–432, div. A, title I, §110(c)(1)–(2)(B), Dec. 20, 2006, 120 Stat. 2940; Pub. L. 110–343, div. C, title III, §322(c)(1), (2)(A), (B), Oct. 3, 2008, 122 Stat. 3874; Pub. L. 111–312, title VII, §754(c), Dec. 17, 2010, 124 Stat. 3321.)

AMENDMENTS

2010—Subsec. (b). Pub. L. 111–312, §754(c)(1), substituted ''2012'' for ''2010'' wherever appearing.

Subsec. (e)(2). Pub. L. 111–312, §754(c)(2)(A), substituted ''2016'' for ''2014'' in heading and text.

Subsec. (g)(2). Pub. L. 111–312, §754(c)(2)(B), substituted ''2016'' for ''2014''.

2008—Subsec. (b). Pub. L. 110–343, §322(c)(1), substituted ''2010'' for ''2008'' wherever appearing.

Subsec. (e)(2). Pub. L. 110–343, §322(c)(2)(A), substituted ''2014'' for ''2012'' in heading and text.

Subsec. (g)(2). Pub. L. 110–343, §322(c)(2)(B), substituted ''2014'' for ''2012''.

2006—Subsec. (b). Pub. L. 109–432, §110(c)(1), substituted ''2008'' for ''2006'' wherever appearing.

Subsec. (e)(2). Pub. L. 109–432, §110(c)(2)(A), substituted ''2012'' for ''2010'' in heading and text.

Subsec. (g)(2). Pub. L. 109–432, §110(c)(2)(B), substituted ''2012'' for ''2010''.

2004—Subsec. (b). Pub. L. 108–311, §310(c)(1), substituted ''2006'' for ''2004'' wherever appearing.

Subsec. (e)(2). Pub. L. 108–311, §310(c)(2)(A), substituted ''2010'' for ''2008'' in heading and text.

Subsec. (g)(2). Pub. L. 108–311, §310(c)(2)(B), substituted ''2010'' for ''2008''.

2000—Subsec. (b). Pub. L. 106–554, §1(a)(7) [title I, §164(b)(1)], substituted ''2004'' for ''2003'' wherever appearing.

Subsec. (c). Pub. L. 106–554, §1(a)(7) [title I, §116(b)(5)], substituted ''section 1397C'' for ''section 1397B'' in introductory provisions and in par. (2).

Subsec. (e)(2). Pub. L. 106–554, §1(a)(7) [title I, §164(b)(2)], substituted ''2008'' for ''2007'' in heading and text.

Subsec. (g)(2). Pub. L. 106–554, §1(a)(7) [title I, §164(b)(2)], substituted ''2008'' for ''2007''.

1998—Subsec. (b)(5). Pub. L. 105–206, §6008(c)(1), added par. (5).

Subsec. (b)(6). Pub. L. 105–206, §6008(c)(2), substituted ''(4)(A)(i) or (ii)'' for ''(4)(A)(ii)''.

Subsec. (c). Pub. L. 105–206, §6008(c)(3), struck out ''entity which is an'' before ''enterprise zone'' in introductory provisions.

Subsec. (d)(2). Pub. L. 105–206, §6008(c)(4), inserted ''as determined on the basis of the 1990 census'' after ''percent''.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–312 applicable to property acquired or substantially improved after Dec. 31, 2009, see section 754(e)(3) of Pub. L. 111–312, set out as a note under section 1400 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title III, §322(c)(3), Oct. 3, 2008, 122 Stat. 3874, provided that:

''(A) EXTENSION.—The amendments made by paragraph (1) [amending this section] shall apply to acquisitions after December 31, 2007.

''(B) CONFORMING AMENDMENTS.—The amendments made by paragraph (2) [amending this section and section 1400F of this title] shall take effect on the date of the enactment of this Act [Oct. 3, 2008].''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, §110(c)(3), Dec. 20, 2006, 120 Stat. 2940, provided that:

''(A) EXTENSION.—The amendments made by paragraph (1) [amending this section] shall apply to acquisitions after December 31, 2005.

''(B) CONFORMING AMENDMENTS.—The amendments made by paragraph (2) [amending this section and section 1400F of this title] shall take effect on the date of the enactment of this Act [Dec. 20, 2006].''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 effective Jan. 1, 2004, see section 310(e)(1) of Pub. L. 108–311, set out as a note under section 1400 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by section 1(a)(7) [title I, §116(b)(5)] of Pub. L. 106–554 applicable to qualified empowerment zone assets acquired after Dec. 21, 2000, see section 1(a)(7) [title I, §116(c)] of Pub. L. 106–554, set out as a note under section 1016 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.

§1400C. First-time homebuyer credit for District of Columbia

(a) Allowance of credit

In the case of an individual who is a first-time homebuyer of a principal residence in the District of Columbia during any taxable year, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to so much of the purchase price of the residence as does not exceed $5,000.

(b) Limitation based on modified adjusted gross income

(1) In general

The amount allowable as a credit under subsection (a) (determined without regard to this

subsection and subsection (d)) for the taxable year shall be reduced (but not below zero) by the amount which bears the same ratio to the credit so allowable as—

(A) the excess (if any) of—

(i) the taxpayer's modified adjusted gross income for such taxable year, over

(ii) $70,000 ($110,000 in the case of a joint return), bears to

(B) $20,000.

(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.

(c) First-time homebuyer

For purposes of this section—

(1) In general

The term ''first-time homebuyer'' means any individual if such individual (and if married, such individual's spouse) had no present ownership interest in a principal residence in the District of Columbia during the 1-year period ending on the date of the purchase of the principal residence to which this section applies.

(2) One-time only

If an individual is treated as a first-time homebuyer with respect to any principal residence, such individual may not be treated as a first-time homebuyer with respect to any other principal residence.

(3) Principal residence

The term ''principal residence'' has the same meaning as when used in section 121.

(d) Carryforward of unused credit

If the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under subpart A of part IV of subchapter A (other than this section and section 25D), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year.

(e) Special rules

For purposes of this section—

(1) Allocation of dollar limitation

(A) Married individuals filing separately

In the case of a married individual filing a separate return, subsection (a) shall be applied by substituting ''$2,500'' for ''$5,000''.

(B) Other taxpayers

If 2 or more individuals who are not married purchase a principal residence, the amount of the credit allowed under subsection (a) shall be allocated among such individuals in such manner as the Secretary may prescribe, except that the total amount of the credits allowed to all such individuals shall not exceed $5,000.

(2) Purchase

(A) In general

The term ''purchase'' means any acquisition, but only if—

(i) the property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of losses under section 267 or 707(b) (but, in applying section 267(b) and (c) for purposes of this section, paragraph (4) of section 267(c) shall be treated as providing that the family of an individual shall include only his spouse, ancestors, and lineal descendants), and

(ii) the basis of the property in the hands of the person acquiring it is not determined—

(I) in whole or in part by reference to the adjusted basis of such property in the hands of the person from whom acquired, or

(II) under section 1014(a) (relating to property acquired from a decedent).

(B) Construction

A residence which is constructed by the taxpayer shall be treated as purchased by the taxpayer on the date the taxpayer first occupies such residence.

(3) Purchase price

The term ''purchase price'' means the adjusted basis of the principal residence on the date such residence is purchased.

(4) Coordination with national first-time homebuyers credit

No credit shall be allowed under this section to any taxpayer with respect to the purchase of a residence after December 31, 2008, if a credit under section 36 is allowable to such taxpayer (or the taxpayer's spouse) with respect to such purchase.

(f) Reporting

If the Secretary requires information reporting under section 6045 by a person described in subsection (e)(2) thereof to verify the eligibility of taxpayers for the credit allowable by this section, the exception provided by section 6045(e)(5) shall not apply.

(g) Credit treated as nonrefundable personal credit

For purposes of this title, the credit allowed by this section shall be treated as a credit allowable under subpart A of part IV of subchapter A of this chapter.

(h) Basis adjustment

For purposes of this subtitle, if a credit is allowed under this section with respect to the purchase of any residence, the basis of such residence shall be reduced by the amount of the credit so allowed.

(i) Application of section

This section shall apply to property purchased after August 4, 1997, and before January 1, 2012.

(Added Pub. L. 105–34, title VII, § 701(a), Aug. 5, 1997, 111 Stat. 867; amended Pub. L. 105–206, title VI, § 6008(d)(1)–(5), July 22, 1998, 112 Stat. 811, 812; Pub. L. 106–170, title V, § 510, Dec. 17, 1999, 113 Stat. 1924; Pub. L. 106–554, § 1(a)(7) [title I, § 163], Dec. 21, 2000, 114 Stat. 2763, 2763A–625; Pub. L. 107–16, title II, §§ 201(b)(2)(H), 202(f)(2)(C), title VI, § 618(b)(2)(E), June 7, 2001, 115 Stat. 46, 49, 108;

Pub. L. 107–147, title IV, § 417(23)(B), Mar. 9, 2002, 116 Stat. 57; Pub. L. 108–311, title III, § 310(d), Oct. 4, 2004, 118 Stat. 1180; Pub. L. 109–58, title XIII, § 1335(b)(3), Aug. 8, 2005, 119 Stat. 1036; Pub. L. 109–135, title IV, § 402(i)(3)(F), (4), Dec. 21, 2005, 119 Stat. 2614, 2615; Pub. L. 109–432, div. A, title I, § 110(d)(1), Dec. 20, 2006, 120 Stat. 2940; Pub. L. 110–343, div. B, title II, § 205(d)(1)(E), div. C, title III, § 322(d)(1), Oct. 3, 2008, 122 Stat. 3839, 3874; Pub. L. 111–5, div. B, title I, §§ 1004(b)(6), 1006(d)(1), 1142(b)(1)(F), 1144(b)(1)(F), Feb. 17, 2009, 123 Stat. 314, 316, 330, 332; Pub. L. 111–92, § 11(i), Nov. 6, 2009, 123 Stat. 2991; Pub. L. 111–148, title X, § 10909(b)(2)(M), (c), Mar. 23, 2010, 124 Stat. 1023; Pub. L. 111–312, title I, § 101(b)(1), title VII, § 754(d), Dec. 17, 2010, 124 Stat. 3298, 3322; Pub. L. 112–240, title I, § 104(c)(2)(L), Jan. 2, 2013, 126 Stat. 2322.)

AMENDMENTS

2013—Subsec. (d). Pub. L. 112–240 amended subsec. (d) generally. Prior to amendment, subsec. (d) related to carryforward of unused credit with a rule for years in which all personal credits allowed against regular and alternative minimum tax and a rule for other years.

2010—Subsec. (d)(2). Pub. L. 111–148, § 10909(b)(2)(M), (c), as amended by Pub. L. 111–312, § 101(b)(1), temporarily struck out ''23,'' after ''this section and sections''. See Effective and Termination Dates of 2010 Amendment note below.

Subsec. (i). Pub. L. 111–312, § 754(d), substituted ''2012'' for ''2010''.

2009—Subsec. (d)(2). Pub. L. 111–5, § 1144(b)(1)(F), substituted ''30, and 30B'' for ''and 30''.

Pub. L. 111–5, § 1142(b)(1)(F), which directed the substitution of ''25D, and 30'' for ''and 25D'', was executed by making the substitution for ''25D'', to reflect the probable intent of Congress and the amendment by Pub. L. 110–343, § 205(d)(1)(E). See 2008 Amendment note below.

Pub. L. 111–5, § 1004(b)(6), inserted ''25A(i),'' after ''24,''.

Subsec. (e)(4). Pub. L. 111–92 struck out ''and before December 1, 2009,'' after ''December 31, 2008,''.

Pub. L. 111–5, § 1006(d)(1), added par. (4).

2008—Subsec. (d)(2). Pub. L. 110–343, § 205(d)(1)(E), substituted ''25D, and 30D'' for ''and 25D''.

Subsec. (i). Pub. L. 110–343, § 322(d)(1), substituted ''2010'' for ''2008''.

2006—Subsec. (i). Pub. L. 109–432 substituted ''2008'' for ''2006''.

2005—Subsec. (d). Pub. L. 109–135, § 402(i)(3)(F), amended heading and text of subsec. (d) generally. Prior to amendment, text read as follows: ''If the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under subpart A of part IV of subchapter A (other than this section and sections 23, 24, and 25B), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year.''

Pub. L. 109–58, § 1335(b)(3), which directed amendment of subsec. (d) by substituting ''this section and section 25D'' for ''this section'', was repealed by Pub. L. 109–135, § 402(i)(4). See Effective and Termination Dates of 2005 Amendments notes below.

2004—Subsec. (i). Pub. L. 108–311 substituted ''2006'' for ''2004''.

2002—Subsec. (d). Pub. L. 107–147 amended directory language of Pub. L. 107–16, § 618(b)(2)(E). See 2001 Amendment note below.

2001—Subsec. (d). Pub. L. 107–16, § 618(b)(2)(E), as amended by Pub. L. 107–147, 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)(H), inserted ''and section 24'' after ''this section''.

2000—Subsec. (i). Pub. L. 106–554 substituted ''2004'' for ''2002''.

1999—Subsec. (i). Pub. L. 106–170 substituted ''2002'' for ''2001''.

1998—Subsec. (b)(1). Pub. L. 105–206, § 6008(d)(1), inserted ''and subsection (d)'' after ''this subsection'' in introductory provisions.

Subsec. (c)(1). Pub. L. 105–206, § 6008(d)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The term 'first-time homebuyer' has the same meaning as when used in section 72(t)(8)(D)(i), except that 'principal residence in the District of Columbia during the 1-year period' shall be substituted for 'principal residence during the 2-year period' in subclause (I) thereof.''

Subsec. (e)(2)(B). Pub. L. 105–206, § 6008(d)(3), inserted ''on the date the taxpayer first occupies such residence'' before the period at end.

Subsec. (e)(3). Pub. L. 105–206, § 6008(d)(4), substituted ''on the date such residence is purchased.'' for ''on the date of acquisition (within the meaning of section 72(t)(8)(D)(iii)).''

Subsec. (i). Pub. L. 105–206, § 6008(d)(5), substituted ''Application of section'' for ''Termination'' in heading and amended text generally. Prior to amendment, text read as follows: ''This section shall not apply to any property purchased after December 31, 2000.''

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112–240 applicable to taxable years beginning after Dec. 31, 2011, see section 104(d) of Pub. L. 112–240, set out as a note under section 23 of this title.

EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

Amendment by section 754(d) of Pub. L. 111–312 applicable to homes purchased after Dec. 31, 2009, see section 754(e)(4) of Pub. L. 111–312, set out as a note under section 1400 of this title.

Amendment by Pub. L. 111–148 terminated applicable to taxable years beginning after Dec. 31, 2011, and section is amended to read as if such amendment had never been enacted, see section 10909(c) of Pub. L. 111–148, set out as a note under section 1 of this title.

Amendment by Pub. L. 111–148 applicable to taxable years beginning after Dec. 31, 2009, see section 10909(d) of Pub. L. 111–148, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–92 applicable to residences purchased after Nov. 30, 2009, see section 11(j)(2) of Pub. L. 111–92, set out as a note under section 36 of this title.

Amendment by section 1004(b)(6) of Pub. L. 111–5 applicable to taxable years beginning after Dec. 31, 2008, see section 1004(d) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

Amendment by section 1006(d)(1) of Pub. L. 111–5 applicable to residences purchased after Dec. 31, 2008, see section 1006(f) of Pub. L. 111–5, set out as a note under section 36 of this title.

Amendment by section 1142(b)(1)(F) of Pub. L. 111–5 applicable to vehicles acquired after Feb. 17, 2009, see section 1142(c) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

Amendment by section 1144(b)(1)(F) of Pub. L. 111–5 applicable to taxable years beginning after Dec. 31, 2008, see section 1144(c) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by section 205(d)(1)(E) of Pub. L. 110–343 applicable to taxable years beginning after Dec. 31, 2008, see section 205(e) of Pub. L. 110–343, set out as an Effective and Termination Dates of 2008 Amendment note under section 24 of this title.

Pub. L. 110–343, div. C, title III, § 322(d)(2), Oct. 3, 2008, 122 Stat. 3874, provided that: ''The amendment made by this subsection [amending this section] shall apply to property purchased after December 31, 2007.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, § 110(d)(2), Dec. 20, 2006, 120 Stat. 2940, provided that: ''The amendment made by this subsection [amending this section] shall apply to property purchased after December 31, 2005.''

EFFECTIVE AND TERMINATION DATES OF 2005 AMENDMENT

Amendment by section 402(i)(3)(F) of Pub. L. 109–135 subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, § 901, in the same manner as the provisions of such Act to which such amendment relates, see section 402(i)(3)(H) of Pub. L. 109–135, set out as a note under section 23 of this title. Title IX of Pub. L. 107–16 was repealed by Pub. L. 112–240, title I, § 101(a)(1), Jan. 2, 2013, 126 Stat. 2315.

The Internal Revenue Code of 1986 to be applied and administered as if the amendments made by section 1135(b)(1)–(3) of Pub. L. 109–58 had never been enacted, see section 402(i)(4) of Pub. L. 109–135, set out as a note under section 23 of this title.

Amendments by Pub. L. 109–135 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109–58, to which they relate, except that amendment by section 402(i)(3)(F) of Pub. L. 109–135 is applicable to taxable years beginning after Dec. 31, 2005, see section 402(m) of Pub. L. 109–135, set out as a note under section 23 of this title.

Amendment by Pub. L. 109–58 applicable to property placed in service after Dec. 31, 2005, in taxable years ending after such date, see section 1335(c) of Pub. L. 109–58, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 effective Jan. 1, 2004, see section 310(e)(1) of Pub. L. 108–311, set out as a note under section 1400 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 inapplicable to taxable years beginning during 2004 or 2005, see section 312(b)(2) of Pub. L. 108–311, set out as a note under section 23 of this title.

Amendment by Pub. L. 107–16 inapplicable to taxable years beginning during 2002 and 2003, see section 601(b)(2) of Pub. L. 107–147, set out as a note under section 23 of this title.

Amendment by section 201(b)(2)(H) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 201(e)(2) of Pub. L. 107–16, set out as a note under section 24 of this title.

Amendment by section 202(f)(2)(C) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 202(g)(1) of Pub. L. 107–16, set out as a note under section 23 of this title.

Amendment by section 618(b)(2)(E) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 618(d) of Pub. L. 107–16, set out as a note under section 24 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.

Subchapter X—Renewal Communities

PART I—DESIGNATION

§ 1400E. Designation of renewal communities

(a) Designation

(1) Definitions

For purposes of this title, the term ''renewal community'' means any area—

(A) which is nominated by 1 or more local governments and the State or States in which it is located for designation as a renewal community (hereafter in this section referred to as a ''nominated area''), and

(B) which the Secretary of Housing and Urban Development designates as a renewal community, after consultation with—

(i) the Secretaries of Agriculture, Commerce, Labor, and the Treasury;[1] the Director of the Office of Management and Budget, and the Administrator of the Small Business Administration, and

(ii) in the case of an area on an Indian reservation, the Secretary of the Interior.

(2) Number of designations

(A) In general

Not more than 40 nominated areas may be designated as renewal communities.

(B) Minimum designation in rural areas

Of the areas designated under paragraph (1), at least 12 must be areas—

(i) which are within a local government jurisdiction or jurisdictions with a population of less than 50,000,

(ii) which are outside of a metropolitan statistical area (within the meaning of section 143(k)(2)(B)), or

(iii) which are determined by the Secretary of Housing and Urban Development, after consultation with the Secretary of Commerce, to be rural areas.

(3) Areas designated based on degree of poverty, etc.

(A) In general

Except as otherwise provided in this section, the nominated areas designated as renewal communities under this subsection shall be those nominated areas with the highest average ranking with respect to the criteria described in subparagraphs (B), (C), and (D) of subsection (c)(3). For purposes of the preceding sentence, an area shall be ranked within each such criterion on the basis of the amount by which the area exceeds such criterion, with the area which exceeds such criterion by the greatest amount given the highest ranking.

(B) Exception where inadequate course of action, etc.

An area shall not be designated under subparagraph (A) if the Secretary of Housing and Urban Development determines that the course of action described in subsection (d)(2) with respect to such area is inadequate.

[1] So in original. The semicolon probably should be a comma.

(C) Preference for enterprise communities and empowerment zones

With respect to the first 20 designations made under this section, a preference shall be provided to those nominated areas which are enterprise communities or empowerment zones (and are otherwise eligible for designation under this section).

(4) Limitation on designations

(A) Publication of regulations

The Secretary of Housing and Urban Development shall prescribe by regulation no later than 4 months after the date of the enactment of this section, after consultation with the officials described in paragraph (1)(B)—

(i) the procedures for nominating an area under paragraph (1)(A),

(ii) the parameters relating to the size and population characteristics of a renewal community, and

(iii) the manner in which nominated areas will be evaluated based on the criteria specified in subsection (d).

(B) Time limitations

The Secretary of Housing and Urban Development may designate nominated areas as renewal communities only during the period beginning on the first day of the first month following the month in which the regulations described in subparagraph (A) are prescribed and ending on December 31, 2001.

(C) Procedural rules

The Secretary of Housing and Urban Development shall not make any designation of a nominated area as a renewal community under paragraph (2) unless—

(i) the local governments and the States in which the nominated area is located have the authority—

(I) to nominate such area for designation as a renewal community,

(II) to make the State and local commitments described in subsection (d), and

(III) to provide assurances satisfactory to the Secretary of Housing and Urban Development that such commitments will be fulfilled,

(ii) a nomination regarding such area is submitted in such a manner and in such form, and contains such information, as the Secretary of Housing and Urban Development shall by regulation prescribe, and

(iii) the Secretary of Housing and Urban Development determines that any information furnished is reasonably accurate.

(5) Nomination process for Indian reservations

For purposes of this subchapter, in the case of a nominated area on an Indian reservation, the reservation governing body (as determined by the Secretary of the Interior) shall be treated as being both the State and local governments with respect to such area.

(b) Period for which designation is in effect

(1) In general

Any designation of an area as a renewal community shall remain in effect during the period beginning on January 1, 2002, and ending on the earliest of—

(A) December 31, 2009,

(B) the termination date designated by the State and local governments in their nomination, or

(C) the date the Secretary of Housing and Urban Development revokes such designation.

(2) Revocation of designation

The Secretary of Housing and Urban Development may revoke the designation under this section of an area if such Secretary determines that the local government or the State in which the area is located—

(A) has modified the boundaries of the area, or

(B) is not complying substantially with, or fails to make progress in achieving, the State or local commitments, respectively, described in subsection (d).

(3) Earlier termination of certain benefits if earlier termination of designation

If the designation of an area as a renewal community terminates before December 31, 2009, the day after the date of such termination shall be substituted for ''January 1, 2010'' each place it appears in sections 1400F and 1400J with respect to such area.

(c) Area and eligibility requirements

(1) In general

The Secretary of Housing and Urban Development may designate a nominated area as a renewal community under subsection (a) only if the area meets the requirements of paragraphs (2) and (3) of this subsection.

(2) Area requirements

A nominated area meets the requirements of this paragraph if—

(A) the area is within the jurisdiction of one or more local governments,

(B) the boundary of the area is continuous, and

(C) the area—

(i) has a population of not more than 200,000 and at least—

(I) 4,000 if any portion of such area (other than a rural area described in subsection (a)(2)(B)(i)) is located within a metropolitan statistical area (within the meaning of section 143(k)(2)(B)) which has a population of 50,000 or greater, or

(II) 1,000 in any other case, or

(ii) is entirely within an Indian reservation (as determined by the Secretary of the Interior).

(3) Eligibility requirements

A nominated area meets the requirements of this paragraph if the State and the local governments in which it is located certify in writing (and the Secretary of Housing and Urban Development, after such review of supporting data as he deems appropriate, accepts such certification) that—

(A) the area is one of pervasive poverty, unemployment, and general distress,

(B) the unemployment rate in the area, as determined by the most recent available

data, was at least 1½ times the national unemployment rate for the period to which such data relate,

(C) the poverty rate for each population census tract within the nominated area is at least 20 percent, and

(D) in the case of an urban area, at least 70 percent of the households living in the area have incomes below 80 percent of the median income of households within the jurisdiction of the local government (determined in the same manner as under section 119(b)(2) of the Housing and Community Development Act of 1974).

(4) Consideration of other factors

The Secretary of Housing and Urban Development, in selecting any nominated area for designation as a renewal community under this section—

(A) shall take into account—

(i) the extent to which such area has a high incidence of crime, or

(ii) if such area has census tracts identified in the May 12, 1998, report of the Government Accountability Office regarding the identification of economically distressed areas, and

(B) with respect to 1 of the areas to be designated under subsection (a)(2)(B), may, in lieu of any criteria described in paragraph (3), take into account the existence of outmigration from the area.

(d) Required State and local commitments

(1) In general

The Secretary of Housing and Urban Development may designate any nominated area as a renewal community under subsection (a) only if—

(A) the local government and the State in which the area is located agree in writing that, during any period during which the area is a renewal community, such governments will follow a specified course of action which meets the requirements of paragraph (2) and is designed to reduce the various burdens borne by employers or employees in such area, and

(B) the economic growth promotion requirements of paragraph (3) are met.

(2) Course of action

(A) In general

A course of action meets the requirements of this paragraph if such course of action is a written document, signed by a State (or local government) and neighborhood organizations, which evidences a partnership between such State or government and community-based organizations and which commits each signatory to specific and measurable goals, actions, and timetables. Such course of action shall include at least 4 of the following:

(i) A reduction of tax rates or fees applying within the renewal community.

(ii) An increase in the level of efficiency of local services within the renewal community.

(iii) Crime reduction strategies, such as crime prevention (including the provision of crime prevention services by nongovernmental entities).

(iv) Actions to reduce, remove, simplify, or streamline governmental requirements applying within the renewal community.

(v) Involvement in the program by private entities, organizations, neighborhood organizations, and community groups, particularly those in the renewal community, including a commitment from such private entities to provide jobs and job training for, and technical, financial, or other assistance to, employers, employees, and residents from the renewal community.

(vi) The gift (or sale at below fair market value) of surplus real property (such as land, homes, and commercial or industrial structures) in the renewal community to neighborhood organizations, community development corporations, or private companies.

(B) Recognition of past efforts

For purposes of this section, in evaluating the course of action agreed to by any State or local government, the Secretary of Housing and Urban Development shall take into account the past efforts of such State or local government in reducing the various burdens borne by employers and employees in the area involved.

(3) Economic growth promotion requirements

The economic growth promotion requirements of this paragraph are met with respect to a nominated area if the local government and the State in which such area is located certify in writing that such government and State (respectively) have repealed or reduced, will not enforce, or will reduce within the nominated area at least 4 of the following:

(A) Licensing requirements for occupations that do not ordinarily require a professional degree.

(B) Zoning restrictions on home-based businesses which do not create a public nuisance.

(C) Permit requirements for street vendors who do not create a public nuisance.

(D) Zoning or other restrictions that impede the formation of schools or child care centers.

(E) Franchises or other restrictions on competition for businesses providing public services, including taxicabs, jitneys, cable television, or trash hauling.

This paragraph shall not apply to the extent that such regulation of businesses and occupations is necessary for and well-tailored to the protection of health and safety.

(e) Coordination with treatment of empowerment zones and enterprise communities

For purposes of this title, the designation under section 1391 of any area as an empowerment zone or enterprise community shall cease to be in effect as of the date that the designation of any portion of such area as a renewal community takes effect.

(f) Definitions and special rules

For purposes of this subchapter—

(1) Governments

If more than one government seeks to nominate an area as a renewal community, any reference to, or requirement of, this section shall apply to all such governments.

(2) Local government

The term ''local government'' means—

(A) any county, city, town, township, parish, village, or other general purpose political subdivision of a State, and

(B) any combination of political subdivisions described in subparagraph (A) recognized by the Secretary of Housing and Urban Development.

(3) Application of rules relating to census tracts

The rules of section 1392(b)(4) shall apply.

(4) Census data

Population and poverty rate shall be determined by using 1990 census data.

(g) Expansion of designated area based on 2000 census

(1) In general

At the request of all governments which nominated an area as a renewal community, the Secretary of Housing and Urban Development may expand the area of such community to include any census tract if—

(A)(i) at the time such community was nominated, such community would have met the requirements of this section using 1990 census data even if such tract had been included in such community, and

(ii) such tract has a poverty rate using 2000 census data which exceeds the poverty rate for such tract using 1990 census data, or

(B)(i) such community would be described in subparagraph (A)(i) but for the failure to meet one or more of the requirements of paragraphs (2)(C)(i), (3)(C), and (3)(D) of subsection (c) using 1990 census data,

(ii) such community, including such tract, has a population of not more than 200,000 using either 1990 census data or 2000 census data,

(iii) such tract meets the requirement of subsection (c)(3)(C) using 2000 census data, and

(iv) such tract meets the requirement of subparagraph (A)(ii).

(2) Exception for certain census tracts with low population in 1990

In the case of any census tract which did not have a poverty rate determined by the Bureau of the Census using 1990 census data, paragraph (1)(B) shall be applied without regard to clause (iv) thereof.

(3) Special rule for certain census tracts with low population in 2000

At the request of all governments which nominated an area as a renewal community, the Secretary of Housing and Urban Development may expand the area of such community to include any census tract if—

(A) either—

(i) such tract has no population using 2000 census data, or

(ii) no poverty rate for such tract is determined by the Bureau of the Census using 2000 census data,

(B) such tract is one of general distress, and

(C) such community, including such tract, meets the requirements of subparagraphs (A) and (B) of subsection (c)(2).

(4) Period in effect

Any expansion under this subsection shall take effect as provided in subsection (b).

(Added Pub. L. 106–554, §1(a)(7) [title I, §101(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–589; amended Pub. L. 108–357, title II, §222(a), Oct. 22, 2004, 118 Stat. 1431; Pub. L. 109–135, title IV, §412(rr)(1), Dec. 21, 2005, 119 Stat. 2640.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (a)(4)(A), is the date of enactment of Pub. L. 106–554, which was approved Dec. 21, 2000.

Section 119(b)(2) of the Housing and Community Development Act of 1974, referred to in subsec. (c)(3)(D), is classified to section 5318(b)(2) of Title 42, The Public Health and Welfare.

AMENDMENTS

2005—Subsec. (c)(4)(A)(ii). Pub. L. 109–135 substituted ''Government Accountability Office'' for ''General Accounting Office''.

2004—Subsec. (g). Pub. L. 108–357 added subsec. (g).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title II, §222(b), Oct. 22, 2004, 118 Stat. 1432, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect as if included in the amendments made by section 101 of the Community Renewal Tax Relief Act of 2000 [H.R. 5662, as enacted by section 1(a)(7) of Pub. L. 106–554, Dec. 21, 2000, 114 Stat. 2763, 2763A–587].''

AUDIT AND REPORT

Pub. L. 106–554, §1(a)(7) [title I, §101(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–599, provided that: ''Not later than January 31 of 2004, 2007, and 2010, the Comptroller General of the United States shall, pursuant to an audit of the renewal community program established under section 1400E of the Internal Revenue Code of 1986 (as added by subsection (a)) and the empowerment zone and enterprise community program under subchapter U of chapter 1 of such Code, report to Congress on such program and its effect on poverty, unemployment, and economic growth within the designated renewal communities, empowerment zones, and enterprise communities.''

ADVISORY COUNCIL ON COMMUNITY RENEWAL

Pub. L. 106–554, §1(a)(7) [title I, subtitle E, part II], Dec. 21, 2000, 114 Stat. 2763, 2763A–622, as amended by Pub. L. 107–147, title IV, §417(21), Mar. 9, 2002, 116 Stat. 57; Pub. L. 108–311, title IV, §408(b)(1), Oct. 4, 2004, 118 Stat. 1192, provided that:

''SEC. 151. SHORT TITLE.

''This part may be cited as the 'Advisory Council on Community Renewal Act'.

''SEC. 152. ESTABLISHMENT.

''There is established an advisory council to be known as the 'Advisory Council on Community Renewal' (in this part referred to as the 'Advisory Council').

''SEC. 153. DUTIES OF ADVISORY COUNCIL.

''The Advisory Council shall advise the Secretary of Housing and Urban Development (in this part referred

to as the 'Secretary') on the designation of renewal communities pursuant to the amendment made by section 101 [adding this subchapter and amending section 469 of this title] and on the exercise of any other authority granted to the Secretary pursuant to the amendments made by this title [see Tables for classification].

''SEC. 154. MEMBERSHIP.

''(a) NUMBER AND APPOINTMENT.—The Advisory Council shall be composed of 7 members appointed by the Secretary.

''(b) CHAIRPERSON.—The Chairperson of the Advisory Council (in this part referred to as the 'Chairperson') shall be designated by the Secretary at the time of the appointment.

''(c) TERMS.—Each member shall be appointed for the life of the Advisory Council.

''(d) BASIC PAY.—

''(1) CHAIRPERSON.—The Chairperson shall be paid at a rate equal to the daily rate of basic pay for level III of the Executive Schedule for each day (including travel time) during which the Chairperson is engaged in the actual performance of duties vested in the Advisory Council.

''(2) OTHER MEMBERS.—Members other than the Chairperson shall each be paid at a rate equal to the daily rate of basic pay for level IV of the Executive Schedule for each day (including travel time) during which they are engaged in the actual performance of duties vested in the Advisory Council.

''(e) TRAVEL EXPENSES.—Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with applicable provisions under subchapter I of chapter 57 of title 5, United States Code.

''(f) QUORUM.—Four members of the Advisory Council shall constitute a quorum but a lesser number may hold hearings.

''(g) MEETINGS.—The Advisory Council shall meet at the call of the Secretary or the Chairperson.

''SEC. 155. POWERS OF ADVISORY COUNCIL.

''(a) HEARINGS AND SESSIONS.—The Advisory Council may, for the purpose of carrying out this part, hold hearings, sit and act at times and places, take testimony, and receive evidence as the Advisory Council considers appropriate. The Advisory Council may administer oaths or affirmations to witnesses appearing before it.

''(b) POWERS OF MEMBERS AND AGENTS.—Any member or agent of the Advisory Council may, if authorized by the Advisory Council, take any action which the Advisory Council is authorized to take by this section.

''(c) OBTAINING OFFICIAL DATA.—The Advisory Council may secure directly from any department or agency of the United States information necessary to enable it to carry out this part. Upon request of the Chairperson of the Advisory Council, the head of that department or agency shall furnish that information to the Advisory Council.

''SEC. 156. REPORTS.

''(a) ANNUAL REPORTS.—The Advisory Council shall submit to the Secretary an annual report for each fiscal year.

''(b) INTERIM REPORTS.—The Advisory Council may submit to the Secretary such interim reports as the Advisory Council considers appropriate.

''(c) FINAL REPORT.—The Advisory Council shall transmit a final report to the Secretary not later than September 30, 2003. The final report shall contain a detailed statement of the findings and conclusions of the Advisory Council, together with any recommendations for legislative or administrative action that the Advisory Council considers appropriate.

''SEC. 157. TERMINATION.

''(a) IN GENERAL.—The Advisory Council shall terminate 30 days after submitting its final report under section 156(c).

''(b) EXTENSION.—Notwithstanding subsection (a), the Secretary may postpone the termination of the Advisory Council for a period not to exceed 3 years after the Advisory Council submits its final report under section 156(c).

''SEC. 158. APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.

''The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Advisory Council.

''SEC. 159. RESOURCES.

''The Secretary shall provide to the Advisory Council appropriate resources so that the Advisory Council may carry out its duties and functions under this part.

''SEC. 160. EFFECTIVE DATE.

''This part shall be effective 30 days after the date of its enactment [Dec. 21, 2000].''

PART II—RENEWAL COMMUNITY CAPITAL GAIN; RENEWAL COMMUNITY BUSINESS

Sec.
1400F. Renewal community capital gain.
1400G. Renewal community business defined.

§ 1400F. Renewal community capital gain

(a) General rule

Gross income does not include any qualified capital gain from the sale or exchange of a qualified community asset held for more than 5 years.

(b) Qualified community asset

For purposes of this section—

(1) In general

The term ''qualified community asset'' means—

(A) any qualified community stock,

(B) any qualified community partnership interest, and

(C) any qualified community business property.

(2) Qualified community stock

(A) In general

Except as provided in subparagraph (B), the term ''qualified community stock'' means any stock in a domestic corporation if—

(i) such stock is acquired by the taxpayer after December 31, 2001, and before January 1, 2010, at its original issue (directly or through an underwriter) from the corporation solely in exchange for cash,

(ii) as of the time such stock was issued, such corporation was a renewal community business (or, in the case of a new corporation, such corporation was being organized for purposes of being a renewal community business), and

(iii) during substantially all of the taxpayer's holding period for such stock, such corporation qualified as a renewal community business.

(B) Redemptions

A rule similar to the rule of section 1202(c)(3) shall apply for purposes of this paragraph.

(3) Qualified community partnership interest

The term ''qualified community partnership interest'' means any capital or profits interest in a domestic partnership if—

(A) such interest is acquired by the taxpayer after December 31, 2001, and before January 1, 2010, from the partnership solely in exchange for cash,

(B) as of the time such interest was acquired, such partnership was a renewal community business (or, in the case of a new partnership, such partnership was being organized for purposes of being a renewal community business), and

(C) during substantially all of the taxpayer's holding period for such interest, such partnership qualified as a renewal community business.

A rule similar to the rule of paragraph (2)(B) shall apply for purposes of this paragraph.

(4) Qualified community business property

(A) In general

The term ''qualified community business property'' means tangible property if—

(i) such property was acquired by the taxpayer by purchase (as defined in section 179(d)(2)) after December 31, 2001, and before January 1, 2010,

(ii) the original use of such property in the renewal community commences with the taxpayer, and

(iii) during substantially all of the taxpayer's holding period for such property, substantially all of the use of such property was in a renewal community business of the taxpayer.

(B) Special rule for substantial improvements

The requirements of clauses (i) and (ii) of subparagraph (A) shall be treated as satisfied with respect to—

(i) property which is substantially improved by the taxpayer before January 1, 2010, and

(ii) any land on which such property is located.

The determination of whether a property is substantially improved shall be made under clause (ii) of section 1400B(b)(4)(B), except that ''December 31, 2001'' shall be substituted for ''December 31, 1997'' in such clause.

(c) Qualified capital gain

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, the term ''qualified capital gain'' means any gain recognized on the sale or exchange of—

(A) a capital asset, or

(B) property used in the trade or business (as defined in section 1231(b)).

(2) Gain before 2002 or after 2014 not qualified

The term ''qualified capital gain'' shall not include any gain attributable to periods before January 1, 2002, or after December 31, 2014.

(3) Certain rules to apply

Rules similar to the rules of paragraphs (3), (4), and (5) of section 1400B(e) shall apply for purposes of this subsection.

(d) Certain rules to apply

For purposes of this section, rules similar to the rules of paragraphs (5), (6), and (7) of subsection (b), and subsections (f) and (g), of section 1400B shall apply; except that for such purposes section 1400B(g)(2) shall be applied by substituting ''January 1, 2002'' for ''January 1, 1998'' and ''December 31, 2014'' for ''December 31, 2014''.[1]

(e) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this section, including regulations to prevent the abuse of the purposes of this section.

(Added Pub. L. 106–554, §1(a)(7) [title I, §101(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–594; amended Pub. L. 108–311, title III, §310(c)(2)(C), Oct. 4, 2004, 118 Stat. 1180; Pub. L. 109–432, div. A, title I, §110(c)(2)(C), Dec. 20, 2006, 120 Stat. 2940; Pub. L. 110–343, div. C, title III, §322(c)(2)(C), Oct. 3, 2008, 122 Stat. 3874.)

REFERENCES IN TEXT

December 31, 2014, referred to in subsec. (d), no longer appears in the text of section 1400B(g)(2) of this title subsequent to the amendment made by Pub. L. 111–312, title VII, §754(c)(2)(B), Dec. 17, 2010, 124 Stat. 3322.

AMENDMENTS

2008—Subsec. (d). Pub. L. 110–343 substituted ''2014'.'' for ''2012'.''.

2006—Subsec. (d). Pub. L. 109–432 substituted ''2012'' for ''2010''.

2004—Subsec. (d). Pub. L. 108–311 substituted ''2010'' for ''2008''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 effective Jan. 1, 2004, see section 310(e)(1) of Pub. L. 108–311, set out as a note under section 1400 of this title.

§ 1400G. Renewal community business defined

For purposes of this subchapter, the term ''renewal community business'' means any entity or proprietorship which would be a qualified business entity or qualified proprietorship under section 1397C if references to renewal communities were substituted for references to empowerment zones in such section.

(Added Pub. L. 106–554, §1(a)(7) [title I, §101(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–596.)

PART III—ADDITIONAL INCENTIVES

§ 1400H. Renewal community employment credit

(a) In general

Subject to the modification in subsection (b), a renewal community shall be treated as an empowerment zone for purposes of section 1396 with respect to wages paid or incurred after December 31, 2001.

(b) Modification

In applying section 1396 with respect to renewal communities—

[1] See References in Text note below.

(1) the applicable percentage shall be 15 percent, and

(2) subsection (c) thereof shall be applied by substituting ''$10,000'' for ''$15,000'' each place it appears.

(Added Pub. L. 106–554, §1(a)(7) [title I, §101(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–596.)

§ 1400I. Commercial revitalization deduction

(a) General rule

At the election of the taxpayer, either—

(1) one-half of any qualified revitalization expenditures chargeable to capital account with respect to any qualified revitalization building shall be allowable as a deduction for the taxable year in which the building is placed in service, or

(2) a deduction for all such expenditures shall be allowable ratably over the 120-month period beginning with the month in which the building is placed in service.

(b) Qualified revitalization buildings and expenditures

For purposes of this section—

(1) Qualified revitalization building

The term ''qualified revitalization building'' means any building (and its structural components) if—

(A) the building is placed in service by the taxpayer in a renewal community and the original use of the building begins with the taxpayer, or

(B) in the case of such building not described in subparagraph (A), such building—

(i) is substantially rehabilitated (within the meaning of section 47(c)(1)(C))[1] by the taxpayer, and

(ii) is placed in service by the taxpayer after the rehabilitation in a renewal community.

(2) Qualified revitalization expenditure

(A) In general

The term ''qualified revitalization expenditure'' means any amount properly chargeable to capital account for property for which depreciation is allowable under section 168 (without regard to this section) and which is—

(i) nonresidential real property (as defined in section 168(e)), or

(ii) section 1250 property (as defined in section 1250(c)) which is functionally related and subordinate to property described in clause (i).

(B) Certain expenditures not included

(i) Acquisition cost

In the case of a building described in paragraph (1)(B), the cost of acquiring the building or interest therein shall be treated as a qualified revitalization expenditure only to the extent that such cost does not exceed 30 percent of the aggregate qualified revitalization expenditures (determined without regard to such cost) with respect to such building.

(ii) Credits

The term ''qualified revitalization expenditure'' does not include any expenditure which the taxpayer may take into account in computing any credit allowable under this title unless the taxpayer elects to take the expenditure into account only for purposes of this section.

(c) Dollar limitation

The aggregate amount which may be treated as qualified revitalization expenditures with respect to any qualified revitalization building shall not exceed the lesser of—

(1) $10,000,000, or

(2) the commercial revitalization expenditure amount allocated to such building under this section by the commercial revitalization agency for the State in which the building is located.

(d) Commercial revitalization expenditure amount

(1) In general

The aggregate commercial revitalization expenditure amount which a commercial revitalization agency may allocate for any calendar year is the amount of the State commercial revitalization expenditure ceiling determined under this paragraph for such calendar year for such agency.

(2) State commercial revitalization expenditure ceiling

The State commercial revitalization expenditure ceiling applicable to any State—

(A) for each calendar year after 2001 and before 2010 is $12,000,000 for each renewal community in the State, and

(B) for each calendar year thereafter is zero.

(3) Commercial revitalization agency

For purposes of this section, the term ''commercial revitalization agency'' means any agency authorized by a State to carry out this section.

(4) Time and manner of allocations

Allocations under this section shall be made at the same time and in the same manner as under paragraphs (1) and (7) of section 42(h).

(e) Responsibilities of commercial revitalization agencies

(1) Plans for allocation

Notwithstanding any other provision of this section, the commercial revitalization expenditure amount with respect to any building shall be zero unless—

(A) such amount was allocated pursuant to a qualified allocation plan of the commercial revitalization agency which is approved (in accordance with rules similar to the rules of section 147(f)(2) (other than subparagraph (B)(ii) thereof)) by the governmental unit of which such agency is a part, and

(B) such agency notifies the chief executive officer (or its equivalent) of the local jurisdiction within which the building is located of such allocation and provides such individual a reasonable opportunity to comment on the allocation.

[1] See References in Text note below.

(2) Qualified allocation plan

For purposes of this subsection, the term ''qualified allocation plan'' means any plan—

(A) which sets forth selection criteria to be used to determine priorities of the commercial revitalization agency which are appropriate to local conditions,

(B) which considers—

(i) the degree to which a project contributes to the implementation of a strategic plan that is devised for a renewal community through a citizen participation process,

(ii) the amount of any increase in permanent, full-time employment by reason of any project, and

(iii) the active involvement of residents and nonprofit groups within the renewal community, and

(C) which provides a procedure that the agency (or its agent) will follow in monitoring compliance with this section.

(f) Special rules

(1) Deduction in lieu of depreciation

The deduction provided by this section for qualified revitalization expenditures shall—

(A) with respect to the deduction determined under subsection (a)(1), be in lieu of any depreciation deduction otherwise allowable on account of one-half of such expenditures, and

(B) with respect to the deduction determined under subsection (a)(2), be in lieu of any depreciation deduction otherwise allowable on account of all of such expenditures.

(2) Basis adjustment, etc.

For purposes of sections 1016 and 1250, the deduction under this section shall be treated in the same manner as a depreciation deduction. For purposes of section 1250(b)(5), the straight line method of adjustment shall be determined without regard to this section.

(3) Substantial rehabilitations treated as separate buildings

A substantial rehabilitation (within the meaning of section 47(c)(1)(C))[1] of a building shall be treated as a separate building for purposes of subsection (a).

(4) Clarification of allowance of deduction under minimum tax

Notwithstanding section 56(a)(1), the deduction under this section shall be allowed in determining alternative minimum taxable income under section 55.

(g) Termination

This section shall not apply to any building placed in service after December 31, 2009.

(Added Pub. L. 106–554, §1(a)(7) [title I, §101(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–596.)

REFERENCES IN TEXT

Section 47(c)(1)(C), referred to in subsecs. (b)(1)(B)(i) and (f)(3), was redesignated as section 47(c)(1)(B) by Pub. L. 115–97, title I, §13402(b)(1)(iii), Dec. 22, 2017, 131 Stat. 2134.

§ 1400J. Increase in expensing under section 179

(a) In general

For purposes of section 1397A—

(1) a renewal community shall be treated as an empowerment zone,

(2) a renewal community business shall be treated as an enterprise zone business, and

(3) qualified renewal property shall be treated as qualified zone property.

(b) Qualified renewal property

For purposes of this section—

(1) In general

The term ''qualified renewal property'' means any property to which section 168 applies (or would apply but for section 179) if—

(A) such property was acquired by the taxpayer by purchase (as defined in section 179(d)(2)) after December 31, 2001, and before January 1, 2010, and

(B) such property would be qualified zone property (as defined in section 1397D) if references to renewal communities were substituted for references to empowerment zones in section 1397D.

(2) Certain rules to apply

The rules of subsections (a)(2) and (b) of section 1397D shall apply for purposes of this section.

(Added Pub. L. 106–554, §1(a)(7) [title I, §101(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–598.)

Subchapter Y—Short-Term Regional Benefits

AMENDMENTS

2009—Pub. L. 111–5, div. B, title I, §1401(b), Feb. 17, 2009, 123 Stat. 351, added item for part III.

2005—Pub. L. 109–135, title I, §101(b)(3), Dec. 21, 2005, 119 Stat. 2593, substituted ''Short-Term Regional Benefits'' for ''New York Liberty Zone Benefits'' in subchapter heading and amended analysis generally, substituting items for parts I and II for item 1400L.

PART I—TAX BENEFITS FOR NEW YORK LIBERTY ZONE

§ 1400L. Tax benefits for New York Liberty Zone

(a) Expansion of work opportunity tax credit

(1) In general

For purposes of section 51, a New York Liberty Zone business employee shall be treated as a member of a targeted group.

(2) New York Liberty Zone business employee

For purposes of this subsection—

(A) In general

The term ''New York Liberty Zone business employee'' means, with respect to any period, any employee of a New York Liberty Zone business if substantially all the services performed during such period by such employee for such business are performed in the New York Liberty Zone.

(B) Inclusion of certain employees outside the New York Liberty Zone

(i) In general

In the case of a New York Liberty Zone business described in subclause (II) of sub-

paragraph (C)(i), the term ''New York Liberty Zone business employee'' includes any employee of such business (not described in subparagraph (A)) if substantially all the services performed during such period by such employee for such business are performed in the City of New York, New York.

(ii) Limitation

The number of employees of such a business that are treated as New York Liberty Zone business employees on any day by reason of clause (i) shall not exceed the excess of—

(I) the number of employees of such business on September 11, 2001, in the New York Liberty Zone, over

(II) the number of New York Liberty Zone business employees (determined without regard to this subparagraph) of such business on the day to which the limitation is being applied.

The Secretary may require any trade or business to have the number determined under subclause (I) verified by the New York State Department of Labor.

(C) New York Liberty Zone business

(i) In general

The term ''New York Liberty Zone business'' means any trade or business which is—

(I) located in the New York Liberty Zone, or

(II) located in the City of New York, New York, outside the New York Liberty Zone, as a result of the physical destruction or damage of such place of business by the September 11, 2001, terrorist attack.

(ii) Credit not allowed for large businesses

The term ''New York Liberty Zone business'' shall not include any trade or business for any taxable year if such trade or business employed an average of more than 200 employees on business days during the taxable year.

(D) Special rules for determining amount of credit

For purposes of applying subpart F of part IV of subchapter A of this chapter to wages paid or incurred to any New York Liberty Zone business employee—

(i) section 51(a) shall be applied by substituting ''qualified wages'' for ''qualified first-year wages'',

(ii) the rules of section 52 shall apply for purposes of determining the number of employees under this paragraph,

(iii) subsections (c)(4) and (i)(2) of section 51 shall not apply, and

(iv) in determining qualified wages, the following shall apply in lieu of section 51(b):

(I) Qualified wages

The term ''qualified wages'' means wages paid or incurred by the employer to individuals who are New York Liberty Zone business employees of such employer for work performed during calendar year 2002 or 2003.

(II) Only first $6,000 of wages per calendar year taken into account

The amount of the qualified wages which may be taken into account with respect to any individual shall not exceed $6,000 per calendar year.

(b) Special allowance for certain property acquired after September 10, 2001

(1) Additional allowance

In the case of any qualified New York Liberty Zone property—

(A) the depreciation deduction provided by section 167(a) for the taxable year in which such property is placed in service shall include an allowance equal to 30 percent of the adjusted basis of such property, and

(B) the adjusted basis of the qualified New York Liberty Zone property shall be reduced by the amount of such deduction before computing the amount otherwise allowable as a depreciation deduction under this chapter for such taxable year and any subsequent taxable year.

(2) Qualified New York Liberty Zone property

For purposes of this subsection—

(A) In general

The term ''qualified New York Liberty Zone property'' means property—

(i)(I) which is described in section 168(k)(2)(A)(i), or

(II) which is nonresidential real property, or residential rental property, which is described in subparagraph (B),

(ii) substantially all of the use of which is in the New York Liberty Zone and is in the active conduct of a trade or business by the taxpayer in such Zone,

(iii) the original use of which in the New York Liberty Zone commences with the taxpayer after September 10, 2001,

(iv) which is acquired by the taxpayer by purchase (as defined in section 179(d)) after September 10, 2001, but only if no written binding contract for the acquisition was in effect before September 11, 2001, and

(v) which is placed in service by the taxpayer on or before the termination date.

The term ''termination date'' means December 31, 2006 (December 31, 2009, in the case of nonresidential real property and residential rental property).

(B) Eligible real property

Nonresidential real property or residential rental property is described in this subparagraph only to the extent it rehabilitates real property damaged, or replaces real property destroyed or condemned, as a result of the September 11, 2001, terrorist attack. For purposes of the preceding sentence, property shall be treated as replacing real property destroyed or condemned if, as part of an integrated plan, such property replaces real property which is included in a continuous area which includes real property destroyed or condemned.

(C) Exceptions

(i) Bonus depreciation property under section 168(k)

Such term shall not include property to which section 168(k) applies.

(ii) Alternative depreciation property

The term ''qualified New York Liberty Zone property'' shall not include any property described in section 168(k)(2)(D)(i).[1]

(iii) Qualified New York Liberty Zone leasehold improvement property

Such term shall not include any qualified New York Liberty Zone leasehold improvement property.

(iv) Election out

For purposes of this subsection, rules similar to the rules of section 168(k)(2)(D)(iii)[1] shall apply.

(D) Special rules

For purposes of this subsection, rules similar to the rules of section 168(k)(2)(E) shall apply, except that clause (i) thereof shall be applied without regard to ''and before January 1, 2015'', and clause (iv) thereof shall be applied by substituting ''qualified New York Liberty Zone property'' for ''qualified property''.

(E) Allowance against alternative minimum tax

For purposes of this subsection, rules similar to the rules of section 168(k)(2)(G) shall apply.

(c) 5-year recovery period for depreciation of certain leasehold improvements

(1) In general

For purposes of section 168, the term ''5-year property'' includes any qualified New York Liberty Zone leasehold improvement property.

(2) Qualified New York Liberty Zone leasehold improvement property

For purposes of this section, the term ''qualified New York Liberty Zone leasehold improvement property'' means qualified leasehold improvement property (as defined in section 168(k)(3)[1]) if—

(A) such building is located in the New York Liberty Zone,

(B) such improvement is placed in service after September 10, 2001, and before January 1, 2007, and

(C) no written binding contract for such improvement was in effect before September 11, 2001.

(3) Requirement to use straight line method

The applicable depreciation method under section 168 shall be the straight line method in the case of qualified New York Liberty Zone leasehold improvement property.

(4) 9-year recovery period under alternative system

For purposes of section 168(g), the class life of qualified New York Liberty Zone leasehold improvement property shall be 9 years.

(5) Election out

For purposes of this subsection, rules similar to the rules of section 168(k)(2)(D)(iii)[1] shall apply.

(d) Tax-exempt bond financing

(1) In general

For purposes of this title, any qualified New York Liberty Bond shall be treated as an exempt facility bond.

(2) Qualified New York Liberty Bond

For purposes of this subsection, the term ''qualified New York Liberty Bond'' means any bond issued as part of an issue if—

(A) 95 percent or more of the net proceeds (as defined in section 150(a)(3)) of such issue are to be used for qualified project costs,

(B) such bond is issued by the State of New York or any political subdivision thereof,

(C) the Governor or the Mayor designates such bond for purposes of this section, and

(D) such bond is issued after the date of the enactment of this section and before January 1, 2014.

(3) Limitations on amount of bonds

(A) Aggregate amount designated

The maximum aggregate face amount of bonds which may be designated under this subsection shall not exceed $8,000,000,000, of which not to exceed $4,000,000,000 may be designated by the Governor and not to exceed $4,000,000,000 may be designated by the Mayor.

(B) Specific limitations

The aggregate face amount of bonds issued which are to be used for—

(i) costs for property located outside the New York Liberty Zone shall not exceed $2,000,000,000,

(ii) residential rental property shall not exceed $1,600,000,000, and

(iii) costs with respect to property used for retail sales of tangible property and functionally related and subordinate property shall not exceed $800,000,000.

The limitations under clauses (i), (ii), and (iii) shall be allocated proportionately between the bonds designated by the Governor and the bonds designated by the Mayor in proportion to the respective amounts of bonds designated by each.

(C) Movable property

No bonds shall be issued which are to be used for movable fixtures and equipment.

(4) Qualified project costs

For purposes of this subsection—

(A) In general

The term ''qualified project costs'' means the cost of acquisition, construction, reconstruction, and renovation of—

(i) nonresidential real property and residential rental property (including fixed tenant improvements associated with such property) located in the New York Liberty Zone, and

(ii) public utility property (as defined in section 168(i)(10)) located in the New York Liberty Zone.

[1] See References in Text note below.

(B) Costs for certain property outside zone included

Such term includes the cost of acquisition, construction, reconstruction, and renovation of nonresidential real property (including fixed tenant improvements associated with such property) located outside the New York Liberty Zone but within the City of New York, New York, if such property is part of a project which consists of at least 100,000 square feet of usable office or other commercial space located in a single building or multiple adjacent buildings.

(5) Special rules

In applying this title to any qualified New York Liberty Bond, the following modifications shall apply:

(A) Section 146 (relating to volume cap) shall not apply.

(B) Section 147(d) (relating to acquisition of existing property not permitted) shall be applied by substituting ''50 percent'' for ''15 percent'' each place it appears.

(C) Section 148(f)(4)(C) (relating to exception from rebate for certain proceeds to be used to finance construction expenditures) shall apply to the available construction proceeds of bonds issued under this section.

(D) Repayments of principal on financing provided by the issue—

(i) may not be used to provide financing, and

(ii) must be used not later than the close of the 1st semiannual period beginning after the date of the repayment to redeem bonds which are part of such issue.

The requirement of clause (ii) shall be treated as met with respect to amounts received within 10 years after the date of issuance of the issue (or, in the case of a refunding bond, the date of issuance of the original bond) if such amounts are used by the close of such 10 years to redeem bonds which are part of such issue.

(E) Section 57(a)(5) shall not apply.

(6) Separate issue treatment of portions of an issue

This subsection shall not apply to the portion of an issue which (if issued as a separate issue) would be treated as a qualified bond or as a bond that is not a private activity bond (determined without regard to paragraph (1)), if the issuer elects to so treat such portion.

(e) Advance refundings of certain tax-exempt bonds

(1) In general

With respect to a bond described in paragraph (2) issued as part of an issue 90 percent (95 percent in the case of a bond described in paragraph (2)(C)) or more of the net proceeds (as defined in section 150(a)(3)) of which were used to finance facilities located within the City of New York, New York (or property which is functionally related and subordinate to facilities located within the City of New York for the furnishing of water), one additional advanced refunding after the date of the enactment of this section and before January 1, 2006, shall be allowed under the applicable rules of section 149(d) if—

(A) the Governor or the Mayor designates the advance refunding bond for purposes of this subsection, and

(B) the requirements of paragraph (4) are met.

(2) Bonds described

A bond is described in this paragraph if such bond was outstanding on September 11, 2001, and is—

(A) a State or local bond (as defined in section 103(c)(1)) which is a general obligation of the City of New York, New York,

(B) a State or local bond (as so defined) other than a private activity bond (as defined in section 141(a)) issued by the New York Municipal Water Finance Authority or the Metropolitan Transportation Authority of the State of New York or the Municipal Assistance Corporation, or

(C) a qualified 501(c)(3) bond (as defined in section 145(a)) which is a qualified hospital bond (as defined in section 145(c)) issued by or on behalf of the State of New York or the City of New York, New York.

(3) Aggregate limit

For purposes of paragraph (1), the maximum aggregate face amount of bonds which may be designated under this subsection by the Governor shall not exceed $4,500,000,000 and the maximum aggregate face amount of bonds which may be designated under this subsection by the Mayor shall not exceed $4,500,000,000.

(4) Additional requirements

The requirements of this paragraph are met with respect to any advance refunding of a bond described in paragraph (2) if—

(A) no advance refundings of such bond would be allowed under any provision of law after September 11, 2001,

(B) the advance refunding bond is the only other outstanding bond with respect to the refunded bond, and

(C) the requirements of section 148 are met with respect to all bonds issued under this subsection.

(f) Increase in expensing under section 179

(1) In general

For purposes of section 179—

(A) the limitation under section 179(b)(1) shall be increased by the lesser of—

(i) $35,000, or

(ii) the cost of section 179 property which is qualified New York Liberty Zone property placed in service during the taxable year, and

(B) the amount taken into account under section 179(b)(2) with respect to any section 179 property which is qualified New York Liberty Zone property shall be 50 percent of the cost thereof.

(2) Qualified New York Liberty Zone property

For purposes of this subsection, the term ''qualified New York Liberty Zone property'' has the meaning given such term by sub-

section (b)(2), determined without regard to subparagraph (C)(i) thereof.

(3) Recapture

Rules similar to the rules under section 179(d)(10) shall apply with respect to any qualified New York Liberty Zone property which ceases to be used in the New York Liberty Zone.

(g) Extension of replacement period for nonrecognition of gain

Notwithstanding subsections (g) and (h) of section 1033, clause (i) of section 1033(a)(2)(B) shall be applied by substituting ''5 years'' for ''2 years'' with respect to property which is compulsorily or involuntarily converted as a result of the terrorist attacks on September 11, 2001, in the New York Liberty Zone but only if substantially all of the use of the replacement property is in the City of New York, New York.

(h) New York Liberty Zone

For purposes of this section, the term ''New York Liberty Zone'' means the area located on or south of Canal Street, East Broadway (east of its intersection with Canal Street), or Grand Street (east of its intersection with East Broadway) in the Borough of Manhattan in the City of New York, New York.

(i) References to Governor and Mayor

For purposes of this section, the terms ''Governor'' and ''Mayor'' mean the Governor of the State of New York and the Mayor of the City of New York, New York, respectively.

(Added Pub. L. 107–147, title III, §301(a), Mar. 9, 2002, 116 Stat. 33; amended Pub. L. 108–27, title II, §201(c)(2), May 28, 2003, 117 Stat. 757; Pub. L. 108–311, title III, §309(a)–(c), title IV, §403(c), Oct. 4, 2004, 118 Stat. 1179, 1180, 1187; Pub. L. 109–135, title IV, §§405(a)(2), 412(ss), Dec. 21, 2005, 119 Stat. 2634, 2640; Pub. L. 110–185, title I, §103(c)(8), Feb. 13, 2008, 122 Stat. 619; Pub. L. 111–240, title II, §2022(b)(6), Sept. 27, 2010, 124 Stat. 2558; Pub. L. 111–312, title IV, §401(d)(6), title VII, §761(a), Dec. 17, 2010, 124 Stat. 3306, 3323; Pub. L. 112–240, title III, §§328(a), 331(e)(4), Jan. 2, 2013, 126 Stat. 2334, 2337; Pub. L. 113–295, div. A, title I, §125(d)(4), Dec. 19, 2014, 128 Stat. 4017.)

REFERENCES IN TEXT

Section 168(k)(2)(D), referred to in subsecs. (b)(2)(C)(ii), (iv) and (c)(5), was amended generally by Pub. L. 114–113, div. Q, §143(b)(1), Dec. 18, 2015, 129 Stat. 3057, and, as so amended, no longer contains provisions similar to those in former cl. (iii) of section 158(k)(2)(D). Provisions similar to those contained in former cl. (i) of section 168(k)(2)(D) are now contained in section 168(k)(2)(D).

Section 168(k)(3), referred to in subsec. (c)(2), was amended generally by Pub. L. 114–113, div. Q, §143(b)(2), Dec. 18, 2015, 129 Stat. 3057. Provisions similar to those contained in former par. (3) of section 168(k) were contained in par. (6) of section 168(e), prior to repeal by Pub. L. 115–97, title I, §13204(a)(1)(B), Dec. 22, 2017, 131 Stat. 2109.

The date of the enactment of this section, referred to in subsecs. (d)(2)(D) and (e)(1), is the date of enactment of Pub. L. 107–147, which was approved Mar. 9, 2002.

AMENDMENTS

2014—Subsec. (b)(2)(D). Pub. L. 113–295 substituted ''January 1, 2015'' for ''January 1, 2014''.

2013—Subsec. (b)(2)(D). Pub. L. 112–240, §331(e)(4), substituted ''January 1, 2014'' for ''January 1, 2013''.

Subsec. (d)(2)(D). Pub. L. 112–240, §328(a), substituted ''January 1, 2014'' for ''January 1, 2012''.

2010—Subsec. (b)(2)(D). Pub. L. 111–312, §401(d)(6), substituted ''January 1, 2013'' for ''January 1, 2011''.

Pub. L. 111–240 substituted ''January 1, 2011'' for ''January 1, 2010''.

Subsec. (d)(2)(D). Pub. L. 111–312, §761(a), substituted ''2012'' for ''2010''.

2008—Subsec. (b)(2)(D). Pub. L. 110–185 substituted ''January 1, 2010'' for ''January 1, 2005''.

2005—Subsec. (b)(2)(C)(ii). Pub. L. 109–135, §412(ss)(1), substituted ''section 168(k)(2)(D)(i)'' for ''section 168(k)(2)(C)(i)''.

Subsec. (b)(2)(C)(iv). Pub. L. 109–135, §412(ss)(2), substituted ''section 168(k)(2)(D)(iii)'' for ''section 168(k)(2)(C)(iii)''.

Subsec. (b)(2)(D). Pub. L. 109–135, §412(ss)(3), substituted ''section 168(k)(2)(E)'' for ''section 168(k)(2)(D)''.

Pub. L. 109–135, §405(a)(2), substituted ''January 1, 2005'' for ''September 11, 2004''.

Subsec. (b)(2)(E). Pub. L. 109–135, §412(ss)(4), substituted ''section 168(k)(2)(G)'' for ''section 168(k)(2)(F)''.

Subsec. (c)(5). Pub. L. 109–135, §412(ss)(5), substituted ''section 168(k)(2)(D)(iii)'' for ''section 168(k)(2)(C)(iii)''.

2004—Subsec. (a)(2)(D). Pub. L. 108–311, §403(c)(1)(A), substituted ''subchapter A'' for ''subchapter B'' in introductory provisions.

Subsec. (a)(2)(D)(ii). Pub. L. 108–311, §403(c)(1)(B), substituted ''this paragraph'' for ''subparagraph (B)''.

Subsec. (b)(2)(D). Pub. L. 108–311, §403(c)(2), inserted '', and clause (iv) thereof shall be applied by substituting 'qualified New York Liberty Zone property' for 'qualified property'' before period at end.

Subsec. (c)(5). Pub. L. 108–311, §403(c)(3), added par. (5).

Subsec. (d)(2)(D). Pub. L. 108–311, §309(a), substituted ''2010'' for ''2005''.

Subsec. (e)(1). Pub. L. 108–311, §309(b), substituted ''2006'' for ''2005''.

Subsec. (e)(2)(B). Pub. L. 108–311, §309(c), substituted ''or the Municipal Assistance Corporation, or'' for '', or'' at end.

Subsec. (f)(2). Pub. L. 108–311, §403(c)(4), inserted '', determined without regard to subparagraph (C)(i) thereof'' before period at end.

2003—Subsec. (b)(2)(C)(i). Pub. L. 108–27, which directed amendment of heading by substituting ''Bonus depreciation property under section 168(k)'' for ''30-percent additional allowance property'', was executed by making the substitution for ''30 percent additional allowance property'' to reflect the probable intent of Congress.

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–295 applicable to property placed in service after Dec. 31, 2013, in taxable years ending after such date, see section 125(e) of Pub. L. 113–295, set out as a note under section 168 of this title.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title III, §328(b), Jan. 2, 2013, 126 Stat. 2334, provided that: ''The amendment made by this section [amending this section] shall apply to bonds issued after December 31, 2011.''

Amendment by section 331(e)(4) of Pub. L. 112–240 applicable to property placed in service after Dec. 31, 2012, in taxable years ending after such date, see section 331(f) of Pub. L. 112–240, set out as a note under section 168 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 401(d)(6) of Pub. L. 111–312 applicable to property placed in service after Dec. 31, 2010, in taxable years ending after such date, see section 401(e)(1) of Pub. L. 111–312, set out as a note under section 168 of this title.

Pub. L. 111–312, title VII, §761(b), Dec. 17, 2010, 124 Stat. 3323, provided that: ''The amendment made by this section [amending this section] shall apply to bonds issued after December 31, 2009.''

Amendment by Pub. L. 111–240 applicable to property placed in service after Dec. 31, 2009, in taxable years ending after such date, see section 2022(c) of Pub. L. 111–240, set out as a note under section 168 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–185 applicable to property placed in service after Dec. 31, 2007, in taxable years ending after such date, see section 103(d) of Pub. L. 110–185, set out as a note under section 168 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 405(a)(2) of Pub. L. 109–135 effective as if included in section 201 of the Jobs and Growth Tax Relief Reconciliation Act of 2003, Pub. L. 108–27, see section 405(b) of Pub. L. 109–135, set out as a note under section 168 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–311, title III, §309(d), Oct. 4, 2004, 118 Stat. 1180, provided that: ''The amendment made by subsection (c) [amending this section] shall take effect as if included in the amendments made by section 301 of the Job Creation and Worker Assistance Act of 2002 [Pub. L. 107–147].''

Amendment by section 403(c) of Pub. L. 108–311 effective as if included in the provisions of the Job Creation and Worker Assistance Act of 2002, Pub. L. 107–147, to which such amendment relates, see section 403(f) of Pub. L. 108–311, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–27 applicable to taxable years ending after May 5, 2003, see section 201(d) of Pub. L. 108–27, set out as a note under section 168 of this title.

PART II—TAX BENEFITS FOR GO ZONES

Sec.
1400M. Definitions.
1400N. Tax benefits for Gulf Opportunity Zone.
1400O. Education tax benefits.
1400P. Housing tax benefits.
1400Q. Special rules for use of retirement funds.
1400R. Employment relief.
1400S. Additional tax relief provisions.
1400T. Special rules for mortgage revenue bonds.

AMENDMENTS

2007—Pub. L. 110–172, §11(a)(27), Dec. 29, 2007, 121 Stat. 2487, added item 1400T.

2005—Pub. L. 109–135, title I, §§102(b), 103(b)(3), title II, §201(b)(3), Dec. 21, 2005, 119 Stat. 2594, 2595, 2607, added items 1400O to 1400S.

§ 1400M. Definitions

For purposes of this part—

(1) Gulf Opportunity Zone

The terms ''Gulf Opportunity Zone'' and ''GO Zone'' mean that portion of the Hurricane Katrina disaster area determined by the President to warrant individual or individual and public assistance from the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act by reason of Hurricane Katrina.

(2) Hurricane Katrina disaster area

The term ''Hurricane Katrina disaster area'' means an area with respect to which a major disaster has been declared by the President before September 14, 2005, under section 401 of such Act by reason of Hurricane Katrina.

(3) Rita GO Zone

The term ''Rita GO Zone'' means that portion of the Hurricane Rita disaster area determined by the President to warrant individual or individual and public assistance from the Federal Government under such Act by reason of Hurricane Rita.

(4) Hurricane Rita disaster area

The term ''Hurricane Rita disaster area'' means an area with respect to which a major disaster has been declared by the President before October 6, 2005, under section 401 of such Act by reason of Hurricane Rita.

(5) Wilma GO Zone

The term ''Wilma GO Zone'' means that portion of the Hurricane Wilma disaster area determined by the President to warrant individual or individual and public assistance from the Federal Government under such Act by reason of Hurricane Wilma.

(6) Hurricane Wilma disaster area

The term ''Hurricane Wilma disaster area'' means an area with respect to which a major disaster has been declared by the President before November 14, 2005, under section 401 of such Act by reason of Hurricane Wilma.

(Added Pub. L. 109–135, title I, §101(a), Dec. 21, 2005, 119 Stat. 2578.)

REFERENCES IN TEXT

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in text, is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, as amended, which is classified principally to chapter 68 (§5121 et seq.) of Title 42, The Public Health and Welfare. Section 401 of the Act is classified to section 5170 of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of Title 42 and Tables.

EFFECTIVE DATE

Section applicable to taxable years ending on or after August 28, 2005, see section 101(c)(1) of Pub. L. 109–135, set out as an Effective Date note under section 1400N of this title.

§ 1400N. Tax benefits for Gulf Opportunity Zone

(a) Tax-exempt bond financing

(1) In general

For purposes of this title—

(A) any qualified Gulf Opportunity Zone Bond described in paragraph (2)(A)(i) shall be treated as an exempt facility bond, and

(B) any qualified Gulf Opportunity Zone Bond described in paragraph (2)(A)(ii) shall be treated as a qualified mortgage bond.

(2) Qualified Gulf Opportunity Zone Bond

For purposes of this subsection, the term ''qualified Gulf Opportunity Zone Bond'' means any bond issued as part of an issue if—

(A)(i) 95 percent or more of the net proceeds (as defined in section 150(a)(3)) of such issue are to be used for qualified project costs, or

(ii) such issue meets the requirements of a qualified mortgage issue, except as otherwise provided in this subsection,

(B) such bond is issued by the State of Alabama, Louisiana, or Mississippi, or any political subdivision thereof,

(C) such bond is designated for purposes of this section by—

(i) in the case of a bond which is required under State law to be approved by the bond commission of such State, such bond commission, and

(ii) in the case of any other bond, the Governor of such State,

(D) such bond is issued after the date of the enactment of this section and before January 1, 2012, and

(E) no portion of the proceeds of such issue is to be used to provide any property described in section 144(c)(6)(B).

(3) Limitations on bonds

(A) Aggregate amount designated

The maximum aggregate face amount of bonds which may be designated under this subsection with respect to any State shall not exceed the product of $2,500 multiplied by the portion of the State population which is in the Gulf Opportunity Zone (as determined on the basis of the most recent census estimate of resident population released by the Bureau of Census before August 28, 2005).

(B) Movable property

No bonds shall be issued which are to be used for movable fixtures and equipment.

(4) Qualified project costs

For purposes of this subsection, the term ''qualified project costs'' means—

(A) the cost of any qualified residential rental project (as defined in section 142(d)) located in the Gulf Opportunity Zone, and

(B) the cost of acquisition, construction, reconstruction, and renovation of—

(i) nonresidential real property (including fixed improvements associated with such property) located in the Gulf Opportunity Zone, and

(ii) public utility property (as defined in section 168(i)(10)) located in the Gulf Opportunity Zone.

(5) Special rules

In applying this title to any qualified Gulf Opportunity Zone Bond, the following modifications shall apply:

(A) Section 142(d)(1) (defining qualified residential rental project) shall be applied—

(i) by substituting ''60 percent'' for ''50 percent'' in subparagraph (A) thereof, and

(ii) by substituting ''70 percent'' for ''60 percent'' in subparagraph (B) thereof.

(B) Section 143 (relating to mortgage revenue bonds: qualified mortgage bond and qualified veterans' mortgage bond) shall be applied—

(i) only with respect to owner-occupied residences in the Gulf Opportunity Zone,

(ii) by treating any such residence in the Gulf Opportunity Zone as a targeted area residence,

(iii) by applying subsection (f)(3) thereof without regard to subparagraph (A) thereof, and

(iv) by substituting ''$150,000'' for ''$15,000'' in subsection (k)(4) thereof.

(C) Except as provided in section 143, repayments of principal on financing provided by the issue of which such bond is a part may not be used to provide financing.

(D) Section 146 (relating to volume cap) shall not apply.

(E) Section 147(d)(2) (relating to acquisition of existing property not permitted) shall be applied by substituting ''50 percent'' for ''15 percent'' each place it appears.

(F) Section 148(f)(4)(C) (relating to exception from rebate for certain proceeds to be used to finance construction expenditures) shall apply to the available construction proceeds of bonds which are part of an issue described in paragraph (2)(A)(i).

(G) Section 57(a)(5) (relating to tax-exempt interest) shall not apply.

(6) Separate issue treatment of portions of an issue

This subsection shall not apply to the portion of an issue which (if issued as a separate issue) would be treated as a qualified bond or as a bond that is not a private activity bond (determined without regard to paragraph (1)), if the issuer elects to so treat such portion.

(7) Special rule for repairs and reconstructions

(A) In general

For purposes of section 143 and this subsection, any qualified GO Zone repair or reconstruction shall be treated as a qualified rehabilitation.

(B) Qualified GO Zone repair or reconstruction

For purposes of subparagraph (A), the term ''qualified GO Zone repair or reconstruction'' means any repair of damage caused by Hurricane Katrina, Hurricane Rita, or Hurricane Wilma to a building located in the Gulf Opportunity Zone, the Rita GO Zone, or the Wilma GO Zone (or reconstruction of such building in the case of damage constituting destruction) if the expenditures for such repair or reconstruction are 25 percent or more of the mortgagor's adjusted basis in the residence. For purposes of the preceding sentence, the mortgagor's adjusted basis shall be determined as of the completion of the repair or reconstruction or, if later, the date on which the mortgagor acquires the residence.

(C) Termination

This paragraph shall apply only to owner-financing provided after the date of the enactment of this paragraph and before January 1, 2012.

(8) Inclusion of certain counties

For purposes of this subsection, the Gulf Opportunity Zone includes Colbert County, Alabama and Dallas County, Alabama.

(b) Advance refundings of certain tax-exempt bonds

(1) In general

With respect to a bond described in paragraph (3), one additional advance refunding

after the date of the enactment of this section and before January 1, 2011, shall be allowed under the applicable rules of section 149(d) if—

(A) the Governor of the State designates the advance refunding bond for purposes of this subsection, and

(B) the requirements of paragraph (5) are met.

(2) Certain private activity bonds

With respect to a bond described in paragraph (3) which is an exempt facility bond described in paragraph (1) or (2) of section 142(a), one advance refunding after the date of the enactment of this section and before January 1, 2011, shall be allowed under the applicable rules of section 149(d) (notwithstanding paragraph (2) thereof) if the requirements of subparagraphs (A) and (B) of paragraph (1) are met.

(3) Bonds described

A bond is described in this paragraph if such bond was outstanding on August 28, 2005, and is issued by the State of Alabama, Louisiana, or Mississippi, or a political subdivision thereof.

(4) Aggregate limit

The maximum aggregate face amount of bonds which may be designated under this subsection by the Governor of a State shall not exceed—

(A) $4,500,000,000 in the case of the State of Louisiana,

(B) $2,250,000,000 in the case of the State of Mississippi, and

(C) $1,125,000,000 in the case of the State of Alabama.

(5) Additional requirements

The requirements of this paragraph are met with respect to any advance refunding of a bond described in paragraph (3) if—

(A) no advance refundings of such bond would be allowed under this title on or after August 28, 2005,

(B) the advance refunding bond is the only other outstanding bond with respect to the refunded bond, and

(C) the requirements of section 148 are met with respect to all bonds issued under this subsection.

(6) Use of proceeds requirement

This subsection shall not apply to any advance refunding of a bond which is issued as part of an issue if any portion of the proceeds of such issue (or any prior issue) was (or is to be) used to provide any property described in section 144(c)(6)(B).

(c) Low-income housing credit

(1) Additional housing credit dollar amount for Gulf Opportunity Zone

(A) In general

For purposes of section 42, in the case of calendar years 2006, 2007, and 2008, the State housing credit ceiling of each State, any portion of which is located in the Gulf Opportunity Zone, shall be increased by the lesser of—

(i) the aggregate housing credit dollar amount allocated by the State housing credit agency of such State to buildings located in the Gulf Opportunity Zone for such calendar year, or

(ii) the Gulf Opportunity housing amount for such State for such calendar year.

(B) Gulf Opportunity housing amount

For purposes of subparagraph (A), the term ''Gulf Opportunity housing amount'' means, for any calendar year, the amount equal to the product of $18.00 multiplied by the portion of the State population which is in the Gulf Opportunity Zone (as determined on the basis of the most recent census estimate of resident population released by the Bureau of Census before August 28, 2005).

(C) Allocations treated as made first from additional allocation amount for purposes of determining carryover

For purposes of determining the unused State housing credit ceiling under section 42(h)(3)(C) for any calendar year, any increase in the State housing credit ceiling under subparagraph (A) shall be treated as an amount described in clause (ii) of such section.

(2) Additional housing credit dollar amount for Texas and Florida

For purposes of section 42, in the case of calendar year 2006, the State housing credit ceiling of Texas and Florida shall each be increased by $3,500,000.

(3) Difficult development area

(A) In general

For purposes of section 42, in the case of property placed in service during the period beginning on January 1, 2006, and ending on December 31, 2010, the Gulf Opportunity Zone, the Rita GO Zone, and the Wilma GO Zone—

(i) shall be treated as difficult development areas designated under subclause (I) of section 42(d)(5)(B)(iii), and

(ii) shall not be taken into account for purposes of applying the limitation under subclause (II) of such section.

(B) Application

Subparagraph (A) shall apply only to—

(i) housing credit dollar amounts allocated during the period beginning on January 1, 2006, and ending on December 31, 2008, and

(ii) buildings placed in service during the period described in subparagraph (A) to the extent that paragraph (1) of section 42(h) does not apply to any building by reason of paragraph (4) thereof, but only with respect to bonds issued after December 31, 2005.

(4) Special rule for applying income tests

In the case of property placed in service—

(A) during 2006, 2007, or 2008,

(B) in the Gulf Opportunity Zone, and

(C) in a nonmetropolitan area (as defined in section 42(d)(5)(C)(iv)(IV)),[1]

[1] See References in text note below.

section 42 shall be applied by substituting ''national nonmetropolitan median gross income (determined under rules similar to the rules of section 142(d)(2)(B))'' for ''area median gross income'' in subparagraphs (A) and (B) of section 42(g)(1).

(5) Time for making low-income housing credit allocations

Section 42(h)(1)(B) shall not apply to an allocation of housing credit dollar amount to a building located in the Gulf Opportunity Zone, the Rita GO Zone, or the Wilma GO Zone, if such allocation is made in 2006, 2007, or 2008, and such building is placed in service before January 1, 2012.

(6) Community development block grants not taken into account in determining if buildings are federally subsidized

For purpose of applying section 42(i)(2)(D)[1] to any building which is placed in service in the Gulf Opportunity Zone, the Rita GO Zone, or the Wilma GO Zone during the period beginning on January 1, 2006, and ending on December 31, 2010, a loan shall not be treated as a below market Federal loan solely by reason of any assistance provided under section 106, 107, or 108 of the Housing and Community Development Act of 1974 by reason of section 122 of such Act or any provision of the Department of Defense Appropriations Act, 2006, or the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006.

(7) Definitions

Any term used in this subsection which is also used in section 42 shall have the same meaning as when used in such section.

(d) Special allowance for certain property acquired on or after August 28, 2005

(1) Additional allowance

In the case of any qualified Gulf Opportunity Zone property—

(A) the depreciation deduction provided by section 167(a) for the taxable year in which such property is placed in service shall include an allowance equal to 50 percent of the adjusted basis of such property, and

(B) the adjusted basis of the qualified Gulf Opportunity Zone property shall be reduced by the amount of such deduction before computing the amount otherwise allowable as a depreciation deduction under this chapter for such taxable year and any subsequent taxable year.

(2) Qualified Gulf Opportunity Zone property

For purposes of this subsection—

(A) In general

The term ''qualified Gulf Opportunity Zone property'' means property—

(i)(I) which is described in section 168(k)(2)(A)(i), or

(II) which is nonresidential real property or residential rental property,

(ii) substantially all of the use of which is in the Gulf Opportunity Zone and is in the active conduct of a trade or business by the taxpayer in such Zone,

(iii) the original use of which in the Gulf Opportunity Zone commences with the taxpayer on or after August 28, 2005,

(iv) which is acquired by the taxpayer by purchase (as defined in section 179(d)) on or after August 28, 2005, but only if no written binding contract for the acquisition was in effect before August 28, 2005, and

(v) which is placed in service by the taxpayer on or before December 31, 2007 (December 31, 2008, in the case of nonresidential real property and residential rental property).

(B) Exceptions

(i) Alternative depreciation property

Such term shall not include any property described in section 168(k)(2)(D)(i).[1]

(ii) Tax-exempt bond-financed property

Such term shall not include any property any portion of which is financed with the proceeds of any obligation the interest on which is exempt from tax under section 103.

(iii) Qualified revitalization buildings

Such term shall not include any qualified revitalization building with respect to which the taxpayer has elected the application of paragraph (1) or (2) of section 1400I(a).

(iv) Election out

If a taxpayer makes an election under this clause with respect to any class of property for any taxable year, this subsection shall not apply to all property in such class placed in service during such taxable year.

(3) Special rules

For purposes of this subsection, rules similar to the rules of subparagraph (E) of section 168(k)(2) shall apply, except that such subparagraph shall be applied—

(A) by substituting ''August 27, 2005'' for ''December 31, 2007'' each place it appears therein,

(B) without regard to ''and before January 1, 2015'' in clause (i) thereof, and

(C) by substituting ''qualified Gulf Opportunity Zone property'' for ''qualified property'' in clause (iv) thereof.

(4) Allowance against alternative minimum tax

For purposes of this subsection, rules similar to the rules of section 168(k)(2)(G) shall apply.

(5) Recapture

For purposes of this subsection, rules similar to the rules under section 179(d)(10) shall apply with respect to any qualified Gulf Opportunity Zone property which ceases to be qualified Gulf Opportunity Zone property.

(6) Extension for certain property

(A) In general

In the case of any specified Gulf Opportunity Zone extension property, paragraph (2)(A) shall be applied without regard to clause (v) thereof.

(B) Specified Gulf Opportunity Zone extension property

For purposes of this paragraph, the term ''specified Gulf Opportunity Zone extension property'' means property—

(i) substantially all of the use of which is in one or more specified portions of the GO Zone, and

(ii) which is—

(I) nonresidential real property or residential rental property which is placed in service by the taxpayer on or before December 31, 2011, or

(II) in the case of a taxpayer who places a building described in subclause (I) in service on or before December 31, 2011, property described in section 168(k)(2)(A)(i) if substantially all of the use of such property is in such building and such property is placed in service by the taxpayer not later than 90 days after such building is placed in service.

(C) Specified portions of the GO Zone

For purposes of this paragraph, the term ''specified portions of the GO Zone'' means those portions of the GO Zone which are in any county or parish which is identified by the Secretary as being a county or parish in which hurricanes occurring during 2005 damaged (in the aggregate) more than 60 percent of the housing units in such county or parish which were occupied (determined according to the 2000 Census).

(D) Only pre-January 1, 2012, basis of real property eligible for additional allowance

In the case of property which is qualified Gulf Opportunity Zone property solely by reason of subparagraph (B)(ii)(I), paragraph (1) shall apply only to the extent of the adjusted basis thereof attributable to manufacture, construction, or production before January 1, 2012.

(E) Exception for bonus depreciation property under section 168(k)

The term ''specified Gulf Opportunity Zone extension property'' shall not include any property to which section 168(k) applies.

(e) Increase in expensing under section 179

(1) In general

For purposes of section 179—

(A) the dollar amount in effect under section 179(b)(1) for the taxable year shall be increased by the lesser of—

(i) $100,000, or

(ii) the cost of qualified section 179 Gulf Opportunity Zone property placed in service during the taxable year, and

(B) the dollar amount in effect under section 179(b)(2) for the taxable year shall be increased by the lesser of—

(i) $600,000, or

(ii) the cost of qualified section 179 Gulf Opportunity Zone property placed in service during the taxable year.

(2) Qualified section 179 Gulf Opportunity Zone property

For purposes of this subsection—

(A) In general

The term ''qualified section 179 Gulf Opportunity Zone property'' means section 179 property (as defined in section 179(d)) which is qualified Gulf Opportunity Zone property (as defined in subsection (d)(2) without regard to subsection (d)(6)).

(B) Extension for certain property

In the case of property substantially all of the use of which is in one or more specified portions of the GO Zone (as defined by subsection (d)(6)), such term shall include section 179 property (as so defined) which is described in subsection (d)(2), determined—

(i) without regard to subsection (d)(6), and

(ii) by substituting ''2008'' for ''2007'' in subparagraph (A)(v) thereof.

(3) Coordination with empowerment zones and renewal communities

For purposes of sections 1397A and 1400J, qualified section 179 Gulf Opportunity Zone property shall not be treated as qualified zone property or qualified renewal property, unless the taxpayer elects not to take such qualified section 179 Gulf Opportunity Zone property into account for purposes of this subsection.

(4) Recapture

For purposes of this subsection, rules similar to the rules under section 179(d)(10) shall apply with respect to any qualified section 179 Gulf Opportunity Zone property which ceases to be qualified section 179 Gulf Opportunity Zone property.

(f) Expensing for certain demolition and clean-up costs

(1) In general

A taxpayer may elect to treat 50 percent of any qualified Gulf Opportunity Zone clean-up cost as an expense which is not chargeable to capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which such cost is paid or incurred.

(2) Qualified Gulf Opportunity Zone clean-up cost

For purposes of this subsection, the term ''qualified Gulf Opportunity Zone clean-up cost'' means any amount paid or incurred during the period beginning on August 28, 2005, and ending on December 31, 2007, for the removal of debris from, or the demolition of structures on, real property which is located in the Gulf Opportunity Zone and which is—

(A) held by the taxpayer for use in a trade or business or for the production of income, or

(B) property described in section 1221(a)(1) in the hands of the taxpayer.

For purposes of the preceding sentence, amounts paid or incurred shall be taken into account only to the extent that such amount would (but for paragraph (1)) be chargeable to capital account.

(g) Extension of expensing for environmental remediation costs

With respect to any qualified environmental remediation expenditure (as defined in section

198(b)) paid or incurred on or after August 28, 2005, in connection with a qualified contaminated site located in the Gulf Opportunity Zone, section 198 (relating to expensing of environmental remediation costs) shall be applied—

(1) in the case of expenditures paid or incurred on or after August 28, 2005, and before January 1, 2008, by substituting ''December 31, 2007'' for the date contained in section 198(h), and

(2) except as provided in section 198(d)(2), by treating petroleum products (as defined in section 4612(a)(3)) as a hazardous substance.

(h) Increase in rehabilitation credit

In the case of qualified rehabilitation expenditures (as defined in section 47(c)) paid or incurred during the period beginning on August 28, 2005, and ending on December 31, 2011, with respect to any qualified rehabilitated building or certified historic structure (as defined in section 47(c)) located in the Gulf Opportunity Zone, subsection (a) of section 47 (relating to rehabilitation credit) shall be applied—

(1) by substituting ''13 percent'' for ''10 percent'' in paragraph (1) thereof, and

(2) by substituting ''26 percent'' for ''20 percent'' in paragraph (2) thereof.

(i) Special rules for small timber producers

(1) Increased expensing for qualified timber property

In the case of qualified timber property any portion of which is located in the Gulf Opportunity Zone, in that portion of the Rita GO Zone which is not part of the Gulf Opportunity Zone, or in the Wilma GO Zone, the limitation under subparagraph (B) of section 194(b)(1) shall be increased by the lesser of—

(A) the limitation which would (but for this subsection) apply under such subparagraph, or

(B) the amount of reforestation expenditures (as defined in section 194(c)(3)) paid or incurred by the taxpayer with respect to such qualified timber property during the specified portion of the taxable year.

(2) 5 year NOL carryback of certain timber losses

For purposes of determining any farming loss under section 172(i),[1] income and deductions which are allocable to the specified portion of the taxable year and which are attributable to qualified timber property any portion of which is located in the Gulf Opportunity Zone, in that portion of the Rita GO Zone which is not part of the Gulf Opportunity Zone, or in the Wilma GO Zone shall be treated as attributable to farming businesses.

(3) Rules not applicable to certain entities

Paragraphs (1) and (2) shall not apply to any taxpayer which—

(A) is a corporation the stock of which is publicly traded on an established securities market, or

(B) is a real estate investment trust.

(4) Rules not applicable to large timber producers

(A) Expensing

Paragraph (1) shall not apply to any taxpayer if such taxpayer holds more than 500 acres of qualified timber property at any time during the taxable year.

(B) NOL carryback

Paragraph (2) shall not apply with respect to any qualified timber property unless—

(i) such property was held by the taxpayer—

(I) on August 28, 2005, in the case of qualified timber property any portion of which is located in the Gulf Opportunity Zone,

(II) on September 23, 2005, in the case of qualified timber property (other than property described in subclause (I)) any portion of which is located in that portion of the Rita GO Zone which is not part of the Gulf Opportunity Zone, or

(III) on October 23, 2005, in the case of qualified timber property (other than property described in subclause (I) or (II)) any portion of which is located in the Wilma GO Zone, and

(ii) such taxpayer held not more than 500 acres of qualified timber property on such date.

(5) Definitions

For purposes of this subsection—

(A) Specified portion

(i) In general

The term ''specified portion'' means—

(I) in the case of qualified timber property any portion of which is located in the Gulf Opportunity Zone, that portion of the taxable year which is on or after August 28, 2005, and before the termination date,

(II) in the case of qualified timber property (other than property described in clause (i)) any portion of which is located in the Rita GO Zone, that portion of the taxable year which is on or after September 23, 2005, and before the termination date, or

(III) in the case of qualified timber property (other than property described in clause (i) or (ii)) any portion of which is located in the Wilma GO Zone, that portion of the taxable year which is on or after October 23, 2005, and before the termination date.

(ii) Termination date

The term ''termination date'' means—

(I) for purposes of paragraph (1), January 1, 2008, and

(II) for purposes of paragraph (2), January 1, 2007.

(B) Qualified timber property

The term ''qualified timber property'' has the meaning given such term in section 194(c)(1).

(j) Special rule for Gulf Opportunity Zone public utility casualty losses

(1) In general

The amount described in section 172(f)(1)(A)[1] for any taxable year shall be increased by the Gulf Opportunity Zone public utility casualty loss for such taxable year.

(2) Gulf Opportunity Zone public utility casualty loss

For purposes of this subsection, the term ''Gulf Opportunity Zone public utility casualty loss'' means any casualty loss of public utility property (as defined in section 168(i)(10)) located in the Gulf Opportunity Zone if—

(A) such loss is allowed as a deduction under section 165 for the taxable year,

(B) such loss is by reason of Hurricane Katrina, and

(C) the taxpayer elects the application of this subsection with respect to such loss.

(3) Reduction for gains from involuntary conversion

The amount of any Gulf Opportunity Zone public utility casualty loss which would (but for this paragraph) be taken into account under paragraph (1) for any taxable year shall be reduced by the amount of any gain recognized by the taxpayer for such year from the involuntary conversion by reason of Hurricane Katrina of public utility property (as so defined) located in the Gulf Opportunity Zone.

(4) Coordination with general disaster loss rules

Subsection (k) and section 165(i) shall not apply to any Gulf Opportunity Zone public utility casualty loss to the extent such loss is taken into account under paragraph (1).

(5) Election

Any election under paragraph (2)(C) shall be made in such manner as may be prescribed by the Secretary and shall be made by the due date (including extensions of time) for filing the taxpayer's return for the taxable year of the loss. Such election, once made for any taxable year, shall be irrevocable for such taxable year.

(k) Treatment of net operating losses attributable to Gulf Opportunity Zone losses

(1) In general

If a portion of any net operating loss of the taxpayer for any taxable year is a qualified Gulf Opportunity Zone loss, the following rules shall apply:

(A) Extension of carryback period

Section 172(b)(1) shall be applied with respect to such portion—

(i) by substituting ''5 taxable years'' for ''2 taxable years'' in subparagraph (A)(i),[1] and

(ii) by not taking such portion into account in determining any eligible loss of the taxpayer under subparagraph (F) thereof for the taxable year.

(B) Suspension of 90 percent AMT limitation

Section 56(d)(1) shall be applied by increasing the amount determined under subparagraph (A)(ii)(I) thereof by the sum of the carrybacks and carryovers of any net operating loss attributable to such portion.

(2) Qualified Gulf Opportunity Zone loss

For purposes of paragraph (1), the term ''qualified Gulf Opportunity Zone loss'' means the lesser of—

(A) the excess of—

(i) the net operating loss for such taxable year, over

(ii) the specified liability loss for such taxable year to which a 10-year carryback applies under section 172(b)(1)(C),[1] or

(B) the aggregate amount of the following deductions to the extent taken into account in computing the net operating loss for such taxable year:

(i) Any deduction for any qualified Gulf Opportunity Zone casualty loss.

(ii) Any deduction for moving expenses paid or incurred after August 27, 2005, and before January 1, 2008, and allowable under this chapter to any taxpayer in connection with the employment of any individual—

(I) whose principal place of abode was located in the Gulf Opportunity Zone before August 28, 2005,

(II) who was unable to remain in such abode as the result of Hurricane Katrina, and

(III) whose principal place of employment with the taxpayer after such expense is located in the Gulf Opportunity Zone.

For purposes of this clause, the term ''moving expenses'' has the meaning given such term by section 217(b), except that the taxpayer's former residence and new residence may be the same residence if the initial vacating of the residence was as the result of Hurricane Katrina.

(iii) Any deduction allowable under this chapter for expenses paid or incurred after August 27, 2005, and before January 1, 2008, to temporarily house any employee of the taxpayer whose principal place of employment is in the Gulf Opportunity Zone.

(iv) Any deduction for depreciation (or amortization in lieu of depreciation) allowable under this chapter with respect to any qualified Gulf Opportunity Zone property (as defined in subsection (d)(2), but without regard to subparagraph (B)(iv) thereof))[2] for the taxable year such property is placed in service.

(v) Any deduction allowable under this chapter for repair expenses (including expenses for removal of debris) paid or incurred after August 27, 2005, and before January 1, 2008, with respect to any damage attributable to Hurricane Katrina and in connection with property which is located in the Gulf Opportunity Zone.

(3) Qualified Gulf Opportunity Zone casualty loss

(A) In general

For purposes of paragraph (2)(B)(i), the term ''qualified Gulf Opportunity Zone casualty loss'' means any uncompensated section 1231 loss (as defined in section 1231(a)(3)(B)) of property located in the Gulf Opportunity Zone if—

(i) such loss is allowed as a deduction under section 165 for the taxable year, and

[2] So in original. The second parenthesis probably should not appear.

(ii) such loss is by reason of Hurricane Katrina.

(B) Reduction for gains from involuntary conversion

The amount of qualified Gulf Opportunity Zone casualty loss which would (but for this subparagraph) be taken into account under subparagraph (A) for any taxable year shall be reduced by the amount of any gain recognized by the taxpayer for such year from the involuntary conversion by reason of Hurricane Katrina of property located in the Gulf Opportunity Zone.

(C) Coordination with general disaster loss rules

Section 165(i) shall not apply to any qualified Gulf Opportunity Zone casualty loss to the extent such loss is taken into account under this subsection.

(4) Special rules

For purposes of paragraph (1), rules similar to the rules of paragraphs (2) and (3) of section 172(i)[1] shall apply with respect to such portion.

***(l)* Credit to holders of Gulf tax credit bonds**

(1) Allowance of credit

If a taxpayer holds a Gulf tax credit bond on one or more credit allowance dates of the bond occurring during any taxable year, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of the credits determined under paragraph (2) with respect to such dates.

(2) Amount of credit

(A) In general

The amount of the credit determined under this paragraph with respect to any credit allowance date for a Gulf tax credit bond is 25 percent of the annual credit determined with respect to such bond.

(B) Annual credit

The annual credit determined with respect to any Gulf tax credit bond is the product of—

(i) the credit rate determined by the Secretary under subparagraph (C) for the day on which such bond was sold, multiplied by

(ii) the outstanding face amount of the bond.

(C) Determination

For purposes of subparagraph (B), with respect to any Gulf tax credit bond, the Secretary shall determine daily or cause to be determined daily a credit rate which shall apply to the first day on which there is a binding, written contract for the sale or exchange of the bond. The credit rate for any day is the credit rate which the Secretary or the Secretary's designee estimates will permit the issuance of Gulf tax credit bonds with a specified maturity or redemption date without discount and without interest cost to the issuer.

(D) Credit allowance date

For purposes of this subsection, the term ''credit allowance date'' means March 15, June 15, September 15, and December 15. Such term also includes the last day on which the bond is outstanding.

(E) Special rule for issuance and redemption

In the case of a bond which is issued during the 3-month period ending on a credit allowance date, the amount of the credit determined under this paragraph with respect to such credit allowance date shall be a ratable portion of the credit otherwise determined based on the portion of the 3-month period during which the bond is outstanding. A similar rule shall apply when the bond is redeemed or matures.

(3) Limitation based on amount of tax

The credit allowed under paragraph (1) for any taxable year shall not exceed the excess of—

(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

(B) the sum of the credits allowable under part IV of subchapter A (other than subparts C, I, and J and this subsection).

(4) Gulf tax credit bond

For purposes of this subsection—

(A) In general

The term ''Gulf tax credit bond'' means any bond issued as part of an issue if—

(i) the bond is issued by the State of Alabama, Louisiana, or Mississippi,

(ii) 95 percent or more of the proceeds of such issue are to be used to—

(I) pay principal, interest, or premiums on qualified bonds issued by such State or any political subdivision of such State, or

(II) make a loan to any political subdivision of such State to pay principal, interest, or premiums on qualified bonds issued by such political subdivision,

(iii) the Governor of such State designates such bond for purposes of this subsection,

(iv) the bond is a general obligation of such State and is in registered form (within the meaning of section 149(a)),

(v) the maturity of such bond does not exceed 2 years, and

(vi) the bond is issued after December 31, 2005, and before January 1, 2007.

(B) State matching requirement

A bond shall not be treated as a Gulf tax credit bond unless—

(i) the issuer of such bond pledges as of the date of the issuance of the issue an amount equal to the face amount of such bond to be used for payments described in subclause (I) of subparagraph (A)(ii), or loans described in subclause (II) of such subparagraph, as the case may be, with respect to the issue of which such bond is a part, and

(ii) any such payment or loan is made in equal amounts from the proceeds of such issue and from the amount pledged under clause (i).

The requirement of clause (ii) shall be treated as met with respect to any such payment or loan made during the 1-year period beginning on the date of the issuance (or any successor 1-year period) if such requirement is met when applied with respect to the aggregate amount of such payments and loans made during such period.

(C) Aggregate limit on bond designations

The maximum aggregate face amount of bonds which may be designated under this subsection by the Governor of a State shall not exceed—

(i) $200,000,000 in the case of the State of Louisiana,

(ii) $100,000,000 in the case of the State of Mississippi, and

(iii) $50,000,000 in the case of the State of Alabama.

(D) Special rules relating to arbitrage

A bond which is part of an issue shall not be treated as a Gulf tax credit bond unless, with respect to the issue of which the bond is a part, the issuer satisfies the arbitrage requirements of section 148 with respect to proceeds of the issue and any loans made with such proceeds.

(5) Qualified bond

For purposes of this subsection—

(A) In general

The term ''qualified bond'' means any obligation of a State or political subdivision thereof which was outstanding on August 28, 2005.

(B) Exception for private activity bonds

Such term shall not include any private activity bond.

(C) Exception for advance refundings

Such term shall not include any bond with respect to which there is any outstanding refunded or refunding bond during the period in which a Gulf tax credit bond is outstanding with respect to such bond.

(D) Use of proceeds requirement

Such term shall not include any bond issued as part of an issue if any portion of the proceeds of such issue was (or is to be) used to provide any property described in section 144(c)(6)(B).

(6) Credit included in gross income

Gross income includes the amount of the credit allowed to the taxpayer under this subsection (determined without regard to paragraph (3)) and the amount so included shall be treated as interest income.

(7) Other definitions and special rules

For purposes of this subsection—

(A) Bond

The term ''bond'' includes any obligation.

(B) Partnership; S corporation; and other pass-thru entities

(i) In general

Under regulations prescribed by the Secretary, in the case of a partnership, trust, S corporation, or other pass-thru entity, rules similar to the rules of section 41(g) shall apply with respect to the credit allowable under paragraph (1).

(ii) No basis adjustment

In the case of a bond held by a partnership or an S corporation, rules similar to the rules under section 1397E(*l*)[1] shall apply.

(C) Bonds held by regulated investment companies

If any Gulf tax credit bond is held by a regulated investment company, the credit determined under paragraph (1) shall be allowed to shareholders of such company under procedures prescribed by the Secretary.

(D) Reporting

Issuers of Gulf tax credit bonds shall submit reports similar to the reports required under section 149(e).

(E) Credit treated as nonrefundable bondholder credit

For purposes of this title, the credit allowed by this subsection shall be treated as a credit allowable under subpart H[1] of part IV of subchapter A of this chapter.

(m) Application of new markets tax credit to investments in community development entities serving Gulf Opportunity Zone

For purposes of section 45D—

(1) a qualified community development entity shall be eligible for an allocation under subsection (f)(2) thereof of the increase in the new markets tax credit limitation described in paragraph (2) only if a significant mission of such entity is the recovery and redevelopment of the Gulf Opportunity Zone,

(2) the new markets tax credit limitation otherwise determined under subsection (f)(1) thereof shall be increased by an amount equal to—

(A) $300,000,000 for 2005 and 2006, to be allocated among qualified community development entities to make qualified low-income community investments within the Gulf Opportunity Zone, and

(B) $400,000,000 for 2007, to be so allocated, and

(3) subsection (f)(3) thereof shall be applied separately with respect to the amount of the increase under paragraph (2).

(n) Treatment of representations regarding income eligibility for purposes of qualified residential rental project requirements

For purposes of determining if any residential rental project meets the requirements of section 142(d)(1) and if any certification with respect to such project meets the requirements under section 142(d)(7), the operator of the project may rely on the representations of any individual applying for tenancy in such project that such individual's income will not exceed the applicable income limits of section 142(d)(1) upon commencement of the individual's tenancy if such tenancy begins during the 6-month period beginning on and after the date such individual was displaced by reason of Hurricane Katrina.

(*o*) Treatment of public utility property disaster losses

(1) In general

Upon the election of the taxpayer, in the case of any eligible public utility property loss—

(A) section 165(i) shall be applied by substituting ''the fifth taxable year immediately preceding'' for ''the taxable year immediately preceding'',

(B) an application for a tentative carryback adjustment of the tax for any prior taxable year affected by the application of subparagraph (A) may be made under section 6411, and

(C) section 6611 shall not apply to any overpayment attributable to such loss.

(2) Eligible public utility property loss

For purposes of this subsection—

(A) In general

The term ''eligible public utility property loss'' means any loss with respect to public utility property located in the Gulf Opportunity Zone and attributable to Hurricane Katrina.

(B) Public utility property

The term ''public utility property'' has the meaning given such term by section 168(i)(10) without regard to the matter following subparagraph (D) thereof.

(3) Waiver of limitations

If refund or credit of any overpayment of tax resulting from the application of paragraph (1) is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this section 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.

(p) Tax benefits not available with respect to certain property

(1) Qualified Gulf Opportunity Zone property

For purposes of subsections (d), (e), and (k)(2)(B)(iv), the term ''qualified Gulf Opportunity Zone property'' shall not include any property described in paragraph (3).

(2) Qualified Gulf Opportunity Zone casualty losses

For purposes of subsection (k)(2)(B)(i), the term ''qualified Gulf Opportunity Zone casualty loss'' shall not include any loss with respect to any property described in paragraph (3).

(3) Property described

(A) In general

For purposes of this subsection, property is described in this paragraph if such property is—

(i) any property used in connection with any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises, or

(ii) any gambling or animal racing property.

(B) Gambling or animal racing property

For purposes of subparagraph (A)(ii)—

(i) In general

The term ''gambling or animal racing property'' means—

(I) any equipment, furniture, software, or other property used directly in connection with gambling, the racing of animals, or the on-site viewing of such racing, and

(II) the portion of any real property (determined by square footage) which is dedicated to gambling, the racing of animals, or the on-site viewing of such racing.

(ii) De minimis portion

Clause (i)(II) shall not apply to any real property if the portion so dedicated is less than 100 square feet.

(Added Pub. L. 109–135, title I, §101(a), Dec. 21, 2005, 119 Stat. 2579; amended Pub. L. 109–432, div. A, title I, §§107(b)(2), 120(a), (b), Dec. 20, 2006, 120 Stat. 2939, 2943; Pub. L. 110–28, title VIII, §§8221–8223, May 25, 2007, 121 Stat. 194, 195; Pub. L. 110–185, title I, §103(c)(9), (10), Feb. 13, 2008, 122 Stat. 619; Pub. L. 110–234, title XV, §15316(c)(1), May 22, 2008, 122 Stat. 1511; Pub. L. 110–246, §4(a), title XV, §15316(c)(1), June 18, 2008, 122 Stat. 1664, 2273; Pub. L. 110–289, div. C, title III, §3082(b)(1), (c)(1), July 30, 2008, 122 Stat. 2907; Pub. L. 110–343, div. C, title III, §320(a), Oct. 3, 2008, 122 Stat. 3873; Pub. L. 111–5, div. B, title I, §§1201(a)(2)(E), 1531(c)(3), Feb. 17, 2009, 123 Stat. 333, 360; Pub. L. 111–240, title II, §2022(b)(7), Sept. 27, 2010, 124 Stat. 2558; Pub. L. 111–312, title IV, §401(d)(7), title VII, §§762(a), 763, 764(a), 765(a), Dec. 17, 2010, 124 Stat. 3306, 3323, 3324; Pub. L. 112–240, title III, §331(e)(5), Jan. 2, 2013, 126 Stat. 2337; Pub. L. 113–295, div. A, title I, §125(d)(5), title II, §220(q), Dec. 19, 2014, 128 Stat. 4017, 4036.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsecs. (a)(2)(D), (b)(1), (2), and (*o*)(3), is the date of enactment of Pub. L. 109–135, which was approved Dec. 21, 2005.

The date of the enactment of this paragraph, referred to in subsec. (a)(7)(C), is the date of enactment of Pub. L. 110–28, which was approved May 25, 2007.

Subpar. (C) of section 42(d)(5), referred to in subsec. (c)(4)(C), was redesignated (B) by Pub. L. 110–289, div. C, title I, §3003(g)(3), July 30, 2008, 122 Stat. 2882.

Subpar. (D) of section 42(i)(2), referred to in subsec. (c)(6), was repealed by Pub. L. 110–289, div. C, title I, §3002(b)(2)(C), July 30, 2008, 122 Stat. 2880.

Sections 106, 107, 108, and 122 of the Housing and Community Development Act of 1974, referred to in subsec. (c)(6), are classified to sections 5306, 5307, 5308, and 5321, respectively, of Title 42, The Public Health and Welfare.

The Department of Defense Appropriations Act, 2006, referred to in subsec. (c)(6), is div. A of Pub. L. 109–148, Dec. 30, 2005, 119 Stat. 2680. For complete classification of this Act to the Code, see Tables.

The Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006, referred to in subsec. (c)(6), is Pub. L. 109–234, June 15, 2006, 120 Stat. 418. For complete classification of this Act to the Code, see Tables.

Section 168(k)(2)(D)(i), referred to in subsec. (d)(2)(B)(i), was part of the general amendment of sec-

tion 168(k)(2) by Pub. L. 114–113, div. Q, §143(b)(1), Dec. 18, 2015, 129 Stat. 3057. Provisions similar to those contained in former cl. (i) of section 168(k)(2)(D) are now contained in section 168(k)(2)(D).

Subsec. (i) of section 172, referred to in subsecs. (i)(2) and (k)(4), was redesignated (h) by Pub. L. 113–295, div. A, title II, §221(a)(30)(A)(ii), Dec. 19, 2014, 128 Stat. 4041, and subsequently repealed by Pub. L. 115–97, title I, §13302(c)(2)(A), Dec. 22, 2017, 131 Stat. 2122.

Section 172(f), referred to in subsec. (j)(1), was repealed by Pub. L. 115–97, title I, §13302(c)(2)(A), Dec. 22, 2017, 131 Stat. 2122.

Subpar. (A)(i) of section 172(b)(1), referred to in subsec. (k)(1)(A)(i), was amended by Pub. L. 115–97, title I, §13302(b)(1)(A), Dec. 22, 2017, 131 Stat. 2122, and, as so amended, no longer contains the language ''2 taxable years''.

Subpar. (F) of section 172(b)(1), referred to in subsec. (k)(1)(A)(ii), was repealed by Pub. L. 115–97, title I, §13302(b)(2), Dec. 22, 2017, 131 Stat. 2122. See section 172(b)(1)(B) of this title.

Section 172(b)(1)(C), referred to in subsec. (k)(2)(A)(ii), was repealed by Pub. L. 115–97, title I, §13302(b)(2), Dec. 22, 2017, 131 Stat. 2122.

Section 1397E(*l*), referred to in subsec. (*l*)(7)(B)(ii), 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. (*l*)(7)(E), 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.

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

2014—Subsec. (c)(3)(A)(i). Pub. L. 113–295, §220(q), substituted ''section 42(d)(5)(B)(iii)'' for ''section 42(d)(5)(C)(iii)''.

Subsec. (d)(3)(B). Pub. L. 113–295, §125(d)(5), substituted ''January 1, 2015'' for ''January 1, 2014''.

2013—Subsec. (d)(3)(B). Pub. L. 112–240 substituted ''January 1, 2014'' for ''January 1, 2013''.

2010—Subsec. (a)(2)(D), (7)(C). Pub. L. 111–312, §764(a), substituted ''January 1, 2012'' for ''January 1, 2011''.

Subsec. (c)(5). Pub. L. 111–312, §763, substituted ''January 1, 2012'' for ''January 1, 2011''.

Subsec. (d)(3)(B). Pub. L. 111–312, §401(d)(7), substituted ''January 1, 2013'' for ''January 1, 2011''.

Pub. L. 111–240 substituted ''January 1, 2011'' for ''January 1, 2010''.

Subsec. (d)(6)(B)(ii). Pub. L. 111–312, §765(a)(1), substituted ''December 31, 2011'' for ''December 31, 2010'' in subcls. (I) and (II).

Subsec. (d)(6)(D). Pub. L. 111–312, §765(a)(2), substituted ''January 1, 2012'' for ''January 1, 2010'' in heading and text.

Subsec. (h). Pub. L. 111–312, §762(a), substituted ''December 31, 2011'' for ''December 31, 2009'' in introductory provisions.

2009—Subsec. (d)(3)(B). Pub. L. 111–5, §1201(a)(2)(E), substituted ''January 1, 2010'' for ''January 1, 2009''.

Subsec. (*l*)(3)(B). Pub. L. 111–5, §1531(c)(3), substituted '', I, and J'' for ''and I''.

2008—Subsec. (a)(8). Pub. L. 110–289, §3082(c)(1), added par. (8).

Subsec. (d)(3)(A). Pub. L. 110–185, §103(c)(9)(A), substituted ''December 31, 2007'' for ''September 10, 2001''.

Subsec. (d)(3)(B). Pub. L. 110–289, §3082(b)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''by substituting 'January 1, 2008' for 'January 1, 2009' in clause (i) thereof, and''.

Pub. L. 110–185, §103(c)(9)(B), substituted ''January 1, 2009'' for ''January 1, 2005''.

Subsec. (d)(6)(E). Pub. L. 110–185, §103(c)(10), added subpar. (E).

Subsec. (h). Pub. L. 110–343 substituted ''December 31, 2009'' for ''December 31, 2008'' in introductory provisions.

Subsec. (*l*)(3)(B). Pub. L. 110–246, §15316(c)(1), substituted ''subparts C and I'' for ''subpart C''.

2007—Subsec. (a)(7). Pub. L. 110–28, §8223, added par. (7).

Subsec. (c)(3)(A). Pub. L. 110–28, §8222(b)(1), substituted ''the period beginning on January 1, 2006, and ending on December 31, 2010'' for ''2006, 2007, or 2008''.

Subsec. (c)(3)(B)(ii). Pub. L. 110–28, §8222(b)(2), substituted ''the period described in subparagraph (A)'' for ''such period''.

Subsec. (c)(5). Pub. L. 110–28, §8222(a), added par. (5). Former par. (5) redesignated (6).

Subsec. (c)(6). Pub. L. 110–28, §8222(c), added par. (6). Former par. (6) redesignated (7).

Pub. L. 110–28, §8222(a), redesignated par. (5) as (6).

Subsec. (c)(7). Pub. L. 110–28, §8222(c), redesignated par. (6) as (7).

Subsec. (e)(2). Pub. L. 110–28, §8221, substituted ''this subsection—'', subpar. (A) heading, and ''The term'' for ''this subsection, the term'' and added subpar. (B).

2006—Subsec. (d)(6). Pub. L. 109–432, §120(a), added par. (6).

Subsec. (e)(2). Pub. L. 109–432, §120(b), inserted ''without regard to subsection (d)(6)'' after ''subsection (d)(2)''.

Subsec. (*l*)(7)(B)(ii). Pub. L. 109–432, §107(b)(2), substituted ''1397E(*l*)'' for ''1397E(i)''.

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by section 125(d)(5) of Pub. L. 113–295 applicable to property placed in service after Dec. 31, 2013, in taxable years ending after such date, see section 125(e) of Pub. L. 113–295, set out as a note under section 168 of this title.

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112–240 applicable to property placed in service after Dec. 31, 2012, in taxable years ending after such date, see section 331(f) of Pub. L. 112–240, set out as a note under section 168 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 401(d)(7) of Pub. L. 111–312 applicable to property placed in service after Dec. 31, 2010, in taxable years ending after such date, see section 401(e)(1) of Pub. L. 111–312, set out as a note under section 168 of this title.

Pub. L. 111–312, title VII, §762(b), Dec. 17, 2010, 124 Stat. 3323, provided that: ''The amendment made by this section [amending this section] shall apply to amounts paid or incurred after December 31, 2009.''

Pub. L. 111–312, title VII, §765(b), Dec. 17, 2010, 124 Stat. 3324, provided that: ''The amendment made by this section [amending this section] shall apply to property placed in service after December 31, 2009.''

Amendment by Pub. L. 111–240 applicable to property placed in service after Dec. 31, 2009, in taxable years ending after such date, see section 2022(c) of Pub. L. 111–240, set out as a note under section 168 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by section 1201(a)(2)(E) of Pub. L. 111–5 applicable to property placed in service after Dec. 31, 2008, in taxable years ending after such date, see section 1201(c)(1) of Pub. L. 111–5, set out as a note under section 168 of this title.

Pub. L. 111–5, div. B, title I, §1531(e), Feb. 17, 2009, 123 Stat. 360, provided that: ''The amendments made by this section [enacting subpart J of part IV of subchapter A of this chapter and section 6431 of this title and amending this section, sections 54, 54A, 1397E, 6211, and 6401 of this title, and section 1324 of Title 31, Money and Finance] shall apply to obligations issued after the date of the enactment of this Act [Feb. 17, 2009].''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title III, §320(b), Oct. 3, 2008, 122 Stat. 3873, provided that: ''The amendment made by

this section [amending this section] shall apply to expenditures paid or incurred after the date of the enactment of this Act [Oct. 3, 2008].''

Pub. L. 110–289, div. C, title III, §3082(b)(2), July 30, 2008, 122 Stat. 2907, provided that: ''The amendment made by this subsection [amending this section] shall apply to property placed in service after December 31, 2007.''

Pub. L. 110–289, div. C, title III, §3082(c)(2), July 30, 2008, 122 Stat. 2908, provided that: 'The amendment made by this subsection [amending this section] shall take effect as if included in the provisions of the Gulf Opportunity Zone Act of 2005 [Pub. L. 109–135] to which it relates.''

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, §15316(d), May 22, 2008, 122 Stat. 1512, and Pub. L. 110–246, §4(a), title XV, §15316(d), June 18, 2008, 122 Stat. 1664, 2274, provided that: ''The amendments made by this section [enacting subpart I (§54A et seq.) of part IV of subchapter A of this chapter and amending this section, sections 54, 1397E, 6049, and 6401 of this title, and section 1324 of Title 31, Money and Finance] shall apply to obligations issued 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.]

Amendment by Pub. L. 110–185 applicable to property placed in service after Dec. 31, 2007, in taxable years ending after such date, see section 103(d) of Pub. L. 110–185, set out as a note under section 168 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, §107(c), Dec. 20, 2006, 120 Stat. 2939, provided that:

''(1) EXTENSION.—The amendment made by subsection (a) [amending section 1397E of this title] shall apply to obligations issued after December 31, 2005.

''(2) SPECIAL RULES.—The amendments made by subsection (b) [amending this section and sections 54 and 1397E of this title] shall apply to obligations issued after the date of the enactment of this Act [Dec. 20, 2006] pursuant to allocations of the national zone academy bond limitation for calendar years after 2005.''

Pub. L. 109–432, div. A, title I, §120(c), Dec. 20, 2006, 120 Stat. 2943, provided that: ''The amendments made by this section [amending this section] shall take effect as if included in section 101 of the Gulf Opportunity Zone Act of 2005 [Pub. L. 109–135].''

EFFECTIVE DATE

Pub. L. 109–135, title I, §101(c), Dec. 21, 2005, 119 Stat. 2593, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this section and section 1400M of this title and amending sections 54 and 6049 of this title] shall apply to taxable years ending on or after August 28, 2005.

''(2) CARRYBACKS.—Subsections (i)(2), (j), and (k) of section 1400N of the Internal Revenue Code of 1986 (as added by this section) shall apply to losses arising in such taxable years.''

§ 1400O. Education tax benefits

In the case of an individual who attends an eligible educational institution (as defined in section 25A(f)(2)) located in the Gulf Opportunity Zone for any taxable year beginning during 2005 or 2006—

(1) in applying section 25A, the term ''qualified tuition and related expenses'' shall include any costs which are qualified higher education expenses (as defined in section 529(e)(3)),

(2) each of the dollar amounts in effect under subparagraphs (A) and (B) of section 25A(b)(1) shall be twice the amount otherwise in effect before the application of this subsection, and

(3) section 25A(c)(1) shall be applied by substituting ''40 percent'' for ''20 percent''.

(Added Pub. L. 109–135, title I, §102(a), Dec. 21, 2005, 119 Stat. 2594; amended Pub. L. 110–172, §11(a)(26), Dec. 29, 2007, 121 Stat. 2487.)

AMENDMENTS

2007—Par. (2). Pub. L. 110–172 substituted ''under'' for ''under of''.

§ 1400P. Housing tax benefits

(a) Exclusion of employer provided housing for individual affected by Hurricane Katrina

(1) In general

Gross income of a qualified employee shall not include the value of any lodging furnished in-kind to such employee (and such employee's spouse or any of such employee's dependents) by or on behalf of a qualified employer for any month during the taxable year.

(2) Limitation

The amount which may be excluded under paragraph (1) for any month for which lodging is furnished during the taxable year shall not exceed $600.

(3) Treatment of exclusion

The exclusion under paragraph (1) shall be treated as an exclusion under section 119 (other than for purposes of sections 3121(a)(19) and 3306(b)(14)).

(b) Employer credit for housing employees affected by Hurricane Katrina

For purposes of section 38, in the case of a qualified employer, the Hurricane Katrina housing credit for any month during the taxable year is an amount equal to 30 percent of any amount which is excludable from the gross income of a qualified employee of such employer under subsection (a) and not otherwise excludable under section 119.

(c) Qualified employee

For purposes of this section, the term ''qualified employee'' means, with respect to any month, an individual—

(1) who had a principal residence (as defined in section 121) in the Gulf Opportunity Zone on August 28, 2005, and

(2) who performs substantially all employment services—

(A) in the Gulf Opportunity Zone, and

(B) for the qualified employer which furnishes lodging to such individual.

(d) Qualified employer

For purposes of this section, the term ''qualified employer'' means any employer with a trade or business located in the Gulf Opportunity Zone.

(e) Certain rules to apply

For purposes of this subsection, rules similar to the rules of sections 51(i)(1) and 52 shall apply.

(f) Application of section

This section shall apply to lodging furnished during the period—

(1) beginning on the first day of the first month beginning after the date of the enactment of this section, and

(2) ending on the date which is 6 months after the first day described in paragraph (1).

(Added Pub. L. 109–135, title I, § 103(a), Dec. 21, 2005, 119 Stat. 2594.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (f)(1), is the date of enactment of Pub. L. 109–135, which was approved Dec. 21, 2005.

§ 1400Q. Special rules for use of retirement funds

(a) Tax-favored withdrawals from retirement plans

(1) In general

Section 72(t) shall not apply to any qualified hurricane distribution.

(2) Aggregate dollar limitation

(A) In general

For purposes of this subsection, the aggregate amount of distributions received by an individual which may be treated as qualified hurricane distributions for any taxable year shall not exceed the excess (if any) of—

(i) $100,000, over

(ii) the aggregate amounts treated as qualified hurricane distributions received by such individual for all prior taxable years.

(B) Treatment of plan distributions

If a distribution to an individual would (without regard to subparagraph (A)) be a qualified hurricane distribution, a plan shall not be treated as violating any requirement of this title merely because the plan treats such distribution as a qualified hurricane distribution, unless the aggregate amount of such distributions from all plans maintained by the employer (and any member of any controlled group which includes the employer) to such individual exceeds $100,000.

(C) Controlled group

For purposes of subparagraph (B), the term ''controlled group'' means any group treated as a single employer under subsection (b), (c), (m), or (*o*) of section 414.

(3) Amount distributed may be repaid

(A) In general

Any individual who receives a qualified hurricane distribution may, at any time during the 3-year period beginning on the day after the date on which such distribution was received, make one or more contributions in an aggregate amount not to exceed the amount of such distribution to an eligible retirement plan of which such individual is a beneficiary and to which a rollover contribution of such distribution could be made under section 402(c), 403(a)(4), 403(b)(8), 408(d)(3), or 457(e)(16), as the case may be.

(B) Treatment of repayments of distributions from eligible retirement plans other than IRAs

For purposes of this title, if a contribution is made pursuant to subparagraph (A) with respect to a qualified hurricane distribution from an eligible retirement plan other than an individual retirement plan, then the taxpayer shall, to the extent of the amount of the contribution, be treated as having received the qualified hurricane distribution in an eligible rollover distribution (as defined in section 402(c)(4)) and as having transferred the amount to the eligible retirement plan in a direct trustee to trustee transfer within 60 days of the distribution.

(C) Treatment of repayments for distributions from IRAs

For purposes of this title, if a contribution is made pursuant to subparagraph (A) with respect to a qualified hurricane distribution from an individual retirement plan (as defined by section 7701(a)(37)), then, to the extent of the amount of the contribution, the qualified hurricane distribution shall be treated as a distribution described in section 408(d)(3) and as having been transferred to the eligible retirement plan in a direct trustee to trustee transfer within 60 days of the distribution.

(4) Definitions

For purposes of this subsection—

(A) Qualified hurricane distribution

Except as provided in paragraph (2), the term ''qualified hurricane distribution'' means—

(i) any distribution from an eligible retirement plan made on or after August 25, 2005, and before January 1, 2007, to an individual whose principal place of abode on August 28, 2005, is located in the Hurricane Katrina disaster area and who has sustained an economic loss by reason of Hurricane Katrina,

(ii) any distribution (which is not described in clause (i)) from an eligible retirement plan made on or after September 23, 2005, and before January 1, 2007, to an individual whose principal place of abode on September 23, 2005, is located in the Hurricane Rita disaster area and who has sustained an economic loss by reason of Hurricane Rita, and

(iii) any distribution (which is not described in clause (i) or (ii)) from an eligible retirement plan made on or after October 23, 2005, and before January 1, 2007, to an individual whose principal place of abode on October 23, 2005, is located in the Hurricane Wilma disaster area and who has sustained an economic loss by reason of Hurricane Wilma.

(B) Eligible retirement plan

The term ''eligible retirement plan'' shall have the meaning given such term by section 402(c)(8)(B).

(5) Income inclusion spread over 3-year period

(A) In general

In the case of any qualified hurricane distribution, unless the taxpayer elects not to have this paragraph apply for any taxable year, any amount required to be included in gross income for such taxable year shall be so included ratably over the 3-taxable year period beginning with such taxable year.

(B) Special rule

For purposes of subparagraph (A), rules similar to the rules of subparagraph (E) of section 408A(d)(3) shall apply.

(6) Special rules

(A) Exemption of distributions from trustee to trustee transfer and withholding rules

For purposes of sections 401(a)(31), 402(f), and 3405, qualified hurricane distributions shall not be treated as eligible rollover distributions.

(B) Qualified hurricane distributions treated as meeting plan distribution requirements

For purposes[1] this title, a qualified hurricane distribution shall be treated as meeting the requirements of sections 401(k)(2)(B)(i), 403(b)(7)(A)(ii), 403(b)(11), and 457(d)(1)(A).

(b) Recontributions of withdrawals for home purchases

(1) Recontributions

(A) In general

Any individual who received a qualified distribution may, during the applicable period, make one or more contributions in an aggregate amount not to exceed the amount of such qualified distribution to an eligible retirement plan (as defined in section 402(c)(8)(B)) of which such individual is a beneficiary and to which a rollover contribution of such distribution could be made under section 402(c), 403(a)(4), 403(b)(8), or 408(d)(3), as the case may be.

(B) Treatment of repayments

Rules similar to the rules of subparagraphs (B) and (C) of subsection (a)(3) shall apply for purposes of this subsection.

(2) Qualified distribution

For purposes of this subsection—

(A) In general

The term ''qualified distribution'' means any qualified Katrina distribution, any qualified Rita distribution, and any qualified Wilma distribution.

(B) Qualified Katrina distribution

The term ''qualified Katrina distribution'' means any distribution—

(i) described in section 401(k)(2)(B)(i)(IV), 403(b)(7)(A)(ii) (but only to the extent such distribution relates to financial hardship), 403(b)(11)(B), or 72(t)(2)(F),

(ii) received after February 28, 2005, and before August 29, 2005, and

(iii) which was to be used to purchase or construct a principal residence in the Hurricane Katrina disaster area, but which was not so purchased or constructed on account of Hurricane Katrina.

(C) Qualified Rita distribution

The term ''qualified Rita distribution'' means any distribution (other than a qualified Katrina distribution)—

(i) described in section 401(k)(2)(B)(i)(IV), 403(b)(7)(A)(ii) (but only to the extent such distribution relates to financial hardship), 403(b)(11)(B), or 72(t)(2)(F),

(ii) received after February 28, 2005, and before September 24, 2005, and

(iii) which was to be used to purchase or construct a principal residence in the Hurricane Rita disaster area, but which was not so purchased or constructed on account of Hurricane Rita.

(D) Qualified Wilma distribution

The term ''qualified Wilma distribution'' means any distribution (other than a qualified Katrina distribution or a qualified Rita distribution)—

(i) described in section 401(k)(2)(B)(i)(IV), 403(b)(7)(A)(ii) (but only to the extent such distribution relates to financial hardship), 403(b)(11)(B), or 72(t)(2)(F),

(ii) received after February 28, 2005, and before October 24, 2005, and

(iii) which was to be used to purchase or construct a principal residence in the Hurricane Wilma disaster area, but which was not so purchased or constructed on account of Hurricane Wilma.

(3) Applicable period

For purposes of this subsection, the term ''applicable period'' means—

(A) with respect to any qualified Katrina distribution, the period beginning on August 25, 2005, and ending on February 28, 2006,

(B) with respect to any qualified Rita distribution, the period beginning on September 23, 2005, and ending on February 28, 2006, and

(C) with respect to any qualified Wilma distribution, the period beginning on October 23, 2005, and ending on February 28, 2006.

(c) Loans from qualified plans

(1) Increase in limit on loans not treated as distributions

In the case of any loan from a qualified employer plan (as defined under section 72(p)(4)) to a qualified individual made during the applicable period—

(A) clause (i) of section 72(p)(2)(A) shall be applied by substituting ''$100,000'' for ''$50,000'', and

(B) clause (ii) of such section shall be applied by substituting ''the present value of the nonforfeitable accrued benefit of the employee under the plan'' for ''one-half of the present value of the nonforfeitable accrued benefit of the employee under the plan''.

(2) Delay of repayment

In the case of a qualified individual with an outstanding loan on or after the qualified be-

[1] So in original. Probably should be followed by ''of''.

ginning date from a qualified employer plan (as defined in section 72(p)(4))—

(A) if the due date pursuant to subparagraph (B) or (C) of section 72(p)(2) for any repayment with respect to such loan occurs during the period beginning on the qualified beginning date and ending on December 31, 2006, such due date shall be delayed for 1 year,

(B) any subsequent repayments with respect to any such loan shall be appropriately adjusted to reflect the delay in the due date under paragraph (1) and any interest accruing during such delay, and

(C) in determining the 5-year period and the term of a loan under subparagraph (B) or (C) of section 72(p)(2), the period described in subparagraph (A) shall be disregarded.

(3) Qualified individual

For purposes of this subsection—

(A) In general

The term ''qualified individual'' means any qualified Hurricane Katrina individual, any qualified Hurricane Rita individual, and any qualified Hurricane Wilma individual.

(B) Qualified Hurricane Katrina individual

The term ''qualified Hurricane Katrina individual'' means an individual whose principal place of abode on August 28, 2005, is located in the Hurricane Katrina disaster area and who has sustained an economic loss by reason of Hurricane Katrina.

(C) Qualified Hurricane Rita individual

The term ''qualified Hurricane Rita individual'' means an individual (other than a qualified Hurricane Katrina individual) whose principal place of abode on September 23, 2005, is located in the Hurricane Rita disaster area and who has sustained an economic loss by reason of Hurricane Rita.

(D) Qualified Hurricane Wilma individual

The term ''qualified Hurricane Wilma individual'' means an individual (other than a qualified Hurricane Katrina individual or a qualified Hurricane Rita individual) whose principal place of abode on October 23, 2005, is located in the Hurricane Wilma disaster area and who has sustained an economic loss by reason of Hurricane Wilma.

(4) Applicable period; qualified beginning date

For purposes of this subsection—

(A) Hurricane Katrina

In the case of any qualified Hurricane Katrina individual—

(i) the applicable period is the period beginning on September 24, 2005, and ending on December 31, 2006, and

(ii) the qualified beginning date is August 25, 2005.

(B) Hurricane Rita

In the case of any qualified Hurricane Rita individual—

(i) the applicable period is the period beginning on the date of the enactment of this subsection and ending on December 31, 2006, and

(ii) the qualified beginning date is September 23, 2005.

(C) Hurricane Wilma

In the case of any qualified Hurricane Wilma individual—

(i) the applicable period is the period beginning on the date of the enactment of this subparagraph and ending on December 31, 2006, and

(ii) the qualified beginning date is October 23, 2005.

(d) Provisions relating to plan amendments

(1) In general

If this subsection applies to any amendment to any plan or annuity contract, such plan or contract shall be treated as being operated in accordance with the terms of the plan during the period described in paragraph (2)(B)(i).

(2) Amendments to which subsection applies

(A) In general

This subsection shall apply to any amendment to any plan or annuity contract which is made—

(i) pursuant to any provision of this section, or pursuant to any regulation issued by the Secretary or the Secretary of Labor under any provision of this section, and

(ii) on or before the last day of the first plan year beginning on or after January 1, 2007, or such later date as the Secretary may prescribe.

In the case of a governmental plan (as defined in section 414(d)), clause (ii) shall be applied by substituting the date which is 2 years after the date otherwise applied under clause (ii).

(B) Conditions

This subsection shall not apply to any amendment unless—

(i) during the period—

(I) beginning on the date that this section or the regulation described in subparagraph (A)(i) takes effect (or in the case of a plan or contract amendment not required by this section or such regulation, the effective date specified by the plan), and

(II) ending on the date described in subparagraph (A)(ii) (or, if earlier, the date the plan or contract amendment is adopted),

the plan or contract is operated as if such plan or contract amendment were in effect; and

(ii) such plan or contract amendment applies retroactively for such period.

(Added Pub. L. 109–135, title II, § 201(a), Dec. 21, 2005, 119 Stat. 2596.)

REFERENCES IN TEXT

The date of the enactment of this subsection and this subparagraph, referred to in subsec. (c)(4)(B)(i), (C)(i), is the date of enactment of Pub. L. 109–135, which was approved Dec. 21, 2005.

§ 1400R. Employment relief

(a) Employee retention credit for employers affected by Hurricane Katrina

(1) In general

For purposes of section 38, in the case of an eligible employer, the Hurricane Katrina employee retention credit for any taxable year is an amount equal to 40 percent of the qualified wages with respect to each eligible employee of such employer for such taxable year. For purposes of the preceding sentence, the amount of qualified wages which may be taken into account with respect to any individual shall not exceed $6,000.

(2) Definitions

For purposes of this subsection—

(A) Eligible employer

The term ''eligible employer'' means any employer—

(i) which conducted an active trade or business on August 28, 2005, in the GO Zone, and

(ii) with respect to whom the trade or business described in clause (i) is inoperable on any day after August 28, 2005, and before January 1, 2006, as a result of damage sustained by reason of Hurricane Katrina.

(B) Eligible employee

The term ''eligible employee'' means with respect to an eligible employer an employee whose principal place of employment on August 28, 2005, with such eligible employer was in the GO Zone.

(C) Qualified wages

The term ''qualified wages'' means wages (as defined in section 51(c)(1), but without regard to section 3306(b)(2)(B)) paid or incurred by an eligible employer with respect to an eligible employee on any day after August 28, 2005, and before January 1, 2006, which occurs during the period—

(i) beginning on the date on which the trade or business described in subparagraph (A) first became inoperable at the principal place of employment of the employee immediately before Hurricane Katrina, and

(ii) ending on the date on which such trade or business has resumed significant operations at such principal place of employment.

Such term shall include wages paid without regard to whether the employee performs no services, performs services at a different place of employment than such principal place of employment, or performs services at such principal place of employment before significant operations have resumed.

(3) Certain rules to apply

For purposes of this subsection, rules similar to the rules of sections 51(i)(1) and 52 shall apply.

(4) Employee not taken into account more than once

An employee shall not be treated as an eligible employee for purposes of this subsection for any period with respect to any employer if such employer is allowed a credit under section 51 with respect to such employee for such period.

(b) Employee retention credit for employers affected by Hurricane Rita

(1) In general

For purposes of section 38, in the case of an eligible employer, the Hurricane Rita employee retention credit for any taxable year is an amount equal to 40 percent of the qualified wages with respect to each eligible employee of such employer for such taxable year. For purposes of the preceding sentence, the amount of qualified wages which may be taken into account with respect to any individual shall not exceed $6,000.

(2) Definitions

For purposes of this subsection—

(A) Eligible employer

The term ''eligible employer'' means any employer—

(i) which conducted an active trade or business on September 23, 2005, in the Rita GO Zone, and

(ii) with respect to whom the trade or business described in clause (i) is inoperable on any day after September 23, 2005, and before January 1, 2006, as a result of damage sustained by reason of Hurricane Rita.

(B) Eligible employee

The term ''eligible employee'' means with respect to an eligible employer an employee whose principal place of employment on September 23, 2005, with such eligible employer was in the Rita GO Zone.

(C) Qualified wages

The term ''qualified wages'' means wages (as defined in section 51(c)(1), but without regard to section 3306(b)(2)(B)) paid or incurred by an eligible employer with respect to an eligible employee on any day after September 23, 2005, and before January 1, 2006, which occurs during the period—

(i) beginning on the date on which the trade or business described in subparagraph (A) first became inoperable at the principal place of employment of the employee immediately before Hurricane Rita, and

(ii) ending on the date on which such trade or business has resumed significant operations at such principal place of employment.

Such term shall include wages paid without regard to whether the employee performs no services, performs services at a different place of employment than such principal place of employment, or performs services at such principal place of employment before significant operations have resumed.

(3) Certain rules to apply

For purposes of this subsection, rules similar to the rules of sections 51(i)(1) and 52 shall apply.

(4) Employee not taken into account more than once

An employee shall not be treated as an eligible employee for purposes of this subsection for any period with respect to any employer if such employer is allowed a credit under subsection (a) or section 51 with respect to such employee for such period.

(c) Employee retention credit for employers affected by Hurricane Wilma

(1) In general

For purposes of section 38, in the case of an eligible employer, the Hurricane Wilma employee retention credit for any taxable year is an amount equal to 40 percent of the qualified wages with respect to each eligible employee of such employer for such taxable year. For purposes of the preceding sentence, the amount of qualified wages which may be taken into account with respect to any individual shall not exceed $6,000.

(2) Definitions

For purposes of this subsection—

(A) Eligible employer

The term ''eligible employer'' means any employer—

(i) which conducted an active trade or business on October 23, 2005, in the Wilma GO Zone, and

(ii) with respect to whom the trade or business described in clause (i) is inoperable on any day after October 23, 2005, and before January 1, 2006, as a result of damage sustained by reason of Hurricane Wilma.

(B) Eligible employee

The term ''eligible employee'' means with respect to an eligible employer an employee whose principal place of employment on October 23, 2005, with such eligible employer was in the Wilma GO Zone.

(C) Qualified wages

The term ''qualified wages'' means wages (as defined in section 51(c)(1), but without regard to section 3306(b)(2)(B)) paid or incurred by an eligible employer with respect to an eligible employee on any day after October 23, 2005, and before January 1, 2006, which occurs during the period—

(i) beginning on the date on which the trade or business described in subparagraph (A) first became inoperable at the principal place of employment of the employee immediately before Hurricane Wilma, and

(ii) ending on the date on which such trade or business has resumed significant operations at such principal place of employment.

Such term shall include wages paid without regard to whether the employee performs no services, performs services at a different place of employment than such principal place of employment, or performs services at such principal place of employment before significant operations have resumed.

(3) Certain rules to apply

For purposes of this subsection, rules similar to the rules of sections 51(i)(1) and 52 shall apply.

(4) Employee not taken into account more than once

An employee shall not be treated as an eligible employee for purposes of this subsection for any period with respect to any employer if such employer is allowed a credit under subsection (a) or (b) or section 51 with respect to such employee for such period.

(Added Pub. L. 109–135, title II, § 201(a), Dec. 21, 2005, 119 Stat. 2601.)

§ 1400S. Additional tax relief provisions

(a) Temporary suspension of limitations on charitable contributions

(1) In general

Except as otherwise provided in paragraph (2), section 170(b) shall not apply to qualified contributions and such contributions shall not be taken into account for purposes of applying subsections (b) and (d) of section 170 to other contributions.

(2) Treatment of excess contributions

For purposes of section 170—

(A) Individuals

In the case of an individual—

(i) Limitation

Any qualified contribution shall be allowed only to the extent that the aggregate of such contributions does not exceed the excess of the taxpayer's contribution base (as defined in subparagraph (G)[1] of section 170(b)(1)) over the amount of all other charitable contributions allowed under section 170(b)(1).

(ii) Carryover

If the aggregate amount of qualified contributions made in the contribution year (within the meaning of section 170(d)(1)) exceeds the limitation of clause (i), such excess shall be added to the excess described in the portion of subparagraph (A) of such section which precedes clause (i) thereof for purposes of applying such section.

(B) Corporations

In the case of a corporation—

(i) Limitation

Any qualified contribution shall be allowed only to the extent that the aggregate of such contributions does not exceed the excess of the taxpayer's taxable income (as determined under paragraph (2) of section 170(b)) over the amount of all other charitable contributions allowed under such paragraph.

(ii) Carryover

Rules similar to the rules of subparagraph (A)(ii) shall apply for purposes of this subparagraph.

[1] See References in Text note below.

(3) Exception to overall limitation on itemized deductions

So much of any deduction allowed under section 170 as does not exceed the qualified contributions paid during the taxable year shall not be treated as an itemized deduction for purposes of section 68.

(4) Qualified contributions

(A) In general

For purposes of this subsection, the term ''qualified contribution'' means any charitable contribution (as defined in section 170(c)) if—

(i) such contribution is paid during the period beginning on August 28, 2005, and ending on December 31, 2005, in cash to an organization described in section 170(b)(1)(A) (other than an organization described in section 509(a)(3)),

(ii) in the case of a contribution paid by a corporation, such contribution is for relief efforts related to Hurricane Katrina, Hurricane Rita, or Hurricane Wilma, and

(iii) the taxpayer has elected the application of this subsection with respect to such contribution.

(B) Exception

Such term shall not include a contribution if the contribution is for establishment of a new, or maintenance in an existing, segregated fund or account with respect to which the donor (or any person appointed or designated by such donor) has, or reasonably expects to have, advisory privileges with respect to distributions or investments by reason of the donor's status as a donor.

(C) Application of election to partnerships and S corporations

In the case of a partnership or S corporation, the election under subparagraph (A)(iii) shall be made separately by each partner or shareholder.

(b) Suspension of certain limitations on personal casualty losses

Paragraphs (1) and (2)(A) of section 165(h) shall not apply to losses described in section 165(c)(3)—

(1) which arise in the Hurricane Katrina disaster area on or after August 25, 2005, and which are attributable to Hurricane Katrina,

(2) which arise in the Hurricane Rita disaster area on or after September 23, 2005, and which are attributable to Hurricane Rita, or

(3) which arise in the Hurricane Wilma disaster area on or after October 23, 2005, and which are attributable to Hurricane Wilma.

In the case of any other losses, section 165(h)(2)(A) shall be applied without regard to the losses referred to in the preceding sentence.

(c) Required exercise of authority under section 7508A

In the case of any taxpayer determined by the Secretary to be affected by the Presidentially declared disaster relating to Hurricane Katrina, Hurricane Rita, or Hurricane Wilma, any relief provided by the Secretary under section 7508A shall be for a period ending not earlier than February 28, 2006.

(d) Special rule for determining earned income

(1) In general

In the case of a qualified individual, if the earned income of the taxpayer for the taxable year which includes the applicable date is less than the earned income of the taxpayer for the preceding taxable year, the credits allowed under sections 24(d) and 32 may, at the election of the taxpayer, be determined by substituting—

(A) such earned income for the preceding taxable year, for

(B) such earned income for the taxable year which includes the applicable date.

(2) Qualified individual

For purposes of this subsection—

(A) In general

The term ''qualified individual'' means any qualified Hurricane Katrina individual, any qualified Hurricane Rita individual, and any qualified Hurricane Wilma individual.

(B) Qualified Hurricane Katrina individual

The term ''qualified Hurricane Katrina individual'' means any individual whose principal place of abode on August 25, 2005, was located—

(i) in the GO Zone, or

(ii) in the Hurricane Katrina disaster area (but outside the GO Zone) and such individual was displaced from such principal place of abode by reason of Hurricane Katrina.

(C) Qualified Hurricane Rita individual

The term ''qualified Hurricane Rita individual'' means any individual (other than a qualified Hurricane Katrina individual) whose principal place of abode on September 23, 2005, was located—

(i) in the Rita GO Zone, or

(ii) in the Hurricane Rita disaster area (but outside the Rita GO Zone) and such individual was displaced from such principal place of abode by reason of Hurricane Rita.

(D) Qualified Hurricane Wilma individual

The term ''qualified Hurricane Wilma individual'' means any individual whose principal place of abode on October 23, 2005, was located—

(i) in the Wilma GO Zone, or

(ii) in the Hurricane Wilma disaster area (but outside the Wilma GO Zone) and such individual was displaced from such principal place of abode by reason of Hurricane Wilma.

(3) Applicable date

For purposes of this subsection, the term ''applicable date'' means—

(A) in the case of a qualified Hurricane Katrina individual, August 25, 2005,

(B) in the case of a qualified Hurricane Rita individual, September 23, 2005, and

(C) in the case of a qualified Hurricane Wilma individual, October 23, 2005.

(4) Earned income

For purposes of this subsection, the term ''earned income'' has the meaning given such term under section 32(c).

(5) Special rules

(A) Application to joint returns

For purposes of paragraph (1), in the case of a joint return for a taxable year which includes the applicable date—

(i) such paragraph shall apply if either spouse is a qualified individual, and

(ii) the earned income of the taxpayer for the preceding taxable year shall be the sum of the earned income of each spouse for such preceding taxable year.

(B) Uniform application of election

Any election made under paragraph (1) shall apply with respect to both sections 24(d) and section 32.

(C) Errors treated as mathematical error

For purposes of section 6213, an incorrect use on a return of earned income pursuant to paragraph (1) shall be treated as a mathematical or clerical error.

(D) No effect on determination of gross income, etc.

Except as otherwise provided in this subsection, this title shall be applied without regard to any substitution under paragraph (1).

(e) Secretarial authority to make adjustments regarding taxpayer and dependency status

With respect to taxable years beginning in 2005 or 2006, the Secretary may make such adjustments in the application of the internal revenue laws as may be necessary to ensure that taxpayers do not lose any deduction or credit or experience a change of filing status by reason of temporary relocations by reason of Hurricane Katrina, Hurricane Rita, or Hurricane Wilma. Any adjustments made under the preceding sentence shall ensure that an individual is not taken into account by more than one taxpayer with respect to the same tax benefit.

(Added Pub. L. 109–135, title II, § 201(a), Dec. 21, 2005, 119 Stat. 2604; amended Pub. L. 110–172, § 11(a)(14)(C), Dec. 29, 2007, 121 Stat. 2485.)

REFERENCES IN TEXT

Section 170(b)(1)(G), referred to in subsec. (a)(2)(A)(i), was redesignated section 170(b)(1)(H) by Pub. L. 115–97, title I, § 11023(a), Dec. 22, 2017, 131 Stat. 2074.

AMENDMENTS

2007—Subsec. (a)(2)(A)(i). Pub. L. 110–172 substituted ''subparagraph (G)'' for ''subparagraph (F)''.

§ 1400T. Special rules for mortgage revenue bonds

(a) In general

In the case of financing provided with respect to owner-occupied residences in the GO Zone, the Rita GO Zone, or the Wilma GO Zone, section 143 shall be applied—

(1) by treating any such residence in the Rita GO Zone or the Wilma GO Zone as a targeted area residence,

(2) by applying subsection (f)(3) thereof without regard to subparagraph (A) thereof, and

(3) by substituting ''$150,000'' for ''$15,000'' in subsection (k)(4) thereof.

(b) Application

Subsection (a) shall not apply to financing provided after December 31, 2010.

(Added Pub. L. 109–135, title II, § 201(a), Dec. 21, 2005, 119 Stat. 2607.)

PART III—RECOVERY ZONE BONDS

Sec.
1400U–1. Allocation of recovery zone bonds.
1400U–2. Recovery zone economic development bonds.
1400U–3. Recovery zone facility bonds.

§ 1400U–1. Allocation of recovery zone bonds

(a) Allocations

(1) In general

(A) General allocation

The Secretary shall allocate the national recovery zone economic development bond limitation and the national recovery zone facility bond limitation among the States in the proportion that each such State's 2008 State employment decline bears to the aggregate of the 2008 State employment declines for all of the States.

(B) Minimum allocation

The Secretary shall adjust the allocations under subparagraph (A) for any calendar year for each State to the extent necessary to ensure that no State receives less than 0.9 percent of the national recovery zone economic development bond limitation and 0.9 percent of the national recovery zone facility bond limitation.

(2) 2008 State employment decline

For purposes of this subsection, the term ''2008 State employment decline'' means, with respect to any State, the excess (if any) of—

(A) the number of individuals employed in such State determined for December 2007, over

(B) the number of individuals employed in such State determined for December 2008.

(3) Allocations by States

(A) In general

Each State with respect to which an allocation is made under paragraph (1) shall reallocate such allocation among the counties and large municipalities in such State in the proportion to[1] each such county's or municipality's 2008 employment decline bears to the aggregate of the 2008 employment declines for all the counties and municipalities in such State. A county or municipality may waive any portion of an allocation made under this subparagraph.

(B) Large municipalities

For purposes of subparagraph (A), the term ''large municipality'' means a municipality with a population of more than 100,000.

(C) Determination of local employment declines

For purposes of this paragraph, the employment decline of any municipality or

[1] So in original.

county shall be determined in the same manner as determining the State employment decline under paragraph (2), except that in the case of a municipality any portion of which is in a county, such portion shall be treated as part of such municipality and not part of such county.

(4) National limitations

(A) Recovery zone economic development bonds

There is a national recovery zone economic development bond limitation of $10,000,000,000.

(B) Recovery zone facility bonds

There is a national recovery zone facility bond limitation of $15,000,000,000.

(b) Recovery zone

For purposes of this part, the term ''recovery zone'' means—

(1) any area designated by the issuer as having significant poverty, unemployment, rate of home foreclosures, or general distress,

(2) any area designated by the issuer as economically distressed by reason of the closure or realignment of a military installation pursuant to the Defense Base Closure and Realignment Act of 1990, and

(3) any area for which a designation as an empowerment zone or renewal community is in effect.

(Added Pub. L. 111–5, div. B, title I, §1401(a), Feb. 17, 2009, 123 Stat. 348.)

REFERENCES IN TEXT

The Defense Base Closure and Realignment Act of 1990, referred to in subsec. (b)(2), is part A of title XXIX of div. B of Pub. L. 101–510, Nov. 5, 1990, 104 Stat. 1808, which is set out as a note under section 2687 of Title 10, Armed Forces. For complete classification of this Act to the Code, see Tables.

EFFECTIVE DATE

Pub. L. 111–5, div. B, title I, §1401(c), Feb. 17, 2009, 123 Stat. 351, provided that: ''The amendments made by this section [enacting this part] shall apply to obligations issued after the date of the enactment of this Act [Feb. 17, 2009].''

§ 1400U–2. Recovery zone economic development bonds

(a) In general

In the case of a recovery zone economic development bond—

(1) such bond shall be treated as a qualified bond for purposes of section 6431,[1] and

(2) subsection (b) of such section shall be applied by substituting ''45 percent'' for ''35 percent''.

(b) Recovery zone economic development bond

(1) In general

For purposes of this section, the term ''recovery zone economic development bond'' means any build America bond (as defined in section 54AA(d))[1] issued before January 1, 2011, as part of issue if—

(A) 100 percent of the excess of—

(i) the available project proceeds (as defined in section 54A)[1] of such issue, over

(ii) the amounts in a reasonably required reserve (within the meaning of section 150(a)(3)) with respect to such issue,

are to be used for one or more qualified economic development purposes, and

(B) the issuer designates such bond for purposes of this section.

(2) Limitation on amount of bonds designated

The maximum aggregate face amount of bonds which may be designated by any issuer under paragraph (1) shall not exceed the amount of the recovery zone economic development bond limitation allocated to such issuer under section 1400U–1.

(c) Qualified economic development purpose

For purposes of this section, the term ''qualified economic development purpose'' means expenditures for purposes of promoting development or other economic activity in a recovery zone, including—

(1) capital expenditures paid or incurred with respect to property located in such zone,

(2) expenditures for public infrastructure and construction of public facilities, and

(3) expenditures for job training and educational programs.

(Added Pub. L. 111–5, div. B, title I, §1401(a), Feb. 17, 2009, 123 Stat. 349.)

REFERENCES IN TEXT

Section 6431, referred to in subsec. (a)(1), was repealed by Pub. L. 115–97, title I, §13404(b), Dec. 22, 2017, 131 Stat. 2138, applicable to bonds issued after Dec. 31, 2017.

Sections 54AA(d) and 54A, referred to in subsec. (b)(1), were repealed by Pub. L. 115–97, title I, §13404(a), Dec. 22, 2017, 131 Stat. 2138.

APPLICATION OF CERTAIN LABOR STANDARDS TO PROJECTS FINANCED WITH CERTAIN TAX-FAVORED BONDS

Pub. L. 111–5, div. B, title I, §1601, Feb. 17, 2009, 123 Stat. 362, provided that: ''Subchapter IV of chapter 31 of the [sic] title 40, United States Code, shall apply to projects financed with the proceeds of—

''(1) any new clean renewable energy bond (as defined in [former] section 54C of the Internal Revenue Code of 1986) issued after the date of the enactment of this Act [Feb. 17, 2009],

''(2) any qualified energy conservation bond (as defined in [former] section 54D of the Internal Revenue Code of 1986) issued after the date of the enactment of this Act,

''(3) any qualified zone academy bond (as defined in [former] section 54E of the Internal Revenue Code of 1986) issued after the date of the enactment of this Act,

''(4) any qualified school construction bond (as defined in [former] section 54F of the Internal Revenue Code of 1986), and

''(5) any recovery zone economic development bond (as defined in section 1400U–2 of the Internal Revenue Code of 1986).''

§ 1400U–3. Recovery zone facility bonds

(a) In general

For purposes of part IV of subchapter B (relating to tax exemption requirements for State and local bonds), the term ''exempt facility bond'' includes any recovery zone facility bond.

[1] See References in Text note below.

(b) Recovery zone facility bond

(1) In general

For purposes of this section, the term ''recovery zone facility bond'' means any bond issued as part of an issue if—

(A) 95 percent or more of the net proceeds (as defined in section 150(a)(3)) of such issue are to be used for recovery zone property,

(B) such bond is issued before January 1, 2011, and

(C) the issuer designates such bond for purposes of this section.

(2) Limitation on amount of bonds designated

The maximum aggregate face amount of bonds which may be designated by any issuer under paragraph (1) shall not exceed the amount of recovery zone facility bond limitation allocated to such issuer under section 1400U–1.

(c) Recovery zone property

For purposes of this section—

(1) In general

The term ''recovery zone property'' means any property to which section 168 applies (or would apply but for section 179) if—

(A) such property was constructed, reconstructed, renovated, or acquired by purchase (as defined in section 179(d)(2)) by the taxpayer after the date on which the designation of the recovery zone took effect,

(B) the original use of which in the recovery zone commences with the taxpayer, and

(C) substantially all of the use of which is in the recovery zone and is in the active conduct of a qualified business by the taxpayer in such zone.

(2) Qualified business

The term ''qualified business'' means any trade or business except that—

(A) the rental to others of real property located in a recovery zone shall be treated as a qualified business only if the property is not residential rental property (as defined in section 168(e)(2)), and

(B) such term shall not include any trade or business consisting of the operation of any facility described in section 144(c)(6)(B).

(3) Special rules for substantial renovations and sale-leaseback

Rules similar to the rules of subsections (a)(2) and (b) of section 1397D shall apply for purposes of this subsection.

(d) Nonapplication of certain rules

Sections 146 (relating to volume cap) and 147(d) (relating to acquisition of existing property not permitted) shall not apply to any recovery zone facility bond.

(Added Pub. L. 111–5, div. B, title I, § 1401(a), Feb. 17, 2009, 123 Stat. 350.)

Subchapter Z—Opportunity Zones

Sec.

§ 1400Z–1. Designation

(a) Qualified opportunity zone defined

For the purposes of this subchapter, the term ''qualified opportunity zone'' means a population census tract that is a low-income community that is designated as a qualified opportunity zone.

(b) Designation

(1) In general

For purposes of subsection (a), a population census tract that is a low-income community is designated as a qualified opportunity zone if—

(A) not later than the end of the determination period, the chief executive officer of the State in which the tract is located—

(i) nominates the tract for designation as a qualified opportunity zone, and

(ii) notifies the Secretary in writing of such nomination, and

(B) the Secretary certifies such nomination and designates such tract as a qualified opportunity zone before the end of the consideration period.

(2) Extension of periods

A chief executive officer of a State may request that the Secretary extend either the determination or consideration period, or both (determined without regard to this subparagraph),[1] for an additional 30 days.

(c) Other definitions

For purposes of this subsection—

(1) Low-income communities

The term ''low-income community'' has the same meaning as when used in section 45D(e).

(2) Definition of periods

(A) Consideration period

The term ''consideration period'' means the 30-day period beginning on the date on which the Secretary receives notice under subsection (b)(1)(A)(ii), as extended under subsection (b)(2).

(B) Determination period

The term ''determination period'' means the 90-day period beginning on the date of the enactment of the Tax Cuts and Jobs Act, as extended under subsection (b)(2).

(3) State

For purposes of this section, the term ''State'' includes any possession of the United States.

(d) Number of designations

(1) In general

Except as provided by paragraph (2), the number of population census tracts in a State that may be designated as qualified opportunity zones under this section may not exceed 25 percent of the number of low-income communities in the State.

(2) Exception

If the number of low-income communities in a State is less than 100, then a total of 25 of

[1] So in original. Probably should be ''paragraph),''.

such tracts may be designated as qualified opportunity zones.

(e) Designation of tracts contiguous with low-income communities

(1) In general

A population census tract that is not a low-income community may be designated as a qualified opportunity zone under this section if—

(A) the tract is contiguous with the low-income community that is designated as a qualified opportunity zone, and

(B) the median family income of the tract does not exceed 125 percent of the median family income of the low-income community with which the tract is contiguous.

(2) Limitation

Not more than 5 percent of the population census tracts designated in a State as a qualified opportunity zone may be designated under paragraph (1).

(f) Period for which designation is in effect

A designation as a qualified opportunity zone shall remain in effect for the period beginning on the date of the designation and ending at the close of the 10th calendar year beginning on or after such date of designation.

(Added Pub. L. 115–97, title I, §13823(a), Dec. 22, 2017, 131 Stat. 2183.)

REFERENCES IN TEXT

The date of the enactment of the Tax Cuts and Jobs Act, referred to in subsec. (c)(2)(B), 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.

EFFECTIVE DATE

Section effective on Dec. 22, 2017, see section 13823(d) of Pub. L. 115–97, set out as an Effective Date of 2017 Amendment note under section 1016 of this title.

§ 1400Z–2. Special rules for capital gains invested in opportunity zones

(a) In general

(1) Treatment of gains

In the case of gain from the sale to, or exchange with, an unrelated person of any property held by the taxpayer, at the election of the taxpayer—

(A) gross income for the taxable year shall not include so much of such gain as does not exceed the aggregate amount invested by the taxpayer in a qualified opportunity fund during the 180-day period beginning on the date of such sale or exchange,

(B) the amount of gain excluded by subparagraph (A) shall be included in gross income as provided by subsection (b), and

(C) subsection (c) shall apply.

(2) Election

No election may be made under paragraph (1)—

(A) with respect to a sale or exchange if an election previously made with respect to such sale or exchange is in effect, or

(B) with respect to any sale or exchange after December 31, 2026.

(b) Deferral of gain invested in opportunity zone property

(1) Year of inclusion

Gain to which subsection (a)(1)(B) applies shall be included in income in the taxable year which includes the earlier of—

(A) the date on which such investment is sold or exchanged, or

(B) December 31, 2026.

(2) Amount includible

(A) In general

The amount of gain included in gross income under subsection (a)(1)(A) shall be the excess of—

(i) the lesser of the amount of gain excluded under paragraph (1) or the fair market value of the investment as determined as of the date described in paragraph (1), over

(ii) the taxpayer's basis in the investment.

(B) Determination of basis

(i) In general

Except as otherwise provided in this clause or subsection (c), the taxpayer's basis in the investment shall be zero.

(ii) Increase for gain recognized under subsection (a)(1)(B)

The basis in the investment shall be increased by the amount of gain recognized by reason of subsection (a)(1)(B) with respect to such property.

(iii) Investments held for 5 years

In the case of any investment held for at least 5 years, the basis of such investment shall be increased by an amount equal to 10 percent of the amount of gain deferred by reason of subsection (a)(1)(A).

(iv) Investments held for 7 years

In the case of any investment held by the taxpayer for at least 7 years, in addition to any adjustment made under clause (iii), the basis of such property shall be increased by an amount equal to 5 percent of the amount of gain deferred by reason of subsection (a)(1)(A).

(c) Special rule for investments held for at least 10 years

In the case of any investment held by the taxpayer for at least 10 years and with respect to which the taxpayer makes an election under this clause, the basis of such property shall be equal to the fair market value of such investment on the date that the investment is sold or exchanged.

(d) Qualified opportunity fund

For purposes of this section—

(1) In general

The term ''qualified opportunity fund'' means any investment vehicle which is organized as a corporation or a partnership for the purpose of investing in qualified opportunity

zone property (other than another qualified opportunity fund) that holds at least 90 percent of its assets in qualified opportunity zone property, determined by the average of the percentage of qualified opportunity zone property held in the fund as measured—

(A) on the last day of the first 6-month period of the taxable year of the fund, and

(B) on the last day of the taxable year of the fund.

(2) Qualified opportunity zone property

(A) In general

The term ''qualified opportunity zone property'' means property which is—

(i) qualified opportunity zone stock,

(ii) qualified opportunity zone partnership interest, or

(iii) qualified opportunity zone business property.

(B) Qualified opportunity zone stock

(i) In general

Except as provided in clause (ii), the term ''qualified opportunity zone stock'' means any stock in a domestic corporation if—

(I) such stock is acquired by the qualified opportunity fund after December 31, 2017, at its original issue (directly or through an underwriter) from the corporation solely in exchange for cash,

(II) as of the time such stock was issued, such corporation was a qualified opportunity zone business (or, in the case of a new corporation, such corporation was being organized for purposes of being a qualified opportunity zone business), and

(III) during substantially all of the qualified opportunity fund's holding period for such stock, such corporation qualified as a qualified opportunity zone business.

(ii) Redemptions

A rule similar to the rule of section 1202(c)(3) shall apply for purposes of this paragraph.

(C) Qualified opportunity zone partnership interest

The term ''qualified opportunity zone partnership interest'' means any capital or profits interest in a domestic partnership if—

(i) such interest is acquired by the qualified opportunity fund after December 31, 2017, from the partnership solely in exchange for cash,

(ii) as of the time such interest was acquired, such partnership was a qualified opportunity zone business (or, in the case of a new partnership, such partnership was being organized for purposes of being a qualified opportunity zone business), and

(iii) during substantially all of the qualified opportunity fund's holding period for such interest, such partnership qualified as a qualified opportunity zone business.

(D) Qualified opportunity zone business property

(i) In general

The term ''qualified opportunity zone business property'' means tangible property used in a trade or business of the qualified opportunity fund if—

(I) such property was acquired by the qualified opportunity fund by purchase (as defined in section 179(d)(2)) after December 31, 2017,

(II) the original use of such property in the qualified opportunity zone commences with the qualified opportunity fund or the qualified opportunity fund substantially improves the property, and

(III) during substantially all of the qualified opportunity fund's holding period for such property, substantially all of the use of such property was in a qualified opportunity zone.

(ii) Substantial improvement

For purposes of subparagraph (A)(ii), property shall be treated as substantially improved by the qualified opportunity fund only if, during any 30-month period beginning after the date of acquisition of such property, additions to basis with respect to such property in the hands of the qualified opportunity fund exceed an amount equal to the adjusted basis of such property at the beginning of such 30-month period in the hands of the qualified opportunity fund.

(iii) Related party

For purposes of subparagraph (A)(i), the related person rule of section 179(d)(2) shall be applied pursuant to paragraph (8) of this subsection[1] in lieu of the application of such rule in section 179(d)(2)(A).

(3) Qualified opportunity zone business

(A) In general

The term ''qualified opportunity zone business'' means a trade or business—

(i) in which substantially all of the tangible property owned or leased by the taxpayer is qualified opportunity zone business property (determined by substituting ''qualified opportunity zone business'' for ''qualified opportunity fund'' each place it appears in paragraph (2)(D)),

(ii) which satisfies the requirements of paragraphs (2), (4), and (8) of section 1397C(b), and

(iii) which is not described in section 144(c)(6)(B).

(B) Special rule

For purposes of subparagraph (A), tangible property that ceases to be a qualified opportunity zone business property shall continue to be treated as a qualified opportunity zone business property for the lesser of—

(i) 5 years after the date on which such tangible property ceases to be so qualified, or

[1] So in original. This subsection does not contain a paragraph (8).

(ii) the date on which such tangible property is no longer held by the qualified opportunity zone business.

(e) Applicable rules

(1) Treatment of investments with mixed funds

In the case of any investment in a qualified opportunity fund only a portion of which consists of investments of gain to which an election under subsection (a) is in effect—

(A) such investment shall be treated as 2 separate investments, consisting of—

(i) one investment that only includes amounts to which the election under subsection (a) applies, and

(ii) a separate investment consisting of other amounts, and

(B) subsections (a), (b), and (c) shall only apply to the investment described in subparagraph (A)(i).

(2) Related persons

For purposes of this section, persons are related to each other if such persons are described in section 267(b) or 707(b)(1), determined by substituting ''20 percent'' for ''50 percent'' each place it occurs in such sections.

(3) Decedents

In the case of a decedent, amounts recognized under this section shall, if not properly includible in the gross income of the decedent, be includible in gross income as provided by section 691.

(4) Regulations

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

(A) rules for the certification of qualified opportunity funds for the purposes of this section,

(B) rules to ensure a qualified opportunity fund has a reasonable period of time to reinvest the return of capital from investments in qualified opportunity zone stock and qualified opportunity zone partnership interests, and to reinvest proceeds received from the sale or disposition of qualified opportunity zone property, and

(C) rules to prevent abuse.

(f) Failure of qualified opportunity fund to maintain investment standard

(1) In general

If a qualified opportunity fund fails to meet the 90-percent requirement of subsection (c)(1),[2] the qualified opportunity fund shall pay a penalty for each month it fails to meet the requirement in an amount equal to the product of—

(A) the excess of—

(i) the amount equal to 90 percent of its aggregate assets, over

(ii) the aggregate amount of qualified opportunity zone property held by the fund, multiplied by

(B) the underpayment rate established under section 6621(a)(2) for such month.

[2] So in original. Probably should be ''subsection (d)(1),''.

(2) Special rule for partnerships

In the case that the qualified opportunity fund is a partnership, the penalty imposed by paragraph (1) shall be taken into account proportionately as part of the distributive share of each partner of the partnership.

(3) Reasonable cause exception

No penalty shall be imposed under this subsection with respect to any failure if it is shown that such failure is due to reasonable cause.

(Added Pub. L. 115–97, title I, §13823(a), Dec. 22, 2017, 131 Stat. 2184.)

EFFECTIVE DATE

Section effective on Dec. 22, 2017, see section 13823(d) of Pub. L. 115–97, set out as an Effective Date of 2017 Amendment note under section 1016 of this title.

CHAPTER 2—TAX ON SELF-EMPLOYMENT INCOME

§ 1401. Rate of tax

(a) Old-age, survivors, and disability insurance

In addition to other taxes, there shall be imposed for each taxable year, on the self-employment income of every individual, a tax equal to 12.4 percent of the amount of the self-employment income for such taxable year.

(b) Hospital insurance

(1) In general

In addition to the tax imposed by the preceding subsection, there shall be imposed for each taxable year, on the self-employment income of every individual, a tax equal to 2.9 percent of the amount of the self-employment income for such taxable year.

(2) Additional tax

(A) In general

In addition to the tax imposed by paragraph (1) and the preceding subsection, there is hereby imposed on every taxpayer (other than a corporation, estate, or trust) for each taxable year beginning after December 31, 2012, a tax equal to 0.9 percent of the self-employment income for such taxable year which is in excess of—

(i) in the case of a joint return, $250,000,

(ii) in the case of a married taxpayer (as defined in section 7703) filing a separate return, ½ of the dollar amount determined under clause (i), and

(iii) in any other case, $200,000.

(B) Coordination with FICA

The amounts under clause (i), (ii), or (iii) (whichever is applicable) of subparagraph (A) shall be reduced (but not below zero) by the amount of wages taken into account in determining the tax imposed under section 3121(b)(2) with respect to the taxpayer.

(c) Relief from taxes in cases covered by certain international agreements

During any period in which there is in effect an agreement entered into pursuant to section

233 of the Social Security Act with any foreign country, the self-employment income of an individual shall be exempt from the taxes imposed by this section to the extent that such self-employment income is subject under such agreement exclusively to the laws applicable to the social security system of such foreign country.

(Aug. 16, 1954, ch. 736, 68A Stat. 353; Sept. 1, 1954, ch. 1206, title II, § 208(a), 68 Stat. 1093; Aug. 1, 1956, ch. 836, title II, § 202(a), 70 Stat. 845; Pub. L. 85–840, title IV, § 401(a), Aug. 28, 1958, 72 Stat. 1041; Pub. L. 87–64, title II, § 201(a), June 30, 1961, 75 Stat. 140; Pub. L. 89–97, title I, § 111(c)(4), title III, § 321(a), July 30, 1965, 79 Stat. 342, 394; Pub. L. 90–248, title I, § 109(a)(1), (b)(1), Jan. 2, 1968, 81 Stat. 835, 836; Pub. L. 92–336, title II, § 204 (a)(1), (b)(1), July 1, 1972, 86 Stat. 420, 421; Pub. L. 92–603, title I, § 135(a)(1), (b)(1), Oct. 30, 1972, 86 Stat. 1362, 1363; Pub. L. 93–233, § 6(b)(1), Dec. 31, 1973, 87 Stat. 955; Pub. L. 94–455, title XIX, § 1901(a)(154), Oct. 4, 1976, 90 Stat. 1789; Pub. L. 95–216, title I, § 101(a)(3), (b)(3), title III, § 317(b)(1), Dec. 20, 1977, 91 Stat. 1511, 1512, 1539; Pub. L. 98–21, title I, § 124(a), (b), Apr. 20, 1983, 97 Stat. 89; Pub. L. 101–508, title XI, § 11801(a)(36), (c)(16), Nov. 5, 1990, 104 Stat. 1388–521, 1388–527; Pub. L. 108–203, title IV, § 415, Mar. 2, 2004, 118 Stat. 530; Pub. L. 111–148, title IX, § 9015(b)(1), title X, § 10906(b), Mar. 23, 2010, 124 Stat. 871, 1020; Pub. L. 111–152, title I, § 1402(b)(1)(B), Mar. 30, 2010, 124 Stat. 1063; Pub. L. 113–295, div. A, title II, § 221(a)(89), (90), Dec. 19, 2014, 128 Stat. 4050.)

REFERENCES IN TEXT

Section 233 of the Social Security Act, referred to in subsec. (c), is classified to section 433 of Title 42, The Public Health and Welfare.

AMENDMENTS

2014—Subsec. (a). Pub. L. 113–295, § 221(a)(89), substituted ''12.4 percent of the amount of the self-employment income for such taxable year.'' for ''the following percent of the amount of the self-employment income for such taxable year:

"In the case of a taxable year		
Beginning after:	**And before:**	**Percent:**
December 31, 1983	January 1, 1988	11.40
December 31, 1987	January 1, 1990	12.12
December 31, 1989		12.40''.

Subsec. (b)(1). Pub. L. 113–295, § 221(a)(90), substituted ''2.9 percent of the amount of the self-employment income for such taxable year.'' for ''the following percent of the amount of the self-employment income for such taxable year:

"In the case of a taxable year		
Beginning after:	**And before:**	**Percent:**
December 31, 1983	January 1, 1985	2.60
December 31, 1984	January 1, 1986	2.70
December 31, 1985		2.90.''

2010—Subsec. (b). Pub. L. 111–148, § 9015(b)(1), designated existing provisions as par. (1), inserted heading, and added par. (2).

Subsec. (b)(2)(A). Pub. L. 111–152, § 1402(b)(1)(B)(i), added cl. (ii) and redesignated former cl. (ii) as (iii).

Pub. L. 111–148, § 10906(b), substituted ''0.9 percent'' for ''0.5 percent'' in introductory provisions.

Subsec. (b)(2)(B). Pub. L. 111–152, § 1402(b)(1)(B)(ii), substituted ''under clause (i), (ii), or (iii) (whichever is applicable)'' for ''under clauses (i) and (ii)''.

2004—Subsec. (c). Pub. L. 108–203 substituted ''exclusively to the laws applicable to'' for ''to taxes or contributions for similar purposes under''.

1990—Subsecs. (c), (d). Pub. L. 101–508 redesignated subsec. (d) as (c) and struck out former subsec. (c) which provided a credit against self-employment taxes imposed by this section.

1983—Subsec. (a). Pub. L. 98–21, § 124(a), amended subsec. (a) generally, substituting a table for former pars. (1) to (7) which had imposed a tax on the self-employment income of every individual (1) in the case of any taxable year beginning before Jan. 1, 1978, to be equal to 7.0 percent of the amount of the self-employment income for such taxable year; (2) in the case of any taxable year beginning after Dec. 31, 1977, and before Jan. 1, 1979, to be equal to 7.10 percent of the amount of the self-employment income for such taxable year; (3) in the case of any taxable year beginning after Dec. 31, 1978, and before Jan. 1, 1981, to be equal to 7.05 percent of the amount of the self-employment income for such taxable year; (4) in the case of any taxable year beginning after Dec. 31, 1980, and before Jan. 1, 1982, to be equal to 8.00 percent of the amount of the self-employment income for such taxable year; (5) in the case of any taxable year beginning after Dec. 31, 1981, and before Jan. 1, 1985, to be equal to 8.05 percent of the amount of the self-employment income for such taxable year; (6) in the case of any taxable year beginning after Dec. 31, 1984, and before Jan. 1, 1990, to be equal to 8.55 percent of the amount of the self-employment income for such taxable year; and (7) in the case of any taxable year beginning after Dec. 31, 1989, to be equal to 9.30 percent of the amount of the self-employment income for such taxable year.

Subsec. (b). Pub. L. 98–21, § 124(a), amended subsec. (b) generally, substituting a table for former pars. (1) to (6) which had imposed a tax on the self-employment income of every individual (1) in the case of any taxable year beginning after Dec. 31, 1973, and before Jan. 1, 1978, to be equal to 0.90 percent of the amount of the self-employment income for such taxable year; (2) in the case of any taxable year beginning after Dec. 31, 1977, and before Jan. 1, 1979, to be equal to 1.00 percent of the amount of the self-employment income for such taxable year; (3) in the case of any taxable year beginning after Dec. 31, 1978, and before Jan. 1, 1981, to be equal to 1.05 percent of the amount of the self-employment income for such taxable year; (4) in the case of any taxable year beginning after Dec. 31, 1980, and before Jan. 1, 1985, to be equal to 1.30 percent of the amount of the self-employment income for such taxable year; (5) in the case of any taxable year beginning after Dec. 31, 1984, and before Jan. 1, 1986, to be equal to 1.35 percent of the amount of the self-employment income for such taxable year; and (6) in the case of any taxable year beginning after Dec. 31, 1985, to be equal to 1.45 percent of the amount of the self-employment income for such taxable year.

Subsecs. (c), (d). Pub. L. 98–21, § 124(b), added subsec. (c) and redesignated former subsec. (c) as (d).

1977—Subsec. (a). Pub. L. 95–216, § 101(a)(3), substituted provisions calling for a graduated increase in the tax from 7.0 percent for taxable years beginning before Jan. 1, 1978, to 9.30 percent for taxable years beginning after Dec. 31, 1989, for provisions under which the tax had been set at 7.0 percent without any increase in the rate in future years.

Subsec. (b). Pub. L. 95–216, § 101(b)(3), substituted ''after December 31, 1977, and before January 1, 1979'' for ''after December 31, 1977, and before January 1, 1981'' and ''1.00 percent'' for ''1.10 percent'' in par. (2), substituted ''after December 31, 1978, and before January 1, 1981'' for ''after December 31, 1980, and before January 1, 1986'' and ''1.05 percent'' for ''1.35 percent'' in par. (3), substituted ''after December 31, 1980, and before January 1, 1985'' for ''after December 31, 1985'' and ''1.30 percent'' for ''1.50 percent'' in par. (4), and added pars. (5) and (6).

Subsec. (c). Pub. L. 95–216, § 317(b)(1), added subsec. (c).

1976—Subsec. (a). Pub. L. 94–455, § 1901(a)(154)(A), among other changes, substituted provisions relating to a uniform tax rate of 7 percent on self-employment

income of every individual for provisions relating to varied tax rate of 5.8 percent of the amount of self-employment income for any taxable year beginning after Dec. 31, 1967, and before Jan. 1, 1969, 6.3 percent for any taxable year beginning after Dec. 31, 1968, and before Jan. 1, 1971, 6.9 percent for any taxable year beginning after Dec. 31, 1970, and before Jan. 1, 1973, and 7.0 percent for any taxable year beginning after Dec. 31, 1972.

Subsec. (b). Pub. L. 94–455, §1901(a)(154)(B), redesignated pars. (3) to (6) as (1) to (4). Former pars. (1) and (2), which related to a 6 percent tax rate on self-employment income for any taxable year beginning after Dec. 31, 1967, and before Jan. 1, 1974, and 1 percent tax rate on self-employment income for any taxable year beginning after Dec. 31, 1972, and before Jan. 1, 1974, were struck out.

1973—Subsec. (b)(2). Pub. L. 93–233 substituted ''1974'' for ''1978''.

Subsec. (b)(3). Pub. L. 93–233 substituted ''1973'' and ''1978'' for ''1977'' and ''1981'' and decreased the rate of tax from 1.25 percent to 0.90 percent.

Subsec. (b)(4). Pub. L. 93–233 substituted ''1977'' and ''1981'' for ''1980'' and ''1986'' and decreased the rate of tax from 1.35 percent to 1.10 percent.

Subsec. (b)(5). Pub. L. 93–233 substituted ''beginning after December 31, 1980, and before January 1, 1986'' for ''beginning after December 31, 1985'' and decreased the rate of tax from 1.45 percent to 1.35 percent.

Subsec. (b)(6). Pub. L. 93–233 added par. (6).

1972—Subsec. (a)(3). Pub. L. 92–603, §135(a)(1)(A), substituted ''1973'' for ''1978''.

Subsec. (a)(4). Pub. L. 92–603, §135(a)(1)(B), substituted provisions that in the case of taxable years beginning after Dec. 31, 1972, the tax shall be equal to 7.0 percent of the amount of the self-employment income for such taxable year, for provisions that in the case of taxable years beginning after Dec. 31, 1977, and before Jan. 1, 2011, the tax shall be equal to 6.7 percent of the amount of the self-employment income for such taxable year.

Subsec. (a)(5). Pub. L. 92–603, §135(a)(1)(B), struck out par. (5) which provided that in the case of taxable years beginning after Dec. 31, 2010, the tax shall be equal to 7.0 percent of the amount of the self-employment income for the taxable year.

Subsec. (a)(3) to (5). Pub. L. 92–336, §204(a)(1), substituted ''January 1, 1978'' for ''January 1, 1973'' and struck out ''and'' after ''such taxable year'' in par. (3), extended from any taxable year beginning after December 31, 1972 to any taxable year beginning after December 31, 1977, and before January 1, 2011, and decreased from 7.0 percent to 6.7 percent the provisions relating to the tax on self-employment income in par. (4), and added par. (5).

Subsec. (b)(2). Pub. L. 92–603, §135(b)(1), increased the rate of tax from 0.9 percent to 1.0 percent.

Subsec. (b)(3). Pub. L. 92–603, §135(b)(1), substituted ''1981'' for ''1986'' and ''1.25'' for ''1.0''.

Subsec. (b)(4). Pub. L. 92–603, §135(b)(1), substituted ''1980'' for ''1985'', ''1986'' for ''1993'', and ''1.35'' for ''1.1''.

Subsec. (b)(5). Pub. L. 92–603, §135(b)(1), substituted ''1985'' for ''1992'' and ''1.45'' for ''1.2''.

Subsec. (b)(2) to (5). Pub. L. 92–336, §204(b)(1), substituted ''1978'' for ''1976'' and ''0.9'' for ''0.65'' in subsec. (b)(2), ''1977'' for ''1975'', ''1986'' for ''1980'' and ''1.0'' for ''0.70'' in par. (3), ''1985'' for ''1979'', ''1993'' for ''1987'' and ''1.1'' for ''0.80'' in par. (4), and ''1992'' for ''1986'' and ''1.2'' for ''0.90'' in par. (5).

1968—Subsecs. (a)(1) to (4). Pub. L. 90–248, §109(a)(1), substituted ''December 31, 1967'' and ''January 1, 1969'' for ''December 31, 1965'' and ''January 1, 1967'' in par. (1), ''December 31, 1968'', ''January 1, 1971'' and ''6.3'' for ''December 31, 1966'', ''January 1, 1969'', and ''5.9'' in par. (2), and ''December 31, 1970'' and ''6.9'' for ''December 31, 1968'' and ''6.6'' in par. (3), and reenacted par. (4) without change.

Subsec. (b)(1) to (5). Pub. L. 90–248, §109(b)(1), struck out par. (1) provision for rate of 0.35 percent of amount of self-employment income for any taxable year beginning after Dec. 31, 1965, and before Jan. 1, 1967, redesignated former pars. (2) to (6) as (1) to (5), substituted ''December 31, 1967'' for ''December 31, 1966'' in such par. (1) and increased the rate by 0.10 percent to 0.60, 0.65, 0.70, 0.80, and 0.90 in pars. (1) to (5), respectively.

1965—Pub. L. 89–97, §321(a), divided the total tax imposed under the entire section for each taxable year upon the self-employment income for such taxable year into two separate taxes by dividing the section into subsecs. (a) and (b), with subsec. (a) reflecting the tax for old-age, survivors, and disability insurance and subsec. (b) reflecting a separate tax for hospital insurance; reduced from 6.2 percent to 6.15 percent the rate of total tax imposed under the entire section for taxable years beginning after Dec. 31, 1965, and before Jan. 1, 1967 (resulting from a tax of 5.8 percent under subsec. (a) and 0.35 percent under subsec. (b)), increased from 6.2 percent to 6.4 percent the rate for taxable years beginning after Dec. 31, 1966, and before Jan. 1, 1968 (resulting from a tax of 5.9 percent under subsec. (a) and 0.50 percent under subsec. (b)), reduced from 6.9 percent to 6.4 percent the rate for taxable years beginning after Dec. 31, 1967, and before Jan. 1, 1969 (resulting from a tax of 5.9 percent under subsec. (a) and 0.50 percent under subsec. (b)), increased from 6.9 percent to 7.1 percent the rate for taxable years beginning after Dec. 31, 1968, and before Jan. 1, 1973 (resulting from a tax of 6.6 percent under subsec. (a) and 0.50 percent under subsec. (b)), from 6.9 percent to 7.55 percent the rate for taxable years beginning after Dec. 31, 1972, and before Jan. 1, 1976 (resulting from a tax of 7.0 percent under subsec. (a) and 0.55 percent under subsec. (b)), from 6.9 percent to 7.60 percent the rate for taxable years beginning after Dec. 31, 1975, and before Jan. 1, 1980 (resulting from a tax of 7.0 percent under subsec. (a) and 0.60 percent under subsec. (b)), from 6.9 percent to 7.70 percent the rate for taxable years beginning after Dec. 31, 1979, and before Jan. 1, 1987 (resulting from a tax of 7.0 percent under subsec. (a) and 0.70 percent under subsec. (b)), and from 6.9 percent to 7.80 percent the rate for taxable years beginning after Dec. 31, 1986 (resulting from a tax of 7.0 percent under subsec. (a) and 0.80 percent under subsec. (b)), and provided that the exclusion of employee representatives by section 1402(c)(3) should not apply for purposes of the tax imposed by subsec. (b).

Subsec. (b). Pub. L. 89–97, §111(c)(4), struck out provision that for purposes of the tax imposed by this subsection, the exclusion of employee representatives by section 1402(c)(3) shall not apply.

1961—Pub. L. 87–64 increased the rate of tax for taxable years beginning after Dec. 31, 1961, and before Jan. 1, 1963, from 4½ to 4.7 percent, taxable years beginning after Dec. 31, 1962, and before Jan. 1, 1966, from 5¼ to 5.4 percent, taxable years beginning after Dec. 31, 1965, and before Jan. 1, 1968, from 6 to 6.2 percent, taxable year beginning after Dec. 31, 1967, and before Jan. 1, 1969, from 6 to 6.9 percent, and taxable years beginning after Dec. 31, 1968, from 6¾ to 6.9 percent.

1958—Pub. L. 85–840 increased the rate of tax by substituting provisions imposing a tax of 3¾ percent for taxable years beginning after Dec. 31, 1958, 4½ percent for years beginning after Dec. 31, 1959, 5¼ percent for years beginning after Dec. 31, 1962, 6 percent for years beginning after Dec. 31, 1965, and 6¾ percent for years beginning after Dec. 31, 1968, for provisions which imposed a tax of 3⅜ percent for taxable years beginning after Dec. 31, 1956, 4⅛ percent for years beginning after Dec. 31, 1959, 4⅞ percent for years beginning after Dec. 31, 1964, 5⅝ percent for years beginning after Dec. 31, 1969, and 6⅜ percent for years beginning after Dec. 31, 1974.

1956—Act Aug. 1, 1956, increased the rate of tax for all taxable years beginning after Dec. 31, 1956, by three-eighths percent.

1954—Act Sept. 1, 1954, increased the 4⅞ percent rate of tax on self-employment income for taxable years beginning after Dec. 31, 1969, to 5¼ percent for taxable years beginning after Dec. 31, 1969, and before Jan. 1, 1975, and 6 percent for taxable years beginning after Dec. 31, 1974.

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. 111–152, title I, § 1402(b)(3), Mar. 30, 2010, 124 Stat. 1063, provided that: ''The amendments made by this subsection [amending this section and sections 3101 and 6654 of this title] shall apply with respect to remuneration received, and taxable years beginning after, December 31, 2012.''

Amendment by section 9015(b)(1) of Pub. L. 111–148 applicable with respect to remuneration received, and taxable years beginning, after Dec. 31, 2012, see section 9015(c) of Pub. L. 111–148, set out as a note under section 164 of this title.

Pub. L. 111–148, title X, § 10906(c), Mar. 23, 2010, 124 Stat. 1020, provided that: ''The amendments made by this section [amending this section and section 3101 of this title] shall apply with respect to remuneration received, and taxable years beginning, after December 31, 2012.''

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 98–21, title I, § 124(d), Apr. 20, 1983, 97 Stat. 91, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section, sections 32, 164, 275, 401, and 1402 of this title, and section 411 of Title 42, The Public Health and Welfare] shall apply to taxable years beginning after December 31, 1983.

''(2) SUBSECTION (c).—The amendments made by subsection (c) [amending sections 32, 164, 275, 401, and 1402 of this title and section 411 of Title 42] shall apply to taxable years beginning after December 31, 1989.''

EFFECTIVE DATE OF 1977 AMENDMENT

Pub. L. 95–216, title I, § 104, Dec. 20, 1977, 91 Stat. 1514, provided that: ''The amendments made by this title [amending this section, sections 3101 and 3111 of this title, and sections 401, 415, and 430 of Title 42, The Public Health and Welfare] shall apply with respect to remuneration paid or received, and taxable years beginning, after 1977.''

EFFECTIVE DATE OF 1976 AMENDMENT

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

EFFECTIVE DATE OF 1973 AMENDMENT

Pub. L. 93–233, § 6(c), Dec. 31, 1973, 87 Stat. 955, provided that: ''The amendment made by subsection (b)(1) [amending this section] shall apply only with respect to taxable years beginning after December 31, 1973. The remaining amendments made by this section [amending sections 3101 and 3111 of this title] shall apply only with respect to remuneration paid after December 31, 1973.''

EFFECTIVE DATE OF 1972 AMENDMENT

Pub. L. 92–603, title I, § 135(c), Oct. 30, 1972, 86 Stat. 1364, provided that: ''The amendments made by subsections (a)(1) and (b)(1) [amending this section] shall apply only with respect to taxable years beginning after December 31, 1972. The remaining amendments made by this section [amending sections 3101 and 3111 of this title] shall apply only with respect to remuneration paid after December 31, 1972.''

Pub. L. 92–336, title II, § 204(c), Oct. 30, 1972, 86 Stat. 1377, provided that: ''The amendments made by subsections (a)(1) and (b)(1) [amending this section] shall apply only with respect to taxable years beginning after December 31, 1972. The remaining amendments made by this section [amending sections 3101 and 3111 of this title] shall apply only with respect to remuneration paid after December 31, 1972.''

EFFECTIVE DATE OF 1968 AMENDMENT

Pub. L. 90–248, title I, § 109(c), Jan. 2, 1968, 81 Stat. 837, provided that: ''The amendments made by subsections (a)(1) and (b)(1) [amending this section] shall apply only with respect to taxable years beginning after December 31, 1967. The remaining amendments made by this section [amending sections 3101 and 3111 of this title] shall apply only with respect to remuneration paid after December 31, 1967.''

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 111(c)(4) of Pub. L. 89–97 applicable to calendar year 1966 or to any subsequent calendar year but only if by October 1 immediately preceding such calendar year the Railroad Retirement Tax Act [section 3201 et seq. of this title] provides for a maximum amount of monthly compensation taxable under such Act during all months of such calendar year equal to one-twelfth of maximum wages which Federal Insurance Contributions Act [section 3101 et seq. of this title] provides may be counted for such calendar year, see section 111(e) of Pub. L. 89–97, set out as an Effective Date note under section 1395i–1 of Title 42, The Public Health and Welfare.

Pub. L. 89–97, title III, § 321(d), July 30, 1965, 79 Stat. 396, provided that: ''The amendments made by subsection (a) [amending this section] shall apply only with respect to taxable years beginning after December 31, 1965. The amendments made by subsections (b) and (c) [amending sections 3101 and 3111 of this title] shall apply only with respect to remuneration paid after December 31, 1965.''

EFFECTIVE DATE OF 1961 AMENDMENT

Pub. L. 87–64, title II, § 201(d), June 30, 1961, 75 Stat. 141, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1961. The amendments made by subsections (b) and (c) [amending sections 3101 and 3111 of this title] shall apply with respect to remuneration paid after December 31, 1961.''

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–840, title IV, § 401(d), Aug. 28, 1958, 72 Stat. 1042, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1958. The amendments made by subsections (b) and (c) [amending sections 3101 and 3111 of this title] shall apply with respect to remuneration paid after December 31, 1958.''

EFFECTIVE DATE OF 1956 AMENDMENT

Act Aug. 1, 1956, ch. 836, title II, § 202(d), 70 Stat. 846, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1956. The amendments made by subsections (b) and (c) [amending sections 3101 and 3111 of this title] shall apply with respect to remuneration paid after December 31, 1956.''

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.

TEMPORARY EMPLOYEE PAYROLL TAX CUT

Pub. L. 111–312, title VI, § 601, Dec. 17, 2010, 124 Stat. 3309, as amended by Pub. L. 112–78, title I, § 101(a)–(d), Dec. 23, 2011, 125 Stat. 1281, 1282; Pub. L. 112–96, title I, § 1001(a), (b), Feb. 22, 2012, 126 Stat. 158, provided that:

''(a) IN GENERAL.—Notwithstanding any other provision of law—

''(1) with respect to any taxable year which begins in the payroll tax holiday period, the rate of tax under section 1401(a) of the Internal Revenue Code of 1986 shall be 10.40 percent, and

''(2) with respect to remuneration received during the payroll tax holiday period, the rate of tax under 3101(a) of such Code shall be 4.2 percent (including for purposes of determining the applicable percentage under sections 3201(a) and 3211(a)(1) [probably means 3211(a)] of such Code).

''(b) COORDINATION WITH DEDUCTIONS FOR EMPLOYMENT TAXES.—

''(1) DEDUCTION IN COMPUTING NET EARNINGS FROM SELF-EMPLOYMENT.—For purposes of applying section 1402(a)(12) of the Internal Revenue Code of 1986, the rate of tax imposed by subsection 1401(a) of such Code shall be determined without regard to the reduction in such rate under this section.

''(2) INDIVIDUAL DEDUCTION.—In the case of the taxes imposed by section 1401 of such Code for any taxable year which begins in the payroll tax holiday period, the deduction under section 164(f) of such Code with respect to such taxes shall be equal to the sum of—

''(A) 59.6 percent of the portion of such taxes attributable to the tax imposed by section 1401(a) of such Code (determined after the application of this section), plus

''(B) one-half of the portion of such taxes attributable to the tax imposed by section 1401(b) of such Code.

''(c) PAYROLL TAX HOLIDAY PERIOD.—The term 'payroll tax holiday period' means calendar years 2011 and 2012.

''(d) EMPLOYER NOTIFICATION.—The Secretary of the Treasury shall notify employers of the payroll tax holiday period in any manner the Secretary deems appropriate.

''(e) TRANSFERS OF FUNDS.—

''(1) TRANSFERS TO FEDERAL OLD-AGE AND SURVIVORS INSURANCE TRUST FUND.—There are hereby appropriated to the Federal Old-Age and Survivors Trust Fund and the Federal Disability Insurance Trust Fund established under section 201 of the Social Security Act (42 U.S.C. 401) amounts equal to the reduction in revenues to the Treasury by reason of the application of subsection (a). Amounts appropriated by the preceding sentence shall be transferred from the general fund at such times and in such manner as to replicate to the extent possible the transfers which would have occurred to such Trust Fund had such amendments not been enacted.

''(2) TRANSFERS TO SOCIAL SECURITY EQUIVALENT BENEFIT ACCOUNT.—There are hereby appropriated to the Social Security Equivalent Benefit Account established under section 15A(a) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n–1(a)) amounts equal to the reduction in revenues to the Treasury by reason of the application of subsection (a)(2). Amounts appropriated by the preceding sentence shall be transferred from the general fund at such times and in such manner as to replicate to the extent possible the transfers which would have occurred to such Account had such amendments not been enacted.

''(3) COORDINATION WITH OTHER FEDERAL LAWS.—For purposes of applying any provision of Federal law other than the provisions of the Internal Revenue Code of 1986, the rate of tax in effect under section 3101(a) of such Code shall be determined without regard to the reduction in such rate under this section.''

[Pub. L. 112–96, title I, §1001(c), Feb. 22, 2012, 126 Stat. 159, provided that: ''The amendments made by this section [amending section 601 of Pub. L. 111–312, set out above] shall apply to remuneration received, and taxable years beginning, after December 31, 2011.'']

[Pub. L. 112–78, title I, §101(e), Dec. 23, 2011, 125 Stat. 1282, provided that:

[''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending section 601 of Pub. L. 111–312, set out above] shall apply to remuneration received, and taxable years beginning, after December 31, 2011.

[''(2) TECHNICAL AMENDMENTS.—The amendments made by subsection (d) [amending section 601(b)(2) of Pub. L. 111–312, set out above] shall take effect as if included in the enactment of section 601 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 [Pub. L. 111–312].'']

LAND DIVERTED UNDER 1983 PAYMENT-IN-KIND PROGRAM

Land diverted from production of agricultural commodities under a 1983 payment-in-kind program to be treated, for purposes of this chapter, as used during the 1983 crop year by qualified taxpayers in the active conduct of the trade or business of farming, with qualified taxpayers who materially participate in the diversion and devotion to conservation uses under a 1983 payment-in-kind program to be treated as materially participating in the operation of such land during the 1983 crop year, see section 3 of Pub. L. 98–4, set out as a note under section 61 of this title.

DEDUCTION BY OR CREDIT AGAINST INDIVIDUAL INCOME TAX FOR TAXES PAID INTO FOREIGN SOCIAL SECURITY SYSTEM PURSUANT TO INTERNATIONAL AGREEMENT

Pub. L. 95–216, title III, §317(b)(4), Dec. 20, 1977, 91 Stat. 1540, provided that: ''Notwithstanding any other provision of law, taxes paid by any individual to any foreign country with respect to any period of employment or self-employment which is covered under the social security system of such foreign country in accordance with the terms of an agreement entered into pursuant to section 233 of the Social Security Act [section 433 of Title 42, The Public Health and Welfare] shall not, under the income tax laws of the United States, be deductible by, or creditable against the income tax of, any such individual.''

§ 1402. Definitions

(a) Net earnings from self-employment

The term ''net earnings from self-employment'' means the gross income derived by an individual from any trade or business carried on by such individual, less the deductions allowed by this subtitle which are attributable to such trade or business, plus his distributive share (whether or not distributed) of income or loss described in section 702(a)(8) from any trade or business carried on by a partnership of which he is a member; except that in computing such gross income and deductions and such distributive share of partnership ordinary income or loss—

(1) there shall be excluded rentals from real estate and from personal property leased with the real estate (including such rentals paid in crop shares, and including payments under section 1233(2) of the Food Security Act of 1985 (16 U.S.C. 3833(2))[1] to individuals receiving benefits under section 202 or 223 of the Social Security Act) together with the deductions attributable thereto, unless such rentals are received in the course of a trade or business as a real estate dealer; except that the preceding provisions of this paragraph shall not apply to any income derived by the owner or tenant of land if (A) such income is derived under an arrangement, between the owner or tenant and another individual, which provides that such other individual shall produce agricultural or horticultural commodities (including live-

[1] See References in Text note below.

stock, bees, poultry, and fur-bearing animals and wildlife) on such land, and that there shall be material participation by the owner or tenant (as determined without regard to any activities of an agent of such owner or tenant) in the production or the management of the production of such agricultural or horticultural commodities, and (B) there is material participation by the owner or tenant (as determined without regard to any activities of an agent of such owner or tenant) with respect to any such agricultural or horticultural commodity;

(2) there shall be excluded dividends on any share of stock, and interest on any bond, debenture, note, or certificate, or other evidence of indebtedness, issued with interest coupons or in registered form by any corporation (including one issued by a government or political subdivision thereof), unless such dividends and interest are received in the course of a trade or business as a dealer in stocks or securities;

(3) there shall be excluded any gain or loss—

(A) which is considered as gain or loss from the sale or exchange of a capital asset,

(B) from the cutting of timber, or the disposal of timber, coal, or iron ore, if section 631 applies to such gain or loss, or

(C) from the sale, exchange, involuntary conversion, or other disposition of property if such property is neither—

(i) 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, nor

(ii) property held primarily for sale to customers in the ordinary course of the trade or business;

(4) the deduction for net operating losses provided in section 172 shall not be allowed;

(5) if—

(A) any of the income derived from a trade or business (other than a trade or business carried on by a partnership) is community income under community property laws applicable to such income, the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the spouse carrying on such trade or business or, if such trade or business is jointly operated, treated as the gross income and deductions of each spouse on the basis of their respective distributive share of the gross income and deductions; and

(B) any portion of a partner's distributive share of the ordinary income or loss from a trade or business carried on by a partnership is community income or loss under the community property laws applicable to such share, all of such distributive share shall be included in computing the net earnings from self-employment of such partner, and no part of such share shall be taken into account in computing the net earnings from self-employment of the spouse of such partner;

(6) a resident of Puerto Rico shall compute his net earnings from self-employment in the same manner as a citizen of the United States but without regard to section 933;

(7) the deduction for personal exemptions provided in section 151 shall not be allowed;

(8) an individual who is a duly ordained, commissioned, or licensed minister of a church or a member of a religious order shall compute his net earnings from self-employment derived from the performance of service described in subsection (c)(4) without regard to section 107 (relating to rental value of parsonages), section 119 (relating to meals and lodging furnished for the convenience of the employer), and section 911 (relating to citizens or residents of the United States living abroad), but shall not include in such net earnings from self-employment the rental value of any parsonage or any parsonage allowance (whether or not excludable under section 107) provided after the individual retires, or any other retirement benefit received by such individual from a church plan (as defined in section 414(e)) after the individual retires;

(9) the exclusion from gross income provided by section 931 shall not apply;

(10) there shall be excluded amounts received by a partner pursuant to a written plan of the partnership, which meets such requirements as are prescribed by the Secretary, and which provides for payments on account of retirement, on a periodic basis, to partners generally or to a class or classes of partners, such payments to continue at least until such partner's death, if—

(A) such partner rendered no services with respect to any trade or business carried on by such partnership (or its successors) during the taxable year of such partnership (or its successors), ending within or with his taxable year, in which such amounts were received, and

(B) no obligation exists (as of the close of the partnership's taxable year referred to in subparagraph (A)) from the other partners to such partner except with respect to retirement payments under such plan, and

(C) such partner's share, if any, of the capital of the partnership has been paid to him in full before the close of the partnership's taxable year referred to in subparagraph (A);

(11) the exclusion from gross income provided by section 911(a)(1) shall not apply;

(12) in lieu of the deduction provided by section 164(f) (relating to deduction for one-half of self-employment taxes), there shall be allowed a deduction equal to the product of—

(A) the taxpayer's net earnings from self-employment for the taxable year (determined without regard to this paragraph), and

(B) one-half of the sum of the rates imposed by subsections (a) and (b) of section 1401 for such year (determined without regard to the rate imposed under paragraph (2) of section 1401(b));

(13) there shall be excluded the distributive share of any item of income or loss of a limited partner, as such, other than guaranteed payments described in section 707(c) to that partner for services actually rendered to or on behalf of the partnership to the extent that those payments are established to be in the nature of remuneration for those services;

(14) in the case of church employee income, the special rules of subsection (j)(1) shall apply;

(15) in the case of a member of an Indian tribe, the special rules of section 7873 (relating to income derived by Indians from exercise of fishing rights) shall apply;

(16) the deduction provided by section 199[1] shall not be allowed; and

(17) notwithstanding the preceding provisions of this subsection, each spouse's share of income or loss from a qualified joint venture shall be taken into account as provided in section 761(f) in determining net earnings from self-employment of such spouse.

If the taxable year of a partner is different from that of the partnership, the distributive share which he is required to include in computing his net earnings from self-employment shall be based on the ordinary income or loss of the partnership for any taxable year of the partnership ending within or with his taxable year. In the case of any trade or business which is carried on by an individual or by a partnership and in which, if such trade or business were carried on exclusively by employees, the major portion of the services would constitute agricultural labor as defined in section 3121(g)—

(i) in the case of an individual, if the gross income derived by him from such trade or business is not more than the upper limit, the net earnings from self-employment derived by him from such trade or business may, at his option, be deemed to be 66⅔ percent of such gross income; or

(ii) in the case of an individual, if the gross income derived by him from such trade or business is more than the upper limit and the net earnings from self-employment derived by him from such trade or business (computed under this subsection without regard to this sentence) are less than the lower limit, the net earnings from self-employment derived by him from such trade or business may, at his option, be deemed to be the lower limit; and

(iii) in the case of a member of a partnership, if his distributive share of the gross income of the partnership derived from such trade or business (after such gross income has been reduced by the sum of all payments to which section 707(c) applies) is not more than the upper limit, his distributive share of income described in section 702(a)(8) derived from such trade or business may, at his option, be deemed to be an amount equal to 66⅔ percent of his distributive share of such gross income (after such gross income has been so reduced); or

(iv) in the case of a member of a partnership, if his distributive share of the gross income of the partnership derived from such trade or business (after such gross income has been reduced by the sum of all payments to which section 707(c) applies) is more than the upper limit and his distributive share (whether or not distributed) of income described in section 702(a)(8) derived from such trade or business (computed under this subsection without regard to this sentence) is less than the lower limit, his distributive share of income described in section 702(a)(8) derived from such trade or business may, at his option, be deemed to be the lower limit.

For purposes of the preceding sentence, gross income means—

(v) in the case of any such trade or business in which the income is computed under a cash receipts and disbursements method, the gross receipts from such trade or business reduced by the cost or other basis of property which was purchased and sold in carrying on such trade or business, adjusted (after such reduction) in accordance with the provisions of paragraphs (1) through (7) and paragraph (9) of this subsection; and

(vi) in the case of any such trade or business in which the income is computed under an accrual method, the gross income from such trade or business, adjusted in accordance with the provisions of paragraphs (1) through (7) and paragraph (9) of this subsection;

and, for purposes of such sentence, if an individual (including a member of a partnership) derives gross income from more than one such trade or business, such gross income (including his distributive share of the gross income of any partnership derived from any such trade or business) shall be deemed to have been derived from one trade or business.

The preceding sentence and clauses (i) through (iv) of the second preceding sentence shall also apply in the case of any trade or business (other than a trade or business specified in such second preceding sentence) which is carried on by an individual who is self-employed on a regular basis as defined in subsection (h), or by a partnership of which an individual is a member on a regular basis as defined in subsection (h), but only if such individual's net earnings from self-employment as determined without regard to this sentence in the taxable year are less than the lower limit and less than 66⅔ percent of the sum (in such taxable year) of such individual's gross income derived from all trades or businesses carried on by him and his distributive share of the income or loss from all trades or businesses carried on by all the partnerships of which he is a member; except that this sentence shall not apply to more than 5 taxable years in the case of any individual, and in no case in which an individual elects to determine the amount of his net earnings from self-employment for a taxable year under the provisions of the two preceding sentences with respect to a trade or business to which the second preceding sentence applies and with respect to a trade or business to which this sentence applies shall such net earnings for such year exceed the lower limit.

(b) Self-employment income

The term ''self-employment income'' means the net earnings from self-employment derived by an individual (other than a nonresident alien individual, except as provided by an agreement under section 233 of the Social Security Act) during any taxable year; except that such term shall not include—

(1) in the case of the tax imposed by section 1401(a), that part of the net earnings from self-employment which is in excess of (i) an amount equal to the contribution and benefit

base (as determined under section 230 of the Social Security Act) which is effective for the calendar year in which such taxable year begins, minus (ii) the amount of the wages paid to such individual during such taxable years; or

(2) the net earnings from self-employment, if such net earnings for the taxable year are less than $400.

For purposes of paragraph (1), the term ''wages'' (A) includes such remuneration paid to an employee for services included under an agreement entered into pursuant to the provisions of section 3121(*l*) (relating to coverage of citizens of the United States who are employees of foreign affiliates of American employers), as would be wages under section 3121(a) if such services constituted employment under section 3121(b), and (B) includes compensation which is subject to the tax imposed by section 3201 or 3211,.[2] An individual who is not a citizen of the United States but who is a resident of the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa shall not, for purposes of this chapter be considered to be a nonresident alien individual. In the case of church employee income, the special rules of subsection (j)(2) shall apply for purposes of paragraph (2).

(c) Trade or business

The term ''trade or business'', when used with reference to self-employment income or net earnings from self-employment, shall have the same meaning as when used in section 162 (relating to trade or business expenses), except that such term shall not include—

(1) the performance of the functions of a public office, other than the functions of a public office of a State or a political subdivision thereof with respect to fees received in any period in which the functions are performed in a position compensated solely on a fee basis and in which such functions are not covered under an agreement entered into by such State and the Commissioner of Social Security pursuant to section 218 of the Social Security Act;

(2) the performance of service by an individual as an employee, other than—

(A) service described in section 3121(b)(14)(B) performed by an individual who has attained the age of 18,

(B) service described in section 3121(b)(16),

(C) service described in section 3121(b)(11), (12), or (15) performed in the United States (as defined in section 3121(e)(2)) by a citizen of the United States, except service which constitutes ''employment'' under section 3121(y),

(D) service described in paragraph (4) of this subsection,

(E) service performed by an individual as an employee of a State or a political subdivision thereof in a position compensated solely on a fee basis with respect to fees received in any period in which such service is not covered under an agreement entered into by such State and the Commissioner of Social Security pursuant to section 218 of the Social Security Act,

(F) service described in section 3121(b) (20), and

(G) service described in section 3121(b)(8)(B);

(3) the performance of service by an individual as an employee or employee representative as defined in section 3231;

(4) the performance of service by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(5) the performance of service by an individual in the exercise of his profession as a Christian Science practitioner; or

(6) the performance of service by an individual during the period for which an exemption under subsection (g) is effective with respect to him.

The provisions of paragraph (4) or (5) shall not apply to service (other than service performed by a member of a religious order who has taken a vow of poverty as a member of such order) performed by an individual unless an exemption under subsection (e) is effective with respect to him.

(d) Employee and wages

The term ''employee'' and the term ''wages'' shall have the same meaning as when used in chapter 21 (sec. 3101 and following, relating to Federal Insurance Contributions Act).

(e) Ministers, members of religious orders, and Christian Science practitioners

(1) Exemption

Subject to paragraph (2), any individual who is (A) a duly ordained, commissioned, or licensed minister of a church or a member of a religious order (other than a member of a religious order who has taken a vow of poverty as a member of such order) or (B) a Christian Science practitioner, upon filing an application (in such form and manner, and with such official, as may be prescribed by regulations made under this chapter) together with a statement that either he is conscientiously opposed to, or because of religious principles he is opposed to, the acceptance (with respect to services performed by him as such minister, member, or practitioner) of any public insurance which makes payments in the event of death, disability, old age, or retirement or makes payments toward the cost of, or provides services for, medical care (including the benefits of any insurance system established by the Social Security Act) and, in the case of an individual described in subparagraph (A), that he has informed the ordaining, commissioning, or licensing body of the church or order that he is opposed to such insurance, shall receive an exemption from the tax imposed by this chapter with respect to services performed by him as such minister, member, or practitioner. Notwithstanding the preceding sentence, an exemption may not be granted to an individual under this subsection if he had filed an effective waiver certificate under this section as it was in effect before its amendment in 1967.

[2] So in original.

(2) Verification of application

The Secretary may approve an application for an exemption filed pursuant to paragraph (1) only if the Secretary has verified that the individual applying for the exemption is aware of the grounds on which the individual may receive an exemption pursuant to this subsection and that the individual seeks exemption on such grounds. The Secretary (or the Commissioner of Social Security under an agreement with the Secretary) shall make such verification by such means as prescribed in regulations.

(3) Time for filing application

Any individual who desires to file an application pursuant to paragraph (1) must file such application on or before the due date of the return (including any extension thereof) for the second taxable year for which he has net earnings from self-employment (computed without regard to subsections (c)(4) and (c)(5)) of $400 or more, any part of which was derived from the performance of service described in subsection (c)(4) or (c)(5).

(4) Effective date of exemption

An exemption received by an individual pursuant to this subsection shall be effective for the first taxable year for which he has net earnings from self-employment (computed without regard to subsections (c)(4) and (c)(5)) of $400 or more, any part of which was derived from the performance of service described in subsection (c)(4) or (c)(5), and for all succeeding taxable years. An exemption received pursuant to this subsection shall be irrevocable.

(f) Partner's taxable year ending as the result of death

In computing a partner's net earnings from self-employment for his taxable year which ends as a result of his death (but only if such taxable year ends within, and not with, the taxable year of the partnership), there shall be included so much of the deceased partner's distributive share of the partnership's ordinary income or loss for the partnership taxable year as is not attributable to an interest in the partnership during any period beginning on or after the first day of the first calendar month following the month in which such partner died. For purposes of this subsection—

(1) in determining the portion of the distributive share which is attributable to any period specified in the preceding sentence, the ordinary income or loss of the partnership shall be treated as having been realized or sustained ratably over the partnership taxable year; and

(2) the term ''deceased partner's distributive share'' includes the share of his estate or of any other person succeeding, by reason of his death, to rights with respect to his partnership interest.

(g) Members of certain religious faiths

(1) Exemption

Any individual may file an application (in such form and manner, and with such official, as may be prescribed by regulations under this chapter) for an exemption from the tax imposed by this chapter if he is a member of a recognized religious sect or division thereof and is an adherent of established tenets or teachings of such sect or division by reason of which he is conscientiously opposed to acceptance of the benefits of any private or public insurance which makes payments in the event of death, disability, old-age, or retirement or makes payments toward the cost of, or provides services for, medical care (including the benefits of any insurance system established by the Social Security Act). Such exemption may be granted only if the application contains or is accompanied by—

(A) such evidence of such individual's membership in, and adherence to the tenets or teachings of, the sect or division thereof as the Secretary may require for purposes of determining such individual's compliance with the preceding sentence, and

(B) his waiver of all benefits and other payments under titles II and XVIII of the Social Security Act on the basis of his wages and self-employment income as well as all such benefits and other payments to him on the basis of the wages and self-employment income of any other person,

and only if the Commissioner of Social Security finds that—

(C) such sect or division thereof has the established tenets or teachings referred to in the preceding sentence,

(D) it is the practice, and has been for a period of time which he deems to be substantial, for members of such sect or division thereof to make provision for their dependent members which in his judgment is reasonable in view of their general level of living, and

(E) such sect or division thereof has been in existence at all times since December 31, 1950.

An exemption may not be granted to any individual if any benefit or other payment referred to in subparagraph (B) became payable (or, but for section 203 or 222(b) of the Social Security Act, would have become payable) at or before the time of the filing of such waiver.

(2) Period for which exemption effective

An exemption granted to any individual pursuant to this subsection shall apply with respect to all taxable years beginning after December 31, 1950, except that such exemption shall not apply for any taxable year—

(A) beginning (i) before the taxable year in which such individual first met the requirements of the first sentence of paragraph (1), or (ii) before the time as of which the Commissioner of Social Security finds that the sect or division thereof of which such individual is a member met the requirements of subparagraphs (C) and (D), or

(B) ending (i) after the time such individual ceases to meet the requirements of the first sentence of paragraph (1), or (ii) after the time as of which the Commissioner of Social Security finds that the sect or division thereof of which he is a member ceases to meet the requirements of subparagraph (C) or (D).

(3) Subsection to apply to certain church employees

This subsection shall apply with respect to services which are described in subparagraph (B) of section 3121(b)(8) (and are not described in subparagraph (A) of such section).

(h) Regular basis

An individual shall be deemed to be self-employed on a regular basis in a taxable year, or to be a member of a partnership on a regular basis in such year, if he had net earnings from self-employment, as defined in the first sentence of subsection (a), of not less than $400 in at least two of the three consecutive taxable years immediately preceding such taxable year from trades or businesses carried on by such individual or such partnership.

(i) Special rules for options and commodities dealers

(1) In general

Notwithstanding subsection (a)(3)(A), in determining the net earnings from self-employment of any options dealer or commodities dealer, there shall not be excluded any gain or loss (in the normal course of the taxpayer's activity of dealing in or trading section 1256 contracts) from section 1256 contracts or property related to such contracts.

(2) Definitions

For purposes of this subsection—

(A) Options dealer

The term ''options dealer'' has the meaning given such term by section 1256(g)(8).

(B) Commodities dealer

The term ''commodities dealer'' means a person who is actively engaged in trading section 1256 contracts and is registered with a domestic board of trade which is designated as a contract market by the Commodities Futures Trading Commission.

(C) Section 1256 contracts

The term ''section 1256 contract'' has the meaning given to such term by section 1256(b).

(j) Special rules for certain church employee income

(1) Computation of net earnings

In applying subsection (a)—

(A) church employee income shall not be reduced by any deduction;

(B) church employee income and deductions attributable to such income shall not be taken into account in determining the amount of other net earnings from self-employment.

(2) Computation of self-employment income

(A) Separate application of subsection (b)(2)

Paragraph (2) of subsection (b) shall be applied separately—

(i) to church employee income, and

(ii) to other net earnings from self-employment.

(B) $100 floor

In applying paragraph (2) of subsection (b) to church employee income, ''$100'' shall be substituted for ''$400''.

(3) Coordination with subsection (a)(12)

Paragraph (1) shall not apply to any amount allowable as a deduction under subsection (a)(12), and paragraph (1) shall be applied before determining the amount so allowable.

(4) Church employee income defined

For purposes of this section, the term ''church employee income'' means gross income for services which are described in section 3121(b)(8)(B) (and are not described in section 3121(b)(8)(A)).

(k) Codification of treatment of certain termination payments received by former insurance salesmen

Nothing in subsection (a) shall be construed as including in the net earnings from self-employment of an individual any amount received during the taxable year from an insurance company on account of services performed by such individual as an insurance salesman for such company if—

(1) such amount is received after termination of such individual's agreement to perform such services for such company,

(2) such individual performs no services for such company after such termination and before the close of such taxable year,

(3) such individual enters into a covenant not to compete against such company which applies to at least the 1-year period beginning on the date of such termination, and

(4) the amount of such payment—

(A) depends primarily on policies sold by or credited to the account of such individual during the last year of such agreement or the extent to which such policies remain in force for some period after such termination, or both, and

(B) does not depend to any extent on length of service or overall earnings from services performed for such company (without regard to whether eligibility for payment depends on length of service).

***(l)* Upper and lower limits**

For purposes of subsection (a)—

(1) Lower limit

The lower limit for any taxable year is the sum of the amounts required under section 213(d) of the Social Security Act for a quarter of coverage in effect with respect to each calendar quarter ending with or within such taxable year.

(2) Upper limit

The upper limit for any taxable year is the amount equal to 150 percent of the lower limit for such taxable year.

(Aug. 16, 1954, ch. 736, 68A Stat. 353; Sept. 1, 1954, ch. 1206, title II, § 201(a)–(c), 68 Stat. 1087; Aug. 1, 1956, ch. 836, title II, § 201(e)(2), (3), (f), (g), (i), 70 Stat. 840–842; Pub. L. 85–239, §§ 1(a), (b), 2, 5(b), Aug. 30, 1957, 71 Stat. 521–523; Pub. L. 85–840, title IV, §§ 402(a), 403(a), Aug. 28, 1958, 72 Stat. 1042, 1043; Pub. L. 86–778, title I, §§ 101(a)–(c), 103(k), (*l*), 105(c)(1), 106(b), Sept. 13, 1960, 74 Stat. 926, 927, 938, 944, 945; Pub. L. 87–64, title II, § 202(a), June 30, 1961, 75 Stat. 141; Pub. L. 88–272, title II, § 227(b)(6), Feb. 26, 1964, 78 Stat. 98; Pub. L.

88–650, § 2(a), (b), Oct. 13, 1964, 78 Stat. 1076, 1077; Pub. L. 89–97, title III, §§ 311(b)(1)–(3), 312(b), 319(a), (c), 320(b)(1), 331(a), 341(a), (b), July 30, 1965, 79 Stat. 381, 390, 391, 393, 401, 411; Pub. L. 89–368, title I, § 102(c), Mar. 15, 1966, 80 Stat. 64; Pub. L. 90–248, title I, §§ 108(b)(1), 115(b), 118(a), 122(b), title V, §§ 501(a), 502(b)(1), Jan. 2, 1968, 81 Stat. 835, 839, 841, 843, 933, 934; Pub. L. 92–5, title II, § 203(b)(1), Mar. 17, 1971, 85 Stat. 10; Pub. L. 92–336, title II, § 203(b)(1), July 1, 1972, 86 Stat. 418; Pub. L. 92–603, title I, §§ 121(b), 124(b), 140(b), Oct. 30, 1972, 86 Stat. 1353, 1357, 1366; Pub. L. 93–66, title II, § 203(b)(1), July 9, 1973, 87 Stat. 153; Pub. L. 93–233, § 5(b)(1), Dec. 31, 1973, 87 Stat. 954; Pub. L. 93–368, § 10(b), Aug. 7, 1974, 88 Stat. 422; Pub. L. 94–92, title II, § 203(a), Aug. 9, 1975, 89 Stat. 465; Pub. L. 94–455, title XII, § 1207(e)(1)(B), title XIX, §§ 1901(a)(155), (b)(1)(I)(iii), (X), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1707, 1789, 1791, 1792, 1834; Pub. L. 95–216, title III, § 313(b), Dec. 20, 1977, 91 Stat. 1536; Pub. L. 95–600, title VII, § 703(j)(8), Nov. 6, 1978, 92 Stat. 2941; Pub. L. 95–615, § 202(g)(5), formerly § 202(f)(5), Nov. 8, 1978, 92 Stat. 3100, renumbered § 202(g)(5), Pub. L. 96–222, title I, § 108(a)(1)(A), Apr. 1, 1980, 94 Stat. 223; Pub. L. 97–34, title I, § 111(b)(3), (5), Aug. 13, 1981, 95 Stat. 194; Pub. L. 97–248, title II, § 278(a)(2), Sept. 3, 1982, 96 Stat. 559; Pub. L. 98–21, title I, § 124(c)(2), title III, §§ 321(e)(3), 322(b)(2), 323(b)(1), Apr. 20, 1983, 97 Stat. 90, 120, 121; Pub. L. 98–369, div. A, title I, § 102(c)(1), div. B, title VI, §§ 2603(c)(2), (d)(2), 2663(j)(5)(B), July 18, 1984, 98 Stat. 622, 1129, 1130, 1171; Pub. L. 99–272, title XIII, § 13205(a)(2)(B), Apr. 7, 1986, 100 Stat. 315; Pub. L. 99–509, title IX, § 9002(b)(1)(B), Oct. 21, 1986, 100 Stat. 1971; Pub. L. 99–514, title III, § 301(b)(12), title XII, § 1272(d)(8), (9), title XVII, § 1704(a)(1), (2), title XVIII, §§ 1882(a), (b)(1), 1883(a)(11)(A), Oct. 22, 1986, 100 Stat. 2218, 2594, 2779, 2914, 2916; Pub. L. 100–203, title IX, § 9022(b), Dec. 22, 1987, 101 Stat. 1330–295; Pub. L. 100–647, title III, § 3043(c)(1), title VIII, § 8007(c), Nov. 10, 1988, 102 Stat. 3642, 3783; Pub. L. 101–239, title X, § 10204(a)(1), Dec. 19, 1989, 103 Stat. 2474; Pub. L. 101–508, title V, §§ 5123(a)(3), 5130(a)(2), title XI, § 11331(b), Nov. 5, 1990, 104 Stat. 1388–284, 1388–289, 1388–467; Pub. L. 103–66, title XIII, § 13207(b), Aug. 10, 1993, 107 Stat. 468; Pub. L. 103–296, title I, § 108(h)(1), title III, § 319(a)(4), Aug. 15, 1994, 108 Stat. 1487, 1534; Pub. L. 104–188, title I, § 1456(a), Aug. 20, 1996, 110 Stat. 1818; Pub. L. 105–34, title IX, § 922(a), Aug. 5, 1997, 111 Stat. 879; Pub. L. 108–203, title IV, § 425(b), Mar. 2, 2004, 118 Stat. 536; Pub. L. 108–357, title I, § 102(d)(7), Oct. 22, 2004, 118 Stat. 1429; Pub. L. 110–28, title VIII, § 8215(b)(1), May 25, 2007, 121 Stat. 193; Pub. L. 110–234, title XV, §§ 15301(a), 15352(a), May 22, 2008, 122 Stat. 1501, 1525; Pub. L. 110–246, § 4(a), title XV, §§ 15301(a), 15352(a), June 18, 2008, 122 Stat. 1664, 2263, 2287; Pub. L. 111–148, title IX, § 9015(b)(2)(B), Mar. 23, 2010, 124 Stat. 871; Pub. L. 113–295, div. A, title II, § 221(a)(91), Dec. 19, 2014, 128 Stat. 4050.)

References in Text

Section 1233(2) of the Food Security Act of 1985 (16 U.S.C. 3833(2)), referred to in subsec. (a)(1), is section 1233(2) of Pub. L. 99–198, which was classified to section 3833(2) of Title 16, Conservation, prior to the general amendment of section 1233 by Pub. L. 113–79, title II, § 2004, Feb. 7, 2014, 128 Stat. 715. As so amended, the substance of former section 1233(2) now appears in section 1233(a)(2) which is classified to section 3833(a)(2) of Title 16.

The Social Security Act, referred to in subsecs. (a)(1), (b), (c)(1), (2)(E), (e)(1), (g)(1), and (*l*)(1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. Titles II and XVIII of the Act are classified generally to subchapters II (§ 401 et seq.) and XVIII (§ 1395 et seq.) of Title 42. Sections 202, 203, 213, 218, 222, 223, 230, and 233 of the Act are classified to sections 402, 403, 413, 418, 422, 423, 430, and 433, respectively, of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 199, referred to in subsec. (a)(16), was repealed by Pub. L. 115–97, title I, § 13305(a), Dec. 22, 2017, 131 Stat. 2126.

The Federal Insurance Contributions Act, referred to in subsec. (d), is act Aug. 16, 1954, ch. 736, 68A Stat. 415, as amended, which is classified generally to chapter 21 (§ 3101 et seq.) of this title. For complete classification of this Act to the Code, see section 3128 of this title and Tables.

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

2014—Subsec. (e)(3). Pub. L. 113–295 struck out ''whichever of the following dates is later: (A)'' after ''before'' and ''; or (B) the due date of the return (including any extension thereof) for his second taxable year ending after 1967'' after ''or (c)(5)''. Amendment was executed to reflect the probable intent of Congress notwithstanding an extra closing quotation mark in the directory language.

2010—Subsec. (a)(12)(B). Pub. L. 111–148 inserted ''(determined without regard to the rate imposed under paragraph (2) of section 1401(b))'' after ''for such year''.

2008—Subsec. (a). Pub. L. 110–246, § 15352(a)(1), in concluding provisions, substituted ''the upper limit'' for ''$2,400'' wherever appearing and ''the lower limit'' for ''$1,600'' wherever appearing.

Subsec. (a)(1). Pub. L. 110–246, § 15301(a), inserted '', and including payments under section 1233(2) of the Food Security Act of 1985 (16 U.S.C. 3833(2)) to individuals receiving benefits under section 202 or 223 of the Social Security Act'' after ''crop shares''.

Subsec. (*l*). Pub. L. 110–246, § 15352(a)(2), added subsec. (*l*).

2007—Subsec. (a)(17). Pub. L. 110–28 added par. (17).

2004—Subsec. (a)(5)(A). Pub. L. 108–203 substituted ''the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the spouse carrying on such trade or business or, if such trade or business is jointly operated, treated as the gross income and deductions of each spouse on the basis of their respective distributive share of the gross income and deductions; and'' for ''all of the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the husband unless the wife exercises substantially all of the management and control of such trade or business, in which case all of such gross income and deductions shall be treated as the gross income and deductions of the wife; and''.

Subsec. (a)(16). Pub. L. 108–357 added par. (16).

1997—Subsec. (k). Pub. L. 105–34 added subsec. (k).

1996—Subsec. (a)(8). Pub. L. 104–188 inserted before semicolon at end '', but shall not include in such net earnings from self-employment the rental value of any parsonage or any parsonage allowance (whether or not excludable under section 107) provided after the individual retires, or any other retirement benefit received by such individual from a church plan (as defined in section 414(e)) after the individual retires''.

1994—Subsec. (c)(1). Pub. L. 103–296, § 108(h)(1), substituted ''Commissioner of Social Security'' for ''Secretary of Health and Human Services''.

Subsec. (c)(2)(C). Pub. L. 103–296, § 319(a)(4), inserted at end ''except service which constitutes 'employment' under section 3121(y),''.

Subsecs. (c)(2)(E), (e)(2), (g)(1), (2)(A), (B). Pub. L. 103–296, § 108(h)(1), substituted ''Commissioner of Social Security'' for ''Secretary of Health and Human Services''.

1993—Subsec. (b). Pub. L. 103–66, § 13207(b)(1)(C), (D), in concluding provisions, inserted ''and'' after ''section 3121(b),'' and struck out ''and (C) includes, but only with respect to the tax imposed by section 1401(b), remuneration paid for medicare qualified government employment (as defined in section 3121(u)(3)) which is subject to the taxes imposed by sections 3101(b) and 3111(b)'' after ''section 3201 or 3211,''.

Subsec. (b)(1). Pub. L. 103–66, § 13207(b)(1)(A), (B), substituted ''in the case of the tax imposed by section 1401(a), that part of the net'' for ''that part of the net'' and ''contribution and benefit base (as determined under section 230 of the Social Security Act)'' for ''applicable contribution base (as determined under subsection (k))''.

Subsec. (k). Pub. L. 103–66, § 13207(b)(2), struck out subsec. (k) which defined parameters of the applicable contribution base under this chapter.

1990—Subsec. (a). Pub. L. 101–508, § 5123(a)(3), struck out last undesignated par. which read as follows: ''Any income of an individual which results from or is attributable to the performance of services by such individual as a director of a corporation during any taxable year shall be deemed to have been derived (and received) by such individual in that year, at the time the services were performed, regardless of when the income is actually paid to or received by such individual (unless it was actually paid and received prior to that year).''

Subsec. (b). Pub. L. 101–508, § 5130(a)(2), amended directory language of Pub. L. 98–21, § 322(b)(2). See 1983 Amendment note below.

Subsec. (b)(1)(i). Pub. L. 101–508, § 11331(b)(1), substituted ''the applicable contribution base (as determined under subsection (k))'' for ''the contribution and benefit base (as determined under section 230 of the Social Security Act)''.

Subsec. (k). Pub. L. 101–508, § 11331(b)(2), added subsec. (k).

1989—Subsec. (g)(3). Pub. L. 101–239 substituted ''to apply'' for ''not to apply'' in heading and ''shall apply'' for ''shall not apply'' in text.

1988—Subsec. (a)(15). Pub. L. 100–647, § 3043(c)(1), added par. (15).

Subsec. (g)(2) to (5). Pub. L. 100–647, § 8007(c), struck out par. (2) which related to time for filing applications, struck out par. (4) which related to application by fiduciaries or survivors, and redesignated pars. (3) and (5) as (2) and (3), respectively.

1987—Subsec. (a). Pub. L. 100–203 inserted par. at end relating to income of an individual which results from or is attributable to the performance of services by such individual as a director of a corporation.

1986—Subsec. (a)(8). Pub. L. 99–514, § 1272(d)(8), inserted ''and'' after ''of the employer),'' and struck out ''and section 931 (relating to income from sources within possessions of the United States)'' after ''living abroad)''.

Subsec. (a)(9). Pub. L. 99–514, § 1272(d)(9), amended par. (9) generally. Prior to amendment, par. (9) read as follows: ''the term 'possession of the United States' as used in sections 931 (relating to income from sources within possessions of the United States) and 932 (relating to citizens of possessions of the United States) shall be deemed not to include the Virgin Islands, Guam, or American Samoa;''.

Subsec. (a)(14). Pub. L. 99–514, § 1882(b)(1)(B)(i), amended par. (14) generally. Prior to amendment, par. (14) read as follows: ''with respect to remuneration for services which are treated as services in a trade or business under subsection (c)(2)(G)—

''(A) no deduction for trade or business expenses provided under this Code (other than the deduction under paragraph (12)) shall apply;

''(B) the provisions of subsection (b)(2) shall not apply; and

''(C) if the amount of such remuneration from an employer for the taxable year is less than $100, such remuneration from that employer shall not be included in self-employment income.''

Subsec. (b). Pub. L. 99–514, § 1882(b)(1)(B)(ii), (iii), substituted ''paragraph'' for ''clause'' in second sentence and inserted at end ''In the case of church employee income, the special rules of subsection (j)(2) shall apply for purposes of paragraph (2).''

Pub. L. 99–509 struck out ''under an agreement entered into pursuant to the provisions of section 218 of the Social Security Act (relating to coverage of State employees), or'' after ''services included'' in second sentence.

Pub. L. 99–272 substituted ''medicare qualified government employment (as defined in section 3121(u)(3))'' for ''medicare qualified Federal employment (as defined in section 3121(u)(2))''.

Subsec. (c)(2)(G). Pub. L. 99–514, § 1883(a)(11)(A), realigned margin of subpar. (G).

Subsec. (e)(1). Pub. L. 99–514, § 1704(a)(1), (2)(A), substituted ''Subject to paragraph (2), any individual'' for ''Any individual'' and inserted ''and, in the case of an individual described in subparagraph (A), that he has informed the ordaining, commissioning, or licensing body of the church or order that he is opposed to such insurance''.

Subsec. (e)(2) to (4). Pub. L. 99–514, § 1704(a)(2)(B), (C), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

Subsec. (g)(5). Pub. L. 99–514, § 1882(a), added par. (5).

Subsec. (i)(1). Pub. L. 99–514, § 301(b)(12), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''In determining the net earnings from self-employment of any options dealer or commodities dealer—

''(A) notwithstanding subsection (a)(3)(A), there shall not be excluded any gain or loss (in the normal course of the taxpayer's activity of dealing in or trading section 1256 contracts) from section 1256 contracts or property related to such contracts, and

''(B) the deduction provided by section 1202 shall not apply.''

Subsec. (j). Pub. L. 99–514, § 1882(b)(1)(A), added subsec. (j).

1984—Subsec. (a)(14). Pub. L. 98–369, § 2603(d)(2), added par. (14).

Subsec. (c)(1), (2)(E). Pub. L. 98–369, § 2663(j)(5)(B), substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

Subsec. (c)(2)(G). Pub. L. 98–369, § 2603(c)(2), added subpar. (G).

Subsec. (g)(1), (3)(A), (B). Pub. L. 98–369, § 2663(j)(5)(B), substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

Subsec. (i). Pub. L. 98–369, § 102(c)(1), added subsec. (i).

1983—Subsec. (a)(11). Pub. L. 98–21, § 323(b)(1), struck out ''in the case of an individual described in section 911(d)(1)(B),'' before ''the exclusion''.

Subsec. (a)(12), (13). Pub. L. 98–21, § 124(c)(2), added par. (12) and redesignated former par. (12) as (13).

Subsec. (b). Pub. L. 98–21, § 322(b)(2), as amended by Pub. L. 101–508, § 5130(a)(2), inserted '', except as provided by an agreement under section 233 of the Social Security Act'' in text preceding par. (1).

Pub. L. 98–21, § 321(e)(3), substituted ''employees of foreign affiliates of American employers'' for ''employees of foreign subsidiaries of domestic corporations'' in cl. (A) of provisions following par. (2).

1982—Subsec. (b). Pub. L. 97–248 struck out ''and'' before ''(B)'' and inserted '', and (C) includes, but only with respect to the tax imposed by section 1401(b), remuneration paid for medicare qualified Federal employment (as defined in section 3121(u)(2)) which is subject to the taxes imposed by sections 3101(b) and 3111(b)''.

1981—Subsec. (a)(8). Pub. L. 97–34, § 111(b)(3), substituted ''relating to citizens or residents of the United

States living abroad'' for ''relating to income earned by employees in certain camps''.

Subsec. (a)(11). Pub. L. 97–34, §111(b)(5), substituted ''in the case of an individual described in section 911(d)(1)(B), the exclusion from gross income provided by section 911(a)(1) shall not apply'' for ''in the case of an individual who has been a resident of the United States during the entire taxable year, the exclusion from gross income provided by section 911(a)(2) shall not apply''.

1978—Subsec. (a). Pub. L. 95–615 substituted ''(relating to income earned by employees in certain camps)'' for ''(relating to earned income from sources without the United States)'' in par. (8).

Pub. L. 95–600, §703(j)(8)(A), substituted ''subsection (h)'' for ''subsection (i)'' wherever appearing in last par.

Subsec. (c)(6). Pub. L. 95–600, §703(j)(8)(B), substituted ''subsection (g)'' for ''subsection (h)''.

1977—Subsec. (a)(12). Pub. L. 95–216 added par. (12).

1976—Subsec. (a). Pub. L. 94–455, §§1901(b)(1) (I)(iii), (X), 1906(b)(13)(A), substituted, in provisions preceding par. (1) and in two places in cl. (iv) of provisions extending the application of provisions relating to agricultural labor to trade or business carried on by individuals, self-employed or in partnership, ''section 702(a)(8)'' for ''section 702(a)(9)'' and struck out in par. (2) ''(other than interest described in section 35)'' after ''unless such dividends and interest'' and in par. (10) ''or his delegate'' after ''Secretary''.

Subsec. (b)(1). Pub. L. 94–455, §1901(a)(155)(A), among other changes, struck out provisions spelling out fixed Social Security contributions and benefit base limits on wages paid during taxable years between 1955 through 1974.

Subsec. (c)(2)(F). Pub. L. 94–455, §1207(e)(1)(B), added subpar. (F).

Subsec. (g). Pub. L. 94–455, §§1901(a)(155)(B), (C), 1906(b)(13)(A), redesignated subsec. (h) as (g), and as so redesignated, struck out in par. (1)(A) ''or his delegate'' after ''Secretary'' and in par. (2) provisions relating to individuals who have self-employment income for taxable years ending before Dec. 31, 1967, on or before Dec. 31, 1968, and substituted in par. (2) reference to for which the individual has self-employment income (determined without regard to this subsection or subsection (c)(6)) for reference to ending on or after Dec. 31, 1967 for which he has self-employment income (as so determined). Former subsec. (g), which related to treatment of certain remunerations erroneously reported as net earnings from self-employment, was struck out.

Subsecs. (h), (i). Pub. L. 94–455, §1901(a)(155)(B), redesignated subsec. (i) as (h). Former subsec. (h) redesignated (g).

1975—Subsec. (b). Pub. L. 94–92 struck out from item B of second sentence the limitation of ''wages'' to include ''compensation'' solely with respect to the tax imposed by section 1401(b).

1974—Subsec. (a)(1). Pub. L. 93–368 inserted ''(as determined without regard to any activities of an agent of such owner or tenant)'' after ''material participation by the owner or tenant'' wherever appearing.

1973—Subsec. (b)(1)(H). Pub. L. 93–233 substituted ''$13,200'' for ''$12,600''.

Pub. L. 93–66 substituted ''$12,600'' for ''$12,000''.

1972—Subsec. (a)(8), (11). Pub. L. 92–603, §§121(b)(1), 124(b), 140(b), in par. (8), struck out limitation under which provisions authorizing the computation of net earnings without regard to sections 911 and 931 were limited to citizens of the United States performing religious service as employees of an American employer or as ministers in a foreign country having a congregation predominantly of citizens of the United States, added par. (11), and extended the application of provisions relating to agricultural labor to trade or business carried on by individuals, self-employed or in partnership, with certain exceptions.

Subsec. (b)(1)(F). Pub. L. 92–336, §203(b)(1)(A), inserted ''and before 1973'' after ''1971''.

Subsec. (b)(1)(G) to (I). Pub. L. 92–336, §203(b)(1)(B), added subpars. (G) to (I).

Subsec. (i). Pub. L. 92–603, §121(b)(2), added subsec. (i).

1971—Subsec. (b)(1)(E). Pub. L. 92–5, §203(b)(1)(A), inserted ''and beginning before 1972'' after ''1967'' and substituted ''; and'' for ''; or''.

Subsec. (b)(1)(F). Pub. L. 92–5, §203(b)(1)(B), added subpar. (F).

1968—Subsec. (a)(10). Pub. L. 90–248, §118(a), added par. (10).

Subsec. (b). Pub. L. 90–248, §502(b)(1), designated existing provisions of second sentence respecting ''wages'' as item ''A'' and added item ''B''.

Subsec. (b)(1)(D). Pub. L. 90–248, §108(b)(1)(A), inserted ''and before 1968'' after ''1965''.

Subsec. (b)(1)(E). Pub. L. 90–248, §108(b)(1)(B), added subpar. (E).

Subsec. (c). Pub. L. 90–248, §115(b)(1), substituted ''such order) performed by an individual unless an exemption under subsection (e) is effective with respect to him'' for ''such order performed by an individual during the period for which a certificate filed by him under subsection (e) is in effect'' in last sentence.

Subsec. (c)(1). Pub. L. 90–248, §122(b)(1), excepted from exclusion from definition of ''trade or business'' the functions of a public office of a State or a political division thereof with respect to fees received in any period in which the functions are performed in a position compensated solely on a fee basis and in which such functions are not covered under an agreement entered by such State and the Secretary pursuant to section 218 of the Social Security Act [section 418 of Title 42, The Public Health and Welfare].

Subsec. (c)(2)(E). Pub. L. 90–248, §122(b)(2), added subpar. (E).

Subsec. (e). Pub. L. 90–248, §115(b)(2), substituted provisions allowing clergymen, members of religious orders who have not taken a vow of poverty, and Christian Science practitioners to secure an exemption from social security self-employment tax upon meeting requirements of pars. (1) to (3) respecting such exemption, time for filing application, and effective date of exemption for provisions of former pars. (1) to (5) permitting such persons to secure social security coverage by filing a waiver certificate, prescribing time for filing certificate, effective date of certificate treatment of certain remuneration paid in 1955 and 1956 as wages, and optional provision for certain certificates filed on or before April 15, 1967.

Subsec. (h)(2). Pub. L. 90–248, §501(a), substituted ''December 31, 1967'' and ''December 31, 1968'' for ''December 31, 1965'' and ''April 15, 1966'', respectively, in subpar. (A) and ''December 31, 1967'' for ''December 31, 1965'' in subpar. (B) and inserted in such subpar. (B) exception provision as to when an application shall be deemed timely filed.

1966—Subsec. (e)(3)(E). Pub. L. 89–368 added subpar. (E).

1965—Subsec. (a). Pub. L. 89–97, §312(b), substituted ''2,400'' for ''$1,800'' in cls. (i) to (iv) and ''$1,600'' for ''$1,200'' in cls. (ii) and (iv) of second sentence following par. (9), wherever appearing.

Subsec. (b)(1)(C). Pub. L. 89–97, §320(b)(1)(C), inserted ''and before 1966'' after ''1958'' and substituted ''and'' for ''or'' after the semicolon.

Subsec. (b)(1)(D). Pub. L. 89–97, §320(b)(1)(B), added subpar. (D).

Subsec. (c). Pub. L. 89–97, §§311(b)(1), (2), 319(a), struck out from par. (5) ''doctor of medicine, or'' before and ''; or the performance of such service by a partnership'' after ''Christian Science practitioner,'' added par. (6), and consolidated into one sentence former last two sentences.

Subsec. (e)(1). Pub. L. 89–97, §311(b)(3)(A), substituted ''extended to service described in subsection (c)(4) or (c)(5) performed by him'' for ''extended to service described in subsection (c)(4), or service described in subsection (c)(5) insofar as it relates to the performance of service by an individual in the exercise of his profession as a Christian Science practitioner, as the case may be performed by him''.

Subsec. (e)(2)(A). Pub. L. 89–97, §311(b)(3)(B), substituted ''(computed without regard to subsections

(c)(4) and (c)(5) of $400 or more, any part of which was derived from the performance of service described in subsection (c)(4) or (c)(5)'' for ''(computed, in the case of an individual referred to in paragraph (1)(A), without regard to subsection (c)(4), and, in the case of an individual referred to in paragraph (1)(B), without regard to subsection (c)(5) insofar as it relates to the performance of service by an individual in the exercise of his profession as a Christian Science practitioner) of $400 or more, any part of which was derived from the performance of service described in subsection (c)(4), or from the performance of service described in subsection (c)(5) insofar as it relates to the performance of service by an individual in the exercise of his profession as a Christian Science practitioner, as the case may be''.

Subsec. (e)(2)(B). Pub. L. 89–97, § 341(a), substituted ''his second taxable year ending after 1963'' for ''his second taxable year ending after 1962''.

Subsec. (e)(3)(D). Pub. L. 89–97, § 341(b), added subpar. (D).

Subsec. (e)(5). Pub. L. 89–97, § 331(a), extended applicability of section to earnings in taxable years beyond those ending before 1960, extended until April 15, 1966, the last date for filing a certificate by an individual and until Apr. 15, 1967, the last date for filing a supplemental certificate by an individual, provided for filing of the certificate on or before Apr. 15, 1967, if the individual died on or before April 15, 1966, and extended to Apr. 15, 1967, the date on or before which the tax under section 1401 had been paid, or the overpayment, including interest under section 6611, had been repaid.

Subsec. (e)(6). Pub. L. 89–97, § 331(a), struck out par. (6) which dealt with filing of certificates by fiduciaries or survivors on or before April 15, 1962.

Subsec. (h). Pub. L. 89–97, § 319(c), added subsec. (h).

1964—Subsec. (a)(3)(B). Pub. L. 88–272 inserted reference to iron ore.

Subsec. (e)(2)(B). Pub. L. 88–650, § 2(a), substituted ''his second taxable year ending after 1962'' for ''his second taxable year ending after 1959''.

Subsec. (e)(3)(C). Pub. L. 88–650, § 2(b), added subpar. (C).

1961—Subsec. (e)(6). Pub. L. 87–64 added par. (6).

1960—Subsec. (a). Pub. L. 86–778, § 103(k), added par. (9) and inserted references to paragraph (9) in cls. (v) and (vi) of last sentence.

Subsec. (b). Pub. L. 86–778, § 103(*l*), substituted ''the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa'' for ''the Virgin Islands or a resident of Puerto Rico'' in last sentence.

Subsec. (c)(2). Pub. L. 86–778, § 106(b), excluded service described in section 3121(b)(11), (12), or (15) performed in the United States (as defined in section 3121(e)(2)) by a citizen of the United States.

Subsec. (e)(2)(B). Pub. L. 86–778, § 101(a), substituted ''1959'' for ''1956''.

Subsec. (e)(3). Pub. L. 86–778, § 101(b), designated existing provisions as cl. (A), struck out provisions which related to certificates for prior taxable years which have now become inapplicable, and added cl. (B).

Subsec. (e)(5). Pub. L. 86–778, § 101(c), added par. (5).

Subsec. (g). Pub. L. 86–778, § 105(c)(1), added subsec. (g).

1958—Subsec. (b)(1). Pub. L. 85–840, § 402(a), increased limitation on self-employment income subject to tax, for taxable years ending after 1958, from $4,200 to $4,800.

Subsec. (f). Pub. L. 85–840, § 403(a), added subsec. (f).

1957—Subsec. (a)(8). Pub. L. 85–239, § 5(b), permitted computation of net earnings without regard to sections 107 and 119 of this title.

Subsec. (e)(2). Pub. L. 85–239, § 1(a), permitted a person to file a certificate on or before the due date of the return (including any extension thereof) for his second taxable year ending after 1956.

Subsec. (e)(3). Pub. L. 85–239, § 1(b), provided for the effective date of certificates filed after August 30, 1957, but on or before the due date of the return (including any extension thereof) for the second taxable year ending after 1956, for certificates filed on or before August 30, 1957, which are effective only for the third or fourth taxable year ending after 1954 and all succeeding taxable years, and for certificates filed after the due date of the return (including any extension thereof) for the second taxable year ending after 1956.

Subsec. (e)(4). Pub. L. 85–239, § 2, added par. (4).

1956—Subsec. (a). Act Aug. 1, 1956, § 201(i), amended generally last two sentences to include those businesses in which the income is computed under an accrual method, and partnerships, to change the method of computation of net earnings for individuals by permitting those whose gross income is not more than $1,800 to deem their net earnings to be 66⅔ percent of such gross income, and those whose gross income is more than $1,800 and the net earnings are less than $1,200, to deem the net earnings to be $1,200, and to provide for the computation of net earnings for members of partnerships.

Subsec. (a)(1). Act Aug. 1, 1956, § 201(e)(2), struck out from the exclusion income derived by an owner or tenant of land if such income is derived under an arrangement with another individual for the production by such other individual of agricultural or horticultural commodities if such arrangement provides for material participation by the owner or tenant in the production or the management of the production of such commodities, and there is material participation by the owner or tenant with respect to any such commodity.

Subsec. (a)(8)(B). Act Aug. 1, 1956, § 201(g), included citizens of the United States who are ministers in foreign countries and have congregations composed predominantly of citizens of the United States.

Subsec. (c)(2). Act Aug. 1, 1956, § 201(e)(3), included within ''trade or business'' service described in section 3121(b)(16) of this title.

Subsec. (c)(5). Act Aug. 1, 1956, § 201(f), struck out exclusion of lawyers, dentists, osteopaths, veterinarians, chiropractors, naturopaths, and optometrists.

1954—Subsec. (a). Act Sept. 1, 1954, § 201(a), (c)(4), in par. (1) clarified the term rentals to indicate that it includes rentals paid in the form of crop shares, struck out par. (2), redesignated pars. (3) to (8) as (2) to (7), respectively, added a new par. (8), and inserted provisions at end establishing an optional method of reporting income for self-employed farmers.

Subsec. (b). Act Sept. 1, 1954, § 201(b), increased the limitation on self-employment income subject to tax, for taxable years ending after 1954, from $3,600 to $4,200 and included as ''wages'', for purposes of computing ''self-employment income,'' remuneration of United States citizens employed by a foreign subsidiary of a domestic corporation which has agreed to have the Social Security insurance system extended to service performed by such citizens.

Subsec. (c). Act Sept. 1, 1954, § 201(c)(2), inserted two sentences at end making the provisions of par. (4) inapplicable to service performed during the period for which a certificate filed under subsec. (e) is in effect.

Subsec. (c)(2). Act Sept. 1, 1954, § 201(c)(1), inserted ''and other than service described in paragraph (4) of this subsection'' after ''18''.

Subsec. (c)(5). Act Sept. 1, 1954, § 201(c)(5), struck out exclusions from self-employment tax in the case of architects, certified public accountants, accountants registered or licensed as accountants under State or municipal law, full-time practicing public accountants, funeral directors and professional engineers.

Subsec. (e). Act Sept. 1, 1954, § 201(c)(3), added subsec. (e).

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

Amendment by Pub. L. 111–148 applicable with respect to remuneration received, and taxable years beginning, after Dec. 31, 2012, see section 9015(c) of Pub. L. 111–148, set out as a note under section 164 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

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, §15301(c), May 22, 2008, 122 Stat. 1501, and Pub. L. 110–246, §4(a), title XV, §15301(c), June 18, 2008, 122 Stat. 1664, 2263, provided that: ''The amendments made by this section [amending this section and section 411 of Title 42, The Public Health and Welfare] shall apply to payments made after December 31, 2007.''

[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, §15352(c), May 22, 2008, 122 Stat. 1526, and Pub. L. 110–246, §4(a), title XV, §15352(c), June 18, 2008, 122 Stat. 1664, 2288, provided that: ''The amendments made by this section [amending this section and sections 411 and 412 of Title 42, The Public Health and Welfare] shall apply to taxable years beginning after December 31, 2007.''

[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 Pub. L. 110–28 applicable to taxable years beginning after Dec. 31, 2006, see section 8215(c) of Pub. L. 110–28, set out as a note under section 761 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 1997 AMENDMENT

Pub. L. 105–34, title IX, §922(c), Aug. 5, 1997, 111 Stat. 880, provided that: ''The amendments made by this section [amending this section and section 411 of Title 42, The Public Health and Welfare] shall apply to payments after December 31, 1997.''

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1456(b), Aug. 20, 1996, 110 Stat. 1818, provided that: ''The amendments made by this section [amending this section] shall apply to years beginning before, on, or after December 31, 1994.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 108(h)(1) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of Title 42, The Public Health and Welfare.

Pub. L. 103–296, title III, §319(c), Aug. 15, 1994, 108 Stat. 1535, provided that: ''The amendments made by this section [amending this section, sections 3102, 3121, and 3122 of this title, and sections 410 and 411 of Title 42, The Public Health and Welfare] shall apply with respect to service performed after the calendar quarter following the calendar quarter in which the date of the enactment of this Act [Aug. 15, 1994] occurs.''

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13207(e), Aug. 10, 1993, 107 Stat. 469, provided that: ''The amendments made by this section [amending this section and sections 3121, 3122, 3125, 3231, and 6413 of this title] shall apply to 1994 and later calendar years.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 5123(a)(3) of Pub. L. 101–508 applicable with respect to income received for services performed in taxable years beginning after Dec. 31, 1990, see section 5123(b) of Pub. L. 101–508, set out as a note under section 403 of Title 42, The Public Health and Welfare.

Pub. L. 101–508, title V, §5130(b), Nov. 5, 1990, 104 Stat. 1388–289, provided that: ''The amendments made by subsection (a) [amending this section, section 3509 of this title, and sections 408, 409, and 411 of Title 42] shall be effective as if included in the enactment of the provision to which it relates.''

Pub. L. 101–508, title XI, §11331(e), Nov. 5, 1990, 104 Stat. 1388–468, provided that: ''The amendments made by this section [amending this section and sections 3121, 3122, 3125, 3231, and 6413 of this title] shall apply to 1991 and later calendar years.''

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title X, §10204(a)(2), Dec. 19, 1989, 103 Stat. 2474, provided that: ''The amendments made by paragraph (1) [amending this section] shall apply with respect to taxable years beginning after December 31, 1989.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 3043(c)(1) of Pub. L. 100–647 applicable to all periods beginning before, on, or after Nov. 10, 1988, with no inference created as to existence or nonexistence or scope of any exemption from tax for income derived from fishing rights secured as of Mar. 17, 1988, by any treaty, law, or Executive Order, see section 3044 of Pub. L. 100–647, set out as an Effective Date note under section 7873 of this title.

Pub. L. 100–647, title VIII, §8007(d), Nov. 10, 1988, 102 Stat. 3783, provided that: ''The amendments made by subsection (a) [enacting section 3127 of this title and renumbering former section 3127 of this title as section 3128] shall apply to wages paid after December 31, 1988. The amendments made by subsection (b) [amending section 402 of Title 42, The Public Health and Welfare] shall apply to benefits paid for (and items and services furnished in) months after December 1988. The amendments made by subsection (c) [amending this section] shall apply to applications for exemptions filed on or after the date of the enactment of this Act [Nov. 10, 1988].''

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title IX, §9022(c), Dec. 22, 1987, 101 Stat. 1330–295, provided that: ''The amendments made by this section [amending this section and section 411 of Title 42, The Public Health and Welfare] shall apply with respect to services performed in taxable years beginning on or after January 1, 1988.''

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 301(b)(12) 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 1272(d)(8), (9) 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.

Pub. L. 99–514, title XVII, §1704(a)(3), Oct. 22, 1986, 100 Stat. 2779, provided that: ''The amendments made by paragraphs (1) and (2) [amending this section] shall apply to applications filed after December 31, 1986.''

Pub. L. 99–514, title XVIII, §1882(b)(3), Oct. 22, 1986, 100 Stat. 2915, provided that: ''The amendments made by this subsection [amending this section and section 411 of Title 42, The Public Health and Welfare] shall apply to remuneration paid or derived in taxable years beginning after December 31, 1985.''

Amendment by Pub. L. 99–509 effective, except as otherwise provided, with respect to payments due with respect to wages paid after Dec. 31, 1986, including wages paid after such date by a State (or political subdivision thereof) that modified its agreement pursuant

to section 418(e)(2) of Title 42, The Public Health and Welfare, see section 9002(d) of Pub. L. 99–509, set out as a note under section 418 of Title 42.

Amendment by Pub. L. 99–272 applicable to services performed after Mar. 31, 1986, see section 13205(d)(1) of Pub. L. 99–272, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 102(c)(1) of Pub. L. 98–369 applicable to taxable years beginning after July 18, 1984, except as otherwise provided, see section 102(f)(3), (g) of Pub. L. 98–369, set out as a note under section 1256 of this title.

Amendment by section 2603(c)(2) of Pub. L. 98–369 applicable to service performed after Dec. 31, 1983, see section 2603(e) of Pub. L. 98–369, set out as a note under section 410 of Title 42, The Public Health and Welfare.

Amendment by section 2663(j)(5)(B) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of Title 42.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 124(c)(2) of Pub. L. 98–21 applicable to taxable years beginning after Dec. 31, 1989, see section 124(d)(2) of Pub. L. 98–21, set out as a note under section 1401 of this title.

Amendment by section 321(e)(3) of Pub. L. 98–21 applicable to agreements entered into after Apr. 20, 1983, except that at the election of any American employer such amendment shall also apply to any agreement entered into on or before Apr. 20, 1983, see section 321(f) of Pub. L. 98–21 set out as a note under section 406 of this title.

Amendment by section 322(b)(2) of Pub. L. 98–21 effective for taxable years beginning on or after Apr. 20, 1983, see section 322(c) of Pub. L. 98–21 set out as a note under section 3121 of this title.

Pub. L. 98–21, title III, § 323(c)(2), Apr. 20, 1983, 97 Stat. 121, provided that: ''Except as provided in subsection (b)(2)(B) [amending section 411 of Title 42, The Public Health and Welfare, effective with respect to taxable years beginning after Dec. 31, 1981, and before Jan. 1, 1984], the amendments made by subsection (b) [amending this section and section 411 of Title 42] shall apply to taxable years beginning after December 31, 1983.''

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to remuneration paid after Dec. 31, 1982, see section 278(c)(1) of Pub. L. 97–248, set out as a note under section 3121 of this title.

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 OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 effective Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT; ELECTION OF PRIOR LAW

Amendment by Pub. L. 95–615 applicable to taxable years beginning after Dec. 31, 1977, with provision for election of prior law, see section 209 of Pub. L. 95–615, set out as an Effective Date of 1978 Amendment note under section 911 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–216 applicable with respect to taxable years beginning after Dec. 31, 1977, see section 313(c) of Pub. L. 95–216, set out as a note under section 411 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1207(e)(1)(B) of Pub. L. 94–455 applicable to taxable years ending after Dec. 31, 1971, see section 1207(f)(4) of Pub. L. 94–455, set out as a note under section 3121 of this title.

Amendment by section 1901(a)(155), (b)(1)(I)(iii), (X) 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

Pub. L. 94–92, title II, § 203(c), Aug. 9, 1975, 89 Stat. 465, provided that: ''The amendments made by this section [amending this section and section 3231 of this title] shall be effective January 1, 1975, and shall apply only with respect to compensation paid for services rendered on or after that date.''

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–368 applicable with respect to taxable years beginning after Dec. 31, 1973, see section 10(c) of Pub. L. 93–368, set out as a note under section 411 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1973 AMENDMENTS

Amendment by Pub. L. 93–233 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 5(e) of Pub. L. 93–233, set out as a note under section 409 of Title 42, The Public Health and Welfare.

Amendment by Pub. L. 93–66 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 203(e) of Pub. L. 93–66, set out as a note under section 409 of Title 42.

EFFECTIVE DATE OF 1972 AMENDMENTS

Amendment by Pub. L. 92–603 applicable with respect to taxable years beginning after Dec. 31, 1972, see sections 121(c), 124(c), and 140(c) of Pub. L. 92–603, set out as notes under section 411 of Title 42, The Public Health and Welfare.

Amendment by Pub. L. 92–336 applicable only with respect to taxable years beginning after 1972, see section 203(c) of Pub. L. 92–336, set out as a note under section 409 of Title 42.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–5 applicable only with respect to taxable years beginning after 1971, see section 203(c) of Pub. L. 92–5, set out as a note under section 409 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 108(b)(1) of Pub. L. 90–248 applicable only with respect to taxable years ending after 1967, see section 108(c) of Pub. L. 90–248, set out as a note under section 409 of Title 42, The Public Health and Welfare.

Pub. L. 90–248, title I, § 115(c), Jan. 2, 1968, 81 Stat. 840, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 411 of Title 42] shall apply only with respect to taxable years ending after 1967.''

Pub. L. 90–248, title I, § 118(c), Jan. 2, 1968, 81 Stat. 842, provided that: ''The amendments made by this section [amending this section and section 411 of Title 42] shall apply only with respect to taxable years ending on or after December 31, 1967.''

Pub. L. 90–248, title I, § 122(c), Jan. 2, 1968, 81 Stat. 844, provided that:

''(1) The amendments made by subsections (a) and (b) of this section [amending this section and section 411 of Title 42] shall apply with respect to fees received after 1967.

''(2) Notwithstanding the provisions of subsections (a) and (b) of this section [amending this section and sec-

tion 411 of Title 42], any individual who in 1968 is in a position to which the amendments made by such subsections apply may make an irrevocable election not to have such amendments apply to the fees he receives in 1968 and every year thereafter, if on or before the due date of his income tax return for 1968 (including any extensions thereof) he files with the Secretary of the Treasury or his delegate, in such manner as the Secretary of the Treasury or his delegate shall by regulations prescribe, a certificate of election of exemption from such amendments.''

Pub. L. 90–248, title V, §501(b), Jan. 2, 1968, 81 Stat. 933, 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 with respect to taxable years beginning after December 31, 1950. For such purpose, chapter 2 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall be treated as applying to all taxable years beginning after such date.''

Pub. L. 90–248, title V, §502(b)(2), Jan. 2, 1968, 81 Stat. 934, provided that: ''The amendments made by paragraph (1) [amending this section] shall be effective only with respect to taxable years ending on or after December 31, 1968.''

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–368 applicable with respect to taxable years beginning after December 31, 1966, see section 102(d) of Pub. L. 89–368, set out as a note under section 6654 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 311(b)(1)–(3) of Pub. L. 89–97 applicable only with respect to taxable years ending on or after Dec. 31, 1965, see section 311(c) of Pub. L. 89–97, set out as a note under section 410 of Title 42, The Public Health and Welfare.

Amendment by section 312(b) of Pub. L. 89–97 applicable only with respect to taxable years beginning after Dec. 31, 1965, see section 312(c) of Pub. L. 89–97, set out as a note under section 411 of Title 42.

Pub. L. 89–97, title III, §319(e), July 30, 1965, 79 Stat. 392, 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 402 and 411 of Title 42] shall apply with respect to taxable years beginning after December 31, 1950. For such purpose, chapter 2 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall be treated as applying to all taxable years beginning after such date.''

Amendment by section 320(b)(1) of Pub. L. 89–97 applicable with respect to taxable years ending after 1965, see section 320(c) of Pub. L. 89–97, set out as a note under section 3121 of this title.

Pub. L. 89–97, title III, §331(d), July 30, 1965, 79 Stat. 403, 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 be applicable (except as otherwise specifically provided therein) only to certificates with respect to which supplemental certificates are filed pursuant to section 1402(e)(5)(A) of such Code after the date of the enactment of this Act [July 30, 1965], and to certificates filed pursuant to section 1402(e)(5)(B) after such date; except that no monthly benefits under title II of the Social Security Act [section 401 et seq. of Title 42] for the month in which this Act is enacted [July 1965] or any prior month shall be payable or increased by reason of such amendments, and no lump sum death payment under such title [section 401 et seq. of Title 42] shall be payable or increased by reason of such amendments in the case of any individual who died prior to the date of the enactment of this Act [July 30, 1965]. The provisions of section 1402(e)(5) and (6) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] which were in effect before the date of enactment of this Act shall be applicable with respect to any certificate filed pursuant thereto before such date if a supplemental certificate is not filed with respect to such certificate as provided in this section.''

Pub. L. 89–97, title III, §341(c), July 30, 1965, 79 Stat. 412, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall be applicable only with respect to certificates filed pursuant to section 1402(e) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] after the date of the enactment of this Act [July 30, 1965]; except that no monthly benefits under title II of the Social Security Act [section 401 et seq. of Title 42] for the month in which this Act is enacted [July 1965] or any prior month shall be payable or increased by reason of such amendments.''

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–650, §2(c), Oct. 13, 1964, 78 Stat. 1077, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall be applicable only with respect to certificates filed pursuant to section 1402(e) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] after the date of the enactment of this Act [Oct. 13, 1964]; except that no monthly benefits under title II of the Social Security Act [section 401 et seq. of Title 42, The Public Health and Welfare] for the month in which this Act [Oct. 1964] is enacted or any prior month shall be payable or increased by reason of such amendments.''

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.

EFFECTIVE DATE OF 1961 AMENDMENT

Pub. L. 87–64, title II, §202(b), June 30, 1961, 75 Stat. 142, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of enactment of this Act [June 30, 1961]; except that no monthly benefits under title II of the Social Security Act [section 401 et seq. of Title 42, The Public Health and Welfare] for the month in which this Act is enacted or any prior month shall be payable or increased by reason of such amendment, and no lump-sum death payment under such title shall be payable or increased by reason of such amendment in the case of any individual who died prior to the date of enactment of this Act [June 30, 1961].''

EFFECTIVE DATE OF 1960 AMENDMENT

Pub. L. 86–778, title I, §101(f), Sept. 13, 1960, 74 Stat. 928, 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 be applicable (except as otherwise specifically indicated therein) only with respect to certificates (and supplemental certificates) filed pursuant to section 1402(e) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] after the date of the enactment of this Act [Sept. 13, 1960]; except that no monthly benefits under title II of the Social Security Act [section 401 et seq. of Title 42, The Public Health and Welfare] for the month in which this Act is enacted or any prior month shall be payable or increased by reason of such amendments, and no lump-sum death payment under such title shall be payable or increased by reason of such amendments in the case of any individual who died prior to the date of the enactment of this Act [Sept. 13, 1960].''

Amendment by section 103(k) of Pub. L. 86–778 applicable only in the case of taxable years beginning after 1960, except that, insofar as such enactment involves the nonapplication of section 932 of this title to the Virgin Islands for purposes of section 1401 et seq. of this title and section 411 of Title 42, such enactment shall be effective in the case of all taxable years with respect to which such chapter 2 (and corresponding provisions of prior law) and section 411 of Title 42 are applicable, see section 103(v)(1) of Pub. L. 86–778, set out as a note under section 402 of Title 42.

Amendment by section 103(*l*) of Pub. L. 86–778 applicable only in the case of taxable years beginning after

1960, see section 103(v)(1) of Pub. L. 86–778, set out as a note under section 402 of Title 42.

Amendment by section 106(b) of Pub. L. 86–778 applicable only with respect to taxable years ending on or after Dec. 31, 1960, see section 106(c) of Pub. L. 86–778, set out as a note under section 411 of Title 42.

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–840, title IV, § 403(b), Aug. 28, 1958, 72 Stat. 1044, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply only with respect to individuals who die after the date of the enactment of this Act [Aug. 28, 1958].

''(2) In the case of an individual who died after 1955 and on or before the date of the enactment of this Act [Aug. 28, 1958], the amendment made by subsection (a) [amending this section] shall apply only if—

''(A) before January 1, 1960, there is filed a return (or amended return) of the tax imposed by chapter 2 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [section 1401 et seq. of this title] for the taxable year ending as a result of his death, and

''(B) in any case where the return is filed solely for the purpose of reporting net earnings from self-employment resulting from the amendment made by subsection (a), the return is accompanied by the amount of tax attributable to such net earnings.

In any case described in the preceding sentence, no interest or penalty shall be assessed or collected on the amount of any tax due under chapter 2 of such Code solely by reason of the operation of section 1402(f) of such Code.''

EFFECTIVE DATE OF 1957 AMENDMENT

Pub. L. 85–239, § 4, Aug. 30, 1957, 71 Stat. 522, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) Section 3 [set out below], and the amendments made by the first section of this Act [amending this section], shall apply with respect to monthly insurance benefits under title II of the Social Security Act [section 401 et seq. of Title 42, The Public Health and Welfare], for months beginning after, and lump sum death payments under such title in the case of deaths occurring after, the date of the enactment of this Act [Aug. 30, 1957].

''(b) Notwithstanding subsection (a), in the case of any individual who—

''(1)(A) has remuneration which is deemed, by reason of section 3, to constitute remuneration for employment for purposes of title II of the Social Security Act [section 401 et seq. of Title 42], or

''(B) has income which constitutes net earnings from self-employment under such title by reason of the filing of a certificate pursuant to [former] section 1402(e)(3)(A) or (B) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], and

''(2) was entitled to monthly insurance benefits under title II of the Social Security Act [section 401 et seq. of Title 42] for the month in which this Act is enacted [August 1957],

section 3 [set out below] and the amendments made by the first section of this Act [amending this section] shall apply with respect to monthly insurance benefits under such title based on his wages and self-employment income only if he, or any other person entitled to monthly insurance benefits under such title on the basis of such wages and self-employment income, files, on or after the date of enactment of this Act [Aug. 30, 1957], an application for recomputation by reason of this Act. Such recomputation shall be made in the manner provided in title II of the Social Security Acts [section 401 et seq. of Title 42] as in effect at the time of the last previous computation or recomputation of such individual's primary insurance amount and as though the application therefor was filed in the month in which the application for such last previous computation or recomputation was filed. No recomputation under this subsection shall be regarded as a recomputation under section 215(f) of the Social Security Act [section 415(f) of Title 42]. Any such recomputation shall be effective for and after the twelfth month before the month in which the application therefor is filed, but in no case for any month which begins on or prior to the date of the enactment of this Act. Any such recomputation shall be effective only if it results in a higher primary insurance amount.

''(c) The preceding provisions of this section shall not render erroneous any monthly insurance benefits under title II of the Social Security Act [section 401 et seq. of Title 42] for the month in which this Act [August 1957] is enacted or any prior month.''

Pub. L. 85–239, § 5(c), Aug. 30, 1957, 71 Stat. 524, provided that: ''The amendments made by this section [amending this section and section 411 of Title 42] shall, except for purposes of section 203 of the Social Security Act [section 403 of title 42], apply only with respect to taxable years ending on or after December 31, 1957. For purposes of section 203 of the Social Security Act [section 403 of Title 42] (other than subsection (a)), such amendments shall apply only with respect to taxable years beginning after the month in which this Act is enacted [August 1957]. For purposes of subsection (a) of such section 203, such amendments shall apply only with respect to taxable years of the insured individual ending on or after December 31, 1957.''

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by section 201(e)(2), (f) of act Aug. 1, 1956, applicable with respect to taxable years ending after 1955, amendment by section 201(i) of that act applicable with respect to taxable years ending on or after Dec. 31, 1956, amendment by section 201(e)(3) of that act applicable with respect to taxable years ending after 1954, and, except as provided in section 201(m)(2)(B) of that act, amendment by section 201(g) of that act applicable only with respect to taxable years ending after 1956, see section 201(m) of act Aug. 1, 1956, set out as a under section 3121 of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Act Sept. 1, 1954, ch. 1206, title II, § 201(d), 68 Stat. 1089, provided that: ''The amendments made by subsections (a), (b) and (c) of this section [amending this section] shall be applicable only with respect to taxable years ending after 1954.''

REVOCATION BY MEMBERS OF THE CLERGY OF EXEMPTION FROM SOCIAL SECURITY COVERAGE

Pub. L. 106–170, title IV, § 403, Dec. 17, 1999, 113 Stat. 1910, provided that:

''(a) IN GENERAL.—Notwithstanding section 1402(e)(4) of the Internal Revenue Code of 1986, any exemption which has been received under section 1402(e)(1) of such Code by a duly ordained, commissioned, or licensed minister of a church, a member of a religious order, or a Christian Science practitioner, and which is effective for the taxable year in which this Act is enacted [enacted Dec. 17, 1999], may be revoked by filing an application therefor (in such form and manner, and with such official, as may be prescribed by the Commissioner of Internal Revenue), if such application is filed no later than the due date of the Federal income tax return (including any extension thereof) for the applicant's second taxable year beginning after December 31, 1999. Any such revocation shall be effective (for purposes of chapter 2 of the Internal Revenue Code of 1986 and title II of the Social Security Act (42 U.S.C. 401 et seq.)), as specified in the application, either with respect to the applicant's first taxable year beginning after December 31, 1999, or with respect to the applicant's second taxable year beginning after such date, and for all succeeding taxable years; and the applicant for any such revocation may not thereafter again file application for an exemption under such section

1402(e)(1). If the application is filed after the due date of the applicant's Federal income tax return for a taxable year and is effective with respect to that taxable year, it shall include or be accompanied by payment in full of an amount equal to the total of the taxes that would have been imposed by section 1401 of the Internal Revenue Code of 1986 with respect to all of the applicant's income derived in that taxable year which would have constituted net earnings from self-employment for purposes of chapter 2 of such Code (notwithstanding paragraphs (4) and (5) of section 1402(c)) except for the exemption under section 1402(e)(1) of such Code.

''(b) EFFECTIVE DATE.—Subsection (a) shall apply with respect to service performed (to the extent specified in such subsection) in taxable years beginning after December 31, 1999, and with respect to monthly insurance benefits payable under title II on the basis of the wages and self-employment income of any individual for months in or after the calendar year in which such individual's application for revocation (as described in such subsection) is effective (and lump-sum death payments payable under such title on the basis of such wages and self-employment income in the case of deaths occurring in or after such calendar year).''

LIMITED EXEMPTION FOR CANADIAN MINISTERS FROM CERTAIN SELF-EMPLOYMENT TAX LIABILITY

Pub. L. 103–296, title III, §306, Aug. 15, 1994, 108 Stat. 1521, provided that:

''(a) IN GENERAL.—Notwithstanding any other provision of law, if—

''(1) an individual performed services described in section 1402(c)(4) of the Internal Revenue Code of 1986 which are subject to tax under section 1401 of such Code,

''(2) such services were performed in Canada at a time when no agreement between the United States and Canada pursuant to section 233 of the Social Security Act [42 U.S.C. 433] was in effect, and

''(3) such individual was required to pay contributions on the earnings from such services under the social insurance system of Canada,

then such individual may file a certificate under this section in such form and manner, and with such official, as may be prescribed in regulations issued under chapter 2 of such Code. Upon the filing of such certificate, notwithstanding any judgment which has been entered to the contrary, such individual shall be exempt from payment of such tax with respect to services described in paragraphs (1) and (2) and from any penalties or interest for failure to pay such tax or to file a self-employment tax return as required under section 6017 of such Code.

''(b) PERIOD FOR FILING.—A certificate referred to in subsection (a) may be filed only during the 180-day period commencing with the date on which the regulations referred to in subsection (a) are issued.

''(c) TAXABLE YEARS AFFECTED BY CERTIFICATE.—A certificate referred to in subsection (a) shall be effective for taxable years ending after December 31, 1978, and before January 1, 1985.

''(d) RESTRICTION ON CREDITING OF EXEMPT SELF-EMPLOYMENT INCOME.—In any case in which an individual is exempt under this section from paying a tax imposed under section 1401 of the Internal Revenue Code of 1986, any income on which such tax would have been imposed but for such exemption shall not constitute self-employment income under section 211(b) of the Social Security Act (42 U.S.C. 411(b)), and, if such individual's primary insurance amount has been determined under section 215 of such Act (42 U.S.C. 415), notwithstanding section 215(f)(1) of such Act, the Secretary of Health and Human Services (prior to March 31, 1995) or the Commissioner of Social Security (after March 30, 1995) shall recompute such primary insurance amount so as to take into account the provisions of this subsection. The recomputation under this subsection shall be effective with respect to benefits for months following approval of the certificate of exemption.''

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.

REVOCATION OF EXEMPTION FROM COVERAGE BY CLERGYMEN; PROCEDURE, APPLICABILITY, ETC.

Pub. L. 99–514, title XVII, §1704(b), Oct. 22, 1986, 100 Stat. 2779, provided that:

''(1) IN GENERAL.—Notwithstanding section 1402(e)(3) of the Internal Revenue Code of 1986, as redesignated by subsection (a)(2)(B) of this section, any exemption which has been received under section 1402(e)(1) of such Code by a duly ordained, commissioned, or licensed minister of a church, a member of a religious order, or a Christian Science practitioner, and which is effective for the taxable year in which this Act is enacted [enacted Oct. 22, 1986], may be revoked by filing an application therefor (in such form and manner, and with such official, as may be prescribed in regulations made under chapter 2 of subtitle A of such Code), if such application is filed—

''(A) before the applicant becomes entitled to benefits under section 202(a) or 223 of the Social Security Act [42 U.S.C. 402(a), 423] (without regard to section 202(j)(1) or 223(b) of such Act [42 U.S.C. 402(j)(1), 423(b)]), and

''(B) no later than the due date of the Federal income tax return (including any extension thereof) for the applicant's first taxable year beginning after the date of the enactment of this Act [Oct. 22, 1986].

Any such revocation shall be effective (for purposes of chapter 2 of subtitle A of the Internal Revenue Code of 1986 and title II of the Social Security Act [42 U.S.C. 401 et seq.]), as specified in the application, either with respect to the applicant's first taxable year ending on or after the date of the enactment of this Act [Oct. 22, 1986] or with respect to the applicant's first taxable year beginning after such date, and for all succeeding taxable years; and the applicant for any such revocation may not thereafter again file application for an exemption under such section 1402(e)(1). If the application is filed on or after the due date of the Federal income tax return for the applicant's first taxable year ending on or after the date of the enactment of this Act [Oct. 22, 1986] and is effective with respect to that taxable year, it shall include or be accompanied by payment in full of an amount equal to the total of the taxes that would have been imposed by section 1401 of the Internal Revenue Code of 1986 with respect to all of the applicant's income derived in that taxable year which would have constituted net earnings from self-employment for purposes of chapter 2 of subtitle A of such Code (notwithstanding paragraph (4) or (5) of section 1402(c) of such Code) but for the exemption under section 1402(e)(1) of such Code.

''(2) EFFECTIVE DATE.—Paragraph (1) of this subsection shall apply with respect to service performed (to the extent specified in such paragraph) in taxable years ending on or after the date of the enactment of this Act [Oct. 22, 1986] and with respect to monthly insurance benefits payable under title II of the Social Security Act [42 U.S.C. 401 et seq.] on the basis of the wages and self-employment income of any individual for months in or after the calendar year in which such individual's application for revocation (as described in such paragraph) is effective (and lump-sum death payments payable under such title on the basis of such wages and self-employment income in the case of deaths occurring in or after such calendar year).''

Pub. L. 95–216, title III, §316, Dec. 20, 1977, 91 Stat. 1537, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) Notwithstanding section 1402(e)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], any exemption which has been received under section 1402(e)(1) of such Code, by a duly ordained, commissioned, or licensed minister of a church or a Christian Science practitioner, and which is effective for the taxable year in which this Act [Pub. L. 95–216, enacted Dec. 20, 1977] is enacted, may be revoked by filing an application therefor (in such form and manner, and with such official, as may be prescribed in regulations made under chapter 2 of such Code [this chapter]), if such application is filed—

''(1) before the applicant becomes entitled to benefits under section 202(a) or 223 of the Social Security Act [section 402(a) or 423 of Title 42, The Public Health and Welfare] (without regard to section 202(j)(1) or 223(b) of such Act [section 402(j)(1) or 423(b) of Title 42]), and

''(2) no later than the due date of the Federal income tax return (including any extension thereof) for the applicant's first taxable year beginning after the date of the enactment of this Act [Dec. 20, 1977].

Any such revocation shall be effective (for purposes of chapter 2 of the Internal Revenue Code of 1986 [this chapter] and title II of the Social Security Act [section 401 et seq. of Title 42]), as specified in the application, either with respect to the applicant's first taxable year ending on or after the date of the enactment of this Act [Dec. 20, 1977] or with respect to the applicant's first taxable year beginning after such date, and for all succeeding taxable years; and the applicant for any such revocation may not thereafter again file application for an exemption under such section 1402(e)(1). If the application is filed on or after the due date of the applicant's first taxable year ending on or after the date of the enactment of this Act [Dec. 20, 1977] and is effective with respect to that taxable year, it shall include or be accompanied by payment in full of an amount equal to the total of the taxes that would have been imposed by section 1401 of the Internal Revenue Code of 1986 with respect to all of the applicant's income derived in that taxable year which would have constituted net earnings from self-employment for purposes of chapter 2 of such Code [this chapter] (notwithstanding section 1402(c)(4) or (c)(5) of such Code) except for the exemption under section 1402(e)(1) of such Code.

''(b) Subsection (a) shall apply with respect to service performed (to the extent specified in such subsection) in taxable years ending on or after the date of the enactment of this Act [Dec. 20, 1977], and with respect to monthly insurance benefits payable under title II of the Social Security Act [section 401 et seq. of Title 42] on the basis of the wages and self-employment income of any individual for months in or after the calendar year in which such individual's application for revocation (as described in such subsection) is filed (and lump-sum death payments payable under such title on the basis of such wages and self-employment income in the case of deaths occurring in or after such calendar year).''

ELECTION OF EXEMPTION OF FEES FROM COVERAGES SELF-EMPLOYMENT INCOME

Pub. L. 90–248, title I, § 122(c)(2), Jan. 2, 1968, 81 Stat. 844, authorized any individual affected by the amendments made by Pub. L. 90–248 to subsecs. (c)(1), (2)(E) of this section and section 411(c)(1), (2)(E) of Title 42, The Public Health and Welfare, to make an irrevocable election not to have such amendments apply to fees received in 1968 and every year thereafter if he filed, on or before the due date of his income tax return for 1968, with the Secretary of the Treasury, a certificate of election of exemption from such amendments.

TIME FOR CLAIM FOR REFUND OR CREDIT OF OVERPAYMENT; DISALLOWANCE OF INTEREST

Pub. L. 90–248, title V, § 501(c), Jan. 2, 1968, 81 Stat. 933, authorized the payment of a refund or credit of any overpayment resulting from the amendment of subsec. (h)(2), relating to the filing of applications under this section, by section 501(a) of Pub. L. 90–248 if the claim therefore was filed on or before Dec. 31, 1968.

REFUND OR CREDIT ON CLAIMS FOR OVERPAYMENT FILED BEFORE APRIL 15, 1966, BY MEMBERS OF RELIGIOUS GROUPS OPPOSED TO INSURANCE

Pub. L. 89–97, title III, § 319(f), July 30, 1965, 79 Stat. 392, authorized the payment of a refund or credit of any overpayment resulting from the amendments made to sections 402, 411, and 1402 of this title by Pub. L. 89–97, if the claim therefore is filed on or before Apr. 15, 1966.

COMPUTATION OF INTEREST OR ASSESSMENT OF PENALTIES ON SELF-EMPLOYMENT TAXES PAYABLE BY MINISTERS, MEMBERS OF RELIGIOUS ORDERS, AND CHRISTIAN SCIENCE PRACTITIONERS

Pub. L. 89–97, title III, § 331(b), July 30, 1965, 79 Stat. 402, established, for purposes of computing interest, Apr. 15, 1967, as the due date for the payment, under section 1401 of this title, of taxes due for any taxable year ending before Jan. 1, 1966 solely by reason of the filing of a certificate or supplementary certificate under subsec. (e)(5) of this section, which was struck out by section 115(b)(2) of Pub. L. 90–248.

Pub. L. 86–778, title I, § 101(d), Sept. 13, 1960, 74 Stat. 927, established, for purposes of computing interest, Apr. 15, 1962, as the due date for the payment, under section 1401 of this title, of taxes due for any taxable year ending before 1959 solely by reason of the filing of a certificate or supplementary certificate under former subsec. (e)(3)(B) or (5) of this section.

Pub. L. 85–239, § 1(c), Aug. 30, 1957, 71 Stat. 521, established the due date, for purposes of computing interest, for the payment of taxes, where a certificate had been filed under former subsec. (e)(3)(A) or (B) of this section after the due date of a return for any taxable year.

REMUNERATION DEEMED NET EARNINGS FROM SELF-EMPLOYMENT AND NOT REMUNERATION FOR EMPLOYMENT

Pub. L. 86–778, title I, § 105(c)(2), Sept. 13, 1960, 74 Stat. 945, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Remuneration which is deemed under section 1402(g) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] to constitute net earnings from self-employment and not remuneration for employment shall also be deemed, for purposes of title II of the Social Security Act [section 401 et seq. of Title 42, The Public Health and Welfare], to constitute net earnings from self-employment and not remuneration for employment. If, pursuant to the last sentence of section 1402(g) of the Internal Revenue Code of 1986, an individual is deemed to have become an employee of an organization (or to have become a member of a group) on the first day of a calendar quarter, such individual shall likewise be deemed, for purposes of clause (ii) or (iii) of section 210(a)(8)(B) of the Social Security Act [section 410(a)(18)(B)(ii), (iii) of Title 42], to have become an employee of such organization (or to have become a member of such group) on such day.''

REMUNERATION PAID TO MINISTERS, MEMBERS OF RELIGIOUS ORDERS, AND CHRISTIAN SCIENCE PRACTITIONERS IN 1955 AND 1956 DEEMED REMUNERATION FOR EMPLOYMENT FOR PURPOSES OF SOCIAL SECURITY BENEFITS

Pub. L. 85–239, § 3, Aug. 30, 1957, 71 Stat. 522, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Remuneration which is deemed under section 1402(e)(4) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] to constitute remuneration for employment shall also be deemed, notwithstanding sections 210(a)(8)(A) and 211(c) of the Social Security Act [sections 410(a)(8)(A) and 411(c) of Title 42, The Public Health and Welfare], to constitute remuneration for employment (and not net earnings from self-employment) for purposes of title II of such Act [section 401 et seq. of Title 42].'' See section 4 of Pub. L. 85–239, set out as an Effective Date of 1957 Amendment note above.

MONTHLY BENEFITS AND LUMP-SUM DEATH PAYMENTS UNDER SOCIAL SECURITY ACT

Pub. L. 86–778, title I, §105(d)(2), Sept. 13, 1960, 74 Stat. 945, set out as an Effective Date of 1960 Amendment note under section 3121 of this title, provided that no monthly benefits under title II of the Social Security Act [section 401 et seq. of Title 42, The Public Health and Welfare], for September 1960 or any prior month shall be payable or increased by reason of the provisions of subsections (b) and (c) of section 105 or the amendments made by such subsections [adding subsec. (g) to this section and enacting notes under this section and section 3121 of this title], and no lump-sum death payment under title II of the Social Security Act shall be payable or increased by reason of such provisions or amendments in the case of any individual who died prior to Sept. 13, 1960.

§ 1403. Miscellaneous provisions

(a) Title of chapter

This chapter may be cited as the ''Self-Employment Contributions Act of 1954''.

(b) Cross references

(1) For provisions relating to returns, see section 6017.

(2) For provisions relating to collection of taxes in Virgin Islands, Guam, American Samoa, and Puerto Rico, see section 7651.

(Aug. 16, 1954, ch. 736, 68A Stat. 355; Pub. L. 86–778, title I, §103(m), Sept. 13, 1960, 74 Stat. 938; Pub. L. 89–368, title I, §102(b)(6), Mar. 15, 1966, 80 Stat. 64; Pub. L. 98–369, div. A, title IV, §412(b)(2), July 18, 1984, 98 Stat. 792.)

AMENDMENTS

1984—Subsec. (b)(3). Pub. L. 98–369 struck out par. (3) referring to section 6015 for provisions relating to declarations of estimated tax on self-employment income.

1966—Subsec. (b)(3). Pub. L. 89–368 added par. (3).

1960—Subsec. (b)(2). Pub. L. 86–778 included Guam and American Samoa.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by 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 1966 AMENDMENT

Amendment by Pub. L. 89–368 applicable with respect to taxable years beginning after December 31, 1966, see section 102(d) of Pub. L. 89–368, set out as a note under section 6654 of this title.

CHAPTER 2A—UNEARNED INCOME MEDICARE CONTRIBUTION

§ 1411. Imposition of tax

(a) In general

Except as provided in subsection (e)—

(1) Application to individuals

In the case of an individual, there is hereby imposed (in addition to any other tax imposed by this subtitle) for each taxable year a tax equal to 3.8 percent of the lesser of—

(A) net investment income for such taxable year, or

(B) the excess (if any) of—

(i) the modified adjusted gross income for such taxable year, over

(ii) the threshold amount.

(2) Application to estates and trusts

In the case of an estate or trust, there is hereby imposed (in addition to any other tax imposed by this subtitle) for each taxable year a tax of 3.8 percent of the lesser of—

(A) the undistributed net investment income for such taxable year, or

(B) the excess (if any) of—

(i) the adjusted gross income (as defined in section 67(e)) for such taxable year, over

(ii) the dollar amount at which the highest tax bracket in section 1(e) begins for such taxable year.

(b) Threshold amount

For purposes of this chapter, the term ''threshold amount'' means—

(1) in the case of a taxpayer making a joint return under section 6013 or a surviving spouse (as defined in section 2(a)), $250,000,

(2) in the case of a married taxpayer (as defined in section 7703) filing a separate return, ½ of the dollar amount determined under paragraph (1), and

(3) in any other case, $200,000.

(c) Net investment income

For purposes of this chapter—

(1) In general

The term ''net investment income'' means the excess (if any) of—

(A) the sum of—

(i) gross income from interest, dividends, annuities, royalties, and rents, other than such income which is derived in the ordinary course of a trade or business not described in paragraph (2),

(ii) other gross income derived from a trade or business described in paragraph (2), and

(iii) net gain (to the extent taken into account in computing taxable income) attributable to the disposition of property other than property held in a trade or business not described in paragraph (2), over

(B) the deductions allowed by this subtitle which are properly allocable to such gross income or net gain.

(2) Trades and businesses to which tax applies

A trade or business is described in this paragraph if such trade or business is—

(A) a passive activity (within the meaning of section 469) with respect to the taxpayer, or

(B) a trade or business of trading in financial instruments or commodities (as defined in section 475(e)(2)).

(3) Income on investment of working capital subject to tax

A rule similar to the rule of section 469(e)(1)(B) shall apply for purposes of this subsection.

(4) Exception for certain active interests in partnerships and S corporations

In the case of a disposition of an interest in a partnership or S corporation—

(A) gain from such disposition shall be taken into account under clause (iii) of paragraph (1)(A) only to the extent of the net gain which would be so taken into account by the transferor if all property of the partnership or S corporation were sold for fair market value immediately before the disposition of such interest, and

(B) a rule similar to the rule of subparagraph (A) shall apply to a loss from such disposition.

(5) Exception for distributions from qualified plans

The term ''net investment income'' shall not include any distribution from a plan or arrangement described in section 401(a), 403(a), 403(b), 408, 408A, or 457(b).

(6) Special rule

Net investment income shall not include any item taken into account in determining self-employment income for such taxable year on which a tax is imposed by section 1401(b).

(d) Modified adjusted gross income

For purposes of this chapter, the term ''modified adjusted gross income'' means adjusted gross income increased by the excess of—

(1) the amount excluded from gross income under section 911(a)(1), over

(2) the amount of any deductions (taken into account in computing adjusted gross income) or exclusions disallowed under section 911(d)(6) with respect to the amounts described in paragraph (1).

(e) Nonapplication of section

This section shall not apply to—

(1) a nonresident alien, or

(2) a trust all of the unexpired interests in which are devoted to one or more of the purposes described in section 170(c)(2)(B).

(Added Pub. L. 111–152, title I, §1402(a)(1), Mar. 30, 2010, 124 Stat. 1061.)

EFFECTIVE DATE

Pub. L. 111–152, title I, §1402(a)(4), Mar. 30, 2010, 124 Stat. 1063, provided that: ''The amendments made by this subsection [enacting this chapter and amending section 6654 of this title] shall apply to taxable years beginning after December 31, 2012.''

CHAPTER 3—WITHHOLDING OF TAX ON NONRESIDENT ALIENS AND FOREIGN CORPORATIONS

AMENDMENTS

1984—Pub. L. 98–369, div. A, title IV, §474(r)(29)(B), (C), July 18, 1984, 98 Stat. 844, struck out ''AND TAX-FREE COVENANT BONDS'' after ''FOREIGN CORPORATIONS'' in heading of chapter 3, and struck out item for subchapter B ''Tax-free covenant bonds'' and redesignated the item for subchapter C as B.

Subchapter A—Nonresident Aliens and Foreign Corporations

AMENDMENTS

1988—Pub. L. 100–647, title I, §1012(s)(1)(C), Nov. 10, 1988, 102 Stat. 3527, substituted ''Withholding of tax on foreign partners' share of effectively connected income'' for ''Withholding tax on amounts paid by partnerships to foreign partners'' in item 1446.

1986—Pub. L. 99–514, title XII, §1246(c), Oct. 22, 1986, 100 Stat. 2582, added item 1446.

1984—Pub. L. 98–369, div. A, title I, §129(a)(2), July 18, 1984, 98 Stat. 659, added item 1445.

1983—Pub. L. 97–455, §1(d)(2), Jan. 12, 1983, 96 Stat. 2498, added item 1444.

§ 1441. Withholding of tax on nonresident aliens

(a) General rule

Except as otherwise provided in subsection (c), all persons, in whatever capacity acting (including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the United States) having the control, receipt, custody, disposal, or payment of any of the items of income specified in subsection (b) (to the extent that any of such items constitutes gross income from sources within the United States), of any nonresident alien individual or of any foreign partnership shall (except as otherwise provided in regulations prescribed by the Secretary under section 874) deduct and withhold from such items a tax equal to 30 percent thereof, except that in the case of any item of income specified in the second sentence of subsection (b), the tax shall be equal to 14 percent of such item.

(b) Income items

The items of income referred to in subsection (a) are interest (other than original issue discount as defined in section 1273), dividends, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income, gains described in section 631(b) or (c), amounts subject to tax under section 871(a)(1)(C), and gains subject to tax under section 871(a)(1)(D). The items of income referred to in subsection (a) from which tax shall be deducted and withheld at the rate of 14 percent are amounts which are received by a nonresident alien individual 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 and which are—

(1) incident to a qualified scholarship to which section 117(a) applies, but only to the extent includible in gross income; or

(2) in the case of an individual who is not a candidate for a degree at an educational organization described in section 170(b)(1)(A)(ii), granted by—

(A) an organization described in section 501(c)(3) which is exempt from tax under section 501(a),

[1] Section numbers editorially supplied.

[1] So in original. Does not conform to section catchline.

(B) a foreign government,

(C) an international organization, or a binational or multinational educational and cultural foundation or commission created or continued pursuant to the Mutual Educational and Cultural Exchange Act of 1961, or

(D) the United States, or an instrumentality or agency thereof, or a State, or a possession of the United States, or any political subdivision thereof, or the District of Columbia,

as a scholarship or fellowship for study, training, or research in the United States. In the case of a nonresident alien individual who is a member of a domestic partnership, the items of income referred to in subsection (a) shall be treated as referring to items specified in this subsection included in his distributive share of the income of such partnership.

(c) Exceptions

(1) Income connected with United States business

No deduction or withholding under subsection (a) shall be required in the case of any item of income (other than compensation for personal services) which is effectively connected with the conduct of a trade or business within the United States and which is included in the gross income of the recipient under section 871(b)(2) for the taxable year.

(2) Owner unknown

The Secretary may authorize the tax under subsection (a) to be deducted and withheld from the interest upon any securities the owners of which are not known to the withholding agent.

(3) Bonds with extended maturity dates

The deduction and withholding in the case of interest on bonds, mortgages, or deeds of trust or other similar obligations of a corporation, within subsections (a), (b), and (c) of section 1451 (as in effect before its repeal by the Tax Reform Act of 1984) were it not for the fact that the maturity date of such obligations has been extended on or after January 1, 1934, and the liability assumed by the debtor exceeds 27½ percent of the interest, shall not exceed the rate of 27½ percent per annum.

(4) Compensation of certain aliens

Under regulations prescribed by the Secretary, compensation for personal services may be exempted from deduction and withholding under subsection (a).

(5) Special items

In the case of gains described in section 631(b) or (c), and gains subject to tax under section 871(a)(1)(D), the amount required to be deducted and withheld shall, if the amount of such gain is not known to the withholding agent, be such amount, not exceeding 30 percent of the amount payable, as may be necessary to assure that the tax deducted and withheld shall not be less than 30 percent of such gain.

(6) Per diem of certain aliens

No deduction or withholding under subsection (a) shall be required in the case of amounts of per diem for subsistence paid by the United States Government (directly or by contract) to any nonresident alien individual who is engaged in any program of training in the United States under the Mutual Security Act of 1954, as amended.

(7) Certain annuities received under qualified plans

No deduction or withholding under subsection (a) shall be required in the case of any amount received as an annuity if such amount is, under section 871(f), exempt from the tax imposed by section 871(a).

(8) Original issue discount

The Secretary may prescribe such regulations as may be necessary for the deduction and withholding of the tax on original issue discount subject to tax under section 871(a)(1)(C) including rules for the deduction and withholding of the tax on original issue discount from payments of interest.

(9) Interest income from certain portfolio debt investments

In the case of portfolio interest (within the meaning of section 871(h)), no tax shall be required to be deducted and withheld from such interest unless the person required to deduct and withhold tax from such interest knows, or has reason to know, that such interest is not portfolio interest by reason of section 871(h)(3) or (4).

(10) Exception for certain interest and dividends

No tax shall be required to be deducted and withheld under subsection (a) from any amount described in section 871(i)(2).

(11) Certain gambling winnings

No tax shall be required to be deducted and withheld under subsection (a) from any amount exempt from the tax imposed by section 871(a)(1)(A) by reason of section 871(j).

(12) Certain dividends received from regulated investment companies

(A) In general

No tax shall be required to be deducted and withheld under subsection (a) from any amount exempt from the tax imposed by section 871(a)(1)(A) by reason of section 871(k).

(B) Special rule

For purposes of subparagraph (A), clause (i) of section 871(k)(1)(B) shall not apply to any dividend unless the regulated investment company knows that such dividend is a dividend referred to in such clause. A similar rule shall apply with respect to the exception contained in section 871(k)(2)(B).

(d) Exemption of certain foreign partnerships

Subject to such terms and conditions as may be provided by regulations prescribed by the Secretary, subsection (a) shall not apply in the case of a foreign partnership engaged in trade or business within the United States if the Secretary determines that the requirements of subsection (a) impose an undue administrative burden and that the collection of the tax imposed

by section 871(a) on the members of such partnership who are nonresident alien individuals will not be jeopardized by the exemption.

(e) Alien resident of Puerto Rico

For purposes of this section, the term ''nonresident alien individual'' includes an alien resident of Puerto Rico.

(f) Continental shelf areas

For sources of income derived from, or for services performed with respect to, the exploration or exploitation of natural resources on submarine areas adjacent to the territorial waters of the United States, see section 638.

(g) Cross reference

For provision treating 85 percent of social security benefits as subject to withholding under this section, see section 871(a)(3).

(Aug. 16, 1954, ch. 736, 68A Stat. 357; Aug. 26, 1954, ch. 937, title V, § 544(f), as added July 18, 1956, ch. 627, § 11(a), 70 Stat. 563; amended Pub. L. 85–141, § 11(b)(1), Aug. 14, 1957, 71 Stat. 365; Pub. L. 85–866, title I, § 40(b), Sept. 2, 1958, 72 Stat. 1638; Pub. L. 87–256, § 110(d), Sept. 21, 1961, 75 Stat. 536; Pub. L. 88–272, title III, § 302(c), Feb. 26, 1964, 78 Stat. 146; Pub. L. 89–809, title I, § 103(h), Nov. 13, 1966, 80 Stat. 1553; Pub. L. 91–172, title V, § 505(b), Dec. 30, 1969, 83 Stat. 634; Pub. L. 92–178, title III, § 313(a), (d), Dec. 10, 1971, 85 Stat. 526, 527; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–21, title I, § 121(c)(2), Apr. 20, 1983, 97 Stat. 82; Pub. L. 98–369, div. A, title I, §§ 42(a)(13), 127(e)(1), title IV, § 474(r)(29)(G), (H), July 18, 1984, 98 Stat. 557, 652, 845; Pub. L. 99–514, title I, § 123(b)(2), title XII, § 1214(c)(3), title XVIII, § 1810(d)(3)(D), Oct. 22, 1986, 100 Stat. 2113, 2542, 2825; Pub. L. 100–647, title I, § 1001(d)(2)(A), title VI, § 6134(a)(2), Nov. 10, 1988, 102 Stat. 3350, 3721; Pub. L. 101–508, title XI, § 11704(a)(14), Nov. 5, 1990, 104 Stat. 1388–518; Pub. L. 102–318, title V, § 521(b)(32), (33), July 3, 1992, 106 Stat. 312; Pub. L. 103–66, title XIII, § 13237(c)(4), Aug. 10, 1993, 107 Stat. 508; Pub. L. 103–296, title III, § 320(a)(1)(B), Aug. 15, 1994, 108 Stat. 1535; Pub. L. 105–34, title XVI, § 1604(g)(3), Aug. 5, 1997, 111 Stat. 1099; Pub. L. 108–357, title IV, § 411(a)(3)(A), Oct. 22, 2004, 118 Stat. 1503; Pub. L. 113–295, div. A, title II, § 221(a)(92), Dec. 19, 2014, 128 Stat. 4050.)

REFERENCES IN TEXT

Section 101(a)(15) of the Immigration and Nationality Act, as amended, referred to in subsec. (b), is classified to section 1101(a)(15) of Title 8, Aliens and Nationality.

The Mutual Educational and Cultural Exchange Act of 1961, referred to in subsec. (b)(2)(C), is Pub. L. 87–256, Sept. 21, 1961, 75 Stat. 527, as amended, which is classified principally to chapter 33 (§ 2451 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 2451 of Title 22 and Tables.

The Tax Reform Act of 1984, referred to in subsec. (c)(3), is division A [§§ 5 to 1082] of Pub. L. 98–369, July 18, 1984, 98 Stat. 494, which was approved July 18, 1984. For complete classification of this Act to the Code, see Short Title of 1984 Amendments note set out under section 1 of this title and Tables.

The Mutual Security Act of 1954, referred to in subsec. (c)(6), is act Aug. 26, 1954, ch. 937, 68 Stat. 832, as amended by acts July 8, 1955, ch. 301, 69 Stat. 283; July 18, 1956, ch. 627, §§ 2 to 11, 70 Stat. 555; Aug. 14, 1957, Pub. L. 85–141, 71 Stat. 355; June 30, 1958, Pub. L. 85–477, ch. 1, §§ 101 to 103, ch. II, §§ 201 to 205, ch. III, § 301, ch. IV, § 401, ch. V, § 501, 72 Stat. 261; July 24, 1959, Pub. L. 86–108, § 2, ch. 1, § 101, ch. II, §§ 201 to 205(a) to (i), (k) to (n), ch. III, § 301, ch. IV, § 401(a) to (k), (m), 73 Stat. 246; May 14, 1960, Pub. L. 86–472, ch. I to V, 74 Stat. 134, which was principally classified to chapter 24 (§ 1750 et seq.) of Title 22, Foreign Relations and Intercourse, and which was repealed by act July 18, 1956, ch. 627, § 8(m), 70 Stat. 559, Pub. L. 85–141, §§ 2(e), 3, 4(b), 11(d), Aug. 14, 1957, 71 Stat. 356, Pub. L. 86–108, ch. II, §§ 205(j), ch. IV, 401(1), July 24, 1959, 73 Stat. 250, Pub. L. 86–472, ch. II, §§ 203(d), 204(k), May 14, 1960, 74 Stat. 138, Pub. L. 87–195, pt. III, § 642(a)(2), Sept. 4, 1961, 75 Stat. 460, Pub. L. 94–329, title II, § 212(b)(1), June 30, 1976, 90 Stat 745, except for sections 1754, 1783, 1796, 1853, 1922, 1928, and 1937 of Title 22. For complete classification of this Act to the Code, see Short Title note set out under section 1754 of Title 22 and Tables.

AMENDMENTS

2014—Subsecs. (b), (c)(5). Pub. L. 113–295 substituted ''and gains subject to tax under section 871(a)(1)(D)'' for ''gains subject to tax under section 871(a)(1)(D), and gains on transfers described in section 1235 made on or before October 4, 1966''.

2004—Subsec. (c)(12). Pub. L. 108–357 added par. (12).

1997—Subsec. (g). Pub. L. 105–34 substituted ''85 percent'' for ''one-half''.

1994—Subsec. (b). Pub. L. 103–296 substituted ''(J), (M), or (Q)'' for ''(J), or (M)''.

1993—Subsec. (c)(9). Pub. L. 103–66 substituted ''section 871(h)(3) or (4)'' for ''section 871(h)(3)''.

1992—Subsecs. (b), (c)(5). Pub. L. 102–318 struck out ''402(a)(2), 403(a)(2), or'' before ''631(b)''.

1990—Subsec. (b)(2). Pub. L. 101–508 inserted ''section'' before ''170(b)(1)(A)(ii)''.

1988—Subsec. (b). Pub. L. 100–647, § 1001(d)(2)(A), amended second sentence generally. Prior to amendment, second sentence read as follows: ''The items of income referred to in subsection (a) from which tax shall be deducted and withheld at the rate of 14 percent are amounts which are received by a nonresident alien individual who is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act and which are incident to a qualified scholarship to which section 117(a) applies, but only to the extent such amounts are includible in gross income.''

Subsec. (c)(11). Pub. L. 100–647, § 6134(a)(2), added par. (11).

1986—Subsec. (b). Pub. L. 99–514, § 123(b)(2), amended second sentence generally. Prior to amendment, second sentence read as follows: ''The items of income referred to in subsection (a) from which tax shall be deducted and withheld at the rate of 14 percent are—

''(1) that portion of any scholarship or fellowship grant which is received by a nonresident alien individual who is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended, and which is not excluded from gross income under section 117(a)(1) solely by reason of section 117(b)(2)(B); and

''(2) amounts described in subparagraphs (A), (B), (C), and (D) of section 117(a)(2) which are received by any such nonresident alien individual and which are incident to a scholarship or fellowship grant to which section 117(a)(1) applies, but only to the extent such amounts are includable in gross income.''

Subsec. (c)(9). Pub. L. 99–514, § 1810(d)(3)(D), substituted ''section 871(h)'' for ''871(h)(2)''.

Subsec. (c)(10). Pub. L. 99–514, § 1214(c)(3), added par. (10).

1984—Subsec. (a). Pub. L. 98–369, § 474(r)(29)(G), struck out ''except in the cases provided for in section 1451 and'' before ''except as otherwise provided in regulations''.

Subsec. (b). Pub. L. 98–369, § 42(a)(13), substituted ''section 1273'' for ''section 1232(b)''.

Subsec. (c)(3). Pub. L. 98–369, § 474(r)(29)(H), inserted ''(as in effect before its repeal by the Tax Reform Act of 1984)''.

Subsec. (c)(9). Pub. L. 98–369, §127(e)(1), added par. (9).

1983—Subsec. (g). Pub. L. 98–21 added subsec. (g).

1976—Pub. L. 94–455 struck out in subsecs. (a), (c)(2), (4), (8), (d), ''or his delegate'' after ''Secretary''.

1971—Subsec. (b). Pub. L. 92–178, §313(a), inserted ''(other than original issue discount as defined in section 1232(b))'' after ''interest''.

Subsec. (c)(8). Pub. L. 92–178, §313(d), added par. (8).

1969—Subsec. (f). Pub. L. 91–172 added subsec. (f).

1966—Subsec. (a). Pub. L. 89–809, §103(h)(1), substituted ''or of any foreign partnership'' for '', or of any partnership not engaged in trade or business within the United States and composed in whole or in part of nonresident aliens,''.

Subsec. (b). Pub. L. 89–809, §103(h)(2)–(4), struck out ''(except interest on deposits with persons carrying on the banking business paid to persons not engaged in business in the United States)'' after ''The items of income referred to in subsection (a) are interest'' and substituted ''gains described in section 402(a)(2), 403(a)(2), or 631(b) or (c), amounts subject to tax under section 871(a)(1)(C), gains subject to tax under section 871(a)(1)(D), and gains on transfers described in section 1235 made on or before October 4, 1966'' for ''and amounts described in section 402(a)(2), section 403(a)(2), section 631(b) and (c), and section 1235, which are considered to be gains from the sale or exchange of capital assets'' in text preceding par. (1), and inserted provision for treatment of items of income referred to in subsec. (a) in the case of nonresident alien individuals who are members of domestic partnerships.

Subsec. (c)(1). Pub. L. 89–809, §103(h)(5), substituted ''in the case of any item of income (other than compensation for personal services) which is effectively connected with the conduct of a trade or business within the United States and which is included in the gross income of the recipient under section 871(b)(2) for the taxable year'' for ''in the case of dividends paid by a foreign corporation unless (A) such corporation is engaged in trade or business within the United States, and (B) more than 85 percent of the gross income of such 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 derived from sources within the United States as determined under part I of subchapter N of chapter 1'' after ''shall be required''.

Subsec. (c)(4). Pub. L. 89–809, §103(h)(6), struck out provisions which had served to limit to compensation for personal services of nonresident alien individuals who enter and leave the United States at frequent intervals and of nonresident alien individuals for the period they are temporarily present in the United States as a nonimmigrant under subparagraph (F) and (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended, the application of the exemption from deduction and withholding under subsec. (a), leaving the exemption under subsec. (a) applicable to compensation for personal services without further limitation.

Subsec. (c)(5). Pub. L. 89–809, §103(h)(7), substituted ''gains described in section 402(a)(2), 403(a)(2), or 631(b) or (c), gains subject to tax under section 871 (a)(1)(D), and gains on transfers described in section 1235 made on or before October 4, 1966,'' for ''amounts described in section 402(a)(2), section 403(a)(2), section 631(b) and (c), and section 1235, which are considered to be gains from the sale or exchange of capital assets,'' and ''amounts payable,'' for ''proceeds from such sale or exchange,''.

Subsec. (c)(7). Pub. L. 89–809, §103(h)(8), added par. (7).

Subsecs. (d), (e). Pub. L. 89–809, §103(h)(9), added subsec. (d) and redesignated former subsec. (d) as (e).

1964—Subsecs. (a), (b). Pub. L. 88–272 reduced the withholding rate from 18% to 14%.

1961—Subsec. (a). Pub. L. 87–256, §110(d)(1), required a tax equal to 18 percent of the item in the case of any item of income specified in second sentence of subsection (b).

Subsec. (b). Pub. L. 87–256, §110(d)(2), inserted provisions listing items of income from which tax shall be deducted and withheld at the rate of 18 percent.

Subsec. (c)(4). Pub. L. 87–256, §110(d)(3), authorized the exemption from deduction and withholding of the compensation for personal services of a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subpar. (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended.

1958—Subsecs. (b), (c)(5). Pub. L. 85–866 inserted ''section 403(a)(2),'' after ''section 402(a)(2),''.

1956—Subsec. (c)(6). Act July 18, 1956, added section 544(f) to act Aug. 26, 1954, which section amended this subsection by adding par. (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 2004 AMENDMENT

Amendment by 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.

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 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 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)(A) 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 123(b)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, but only in the case of scholarships and fellowships granted after Aug. 16, 1986, see section 151(d) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 1214(c)(3) of Pub. L. 99–514 applicable to payments made in a taxable year of the 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)(3)(D) 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)(13) 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(e)(1) 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.

Amendment by section 474(r)(29)(G), (H) of Pub. L. 98–369 not applicable with respect to obligations issued before Jan. 1, 1984, see section 475(b) of Pub. L. 98–369, set out as a note under section 33 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 1971 AMENDMENT

Amendment by Pub. L. 92–178 applicable with respect to payments occurring on or after Apr. 1, 1972, 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 payments made in taxable years of recipients beginning after Dec. 31, 1966, see section 103(n)(2) of Pub. L. 89–809, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to payments made after seventh day following Feb. 24, 1964, see section 302(d) of Pub. L. 88–272, set out as a note under section 3402 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Pub. L. 87–256, § 110(h)(2), Sept. 21, 1961, 75 Stat. 537, provided that: ''The amendments made by subsection (d) of this section [amending this section] shall apply with respect to payments made after December 31, 1961.''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 effective Sept. 3, 1958, see section 40(c) of Pub. L. 85–866, set out as a note under section 871 of this title.

REPEALS

Section 544(f) of act Aug. 26, 1954, cited as a credit to this section, was repealed by Pub. L. 85–141, except insofar as such section 544(f) affected this section.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendments by sections 123(b)(2) and 1214(c)(3) 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, 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.

WITHHOLDING OF TAX ON NONRESIDENT ALIENS AND FOREIGN CORPORATIONS

Pub. L. 97–248, title III, § 342, Sept. 3, 1982, 96 Stat. 635, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Not later than 2 years after the date of the enactment of this Act [Sept. 3, 1982], the Secretary of the Treasury or his delegate shall prescribe regulations establishing certification procedures, refund procedures, or other procedures which ensure that any benefit of any treaty relating to withholding of tax under sections 1441 and 1442 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] is available only to persons entitled to such benefit.''

§ 1442. Withholding of tax on foreign corporations

(a) General rule

In the case of foreign corporations subject to taxation under this subtitle, there shall be deducted and withheld at the source in the same manner and on the same items of income as is provided in section 1441 a tax equal to 30 percent thereof. For purposes of the preceding sentence, the references in section 1441(b) to sections 871(a)(1)(C) and (D) shall be treated as referring to sections 881(a)(3) and (4), the reference in section 1441(c)(1) to section 871(b)(2) shall be treated as referring to section 842 or section 882(a)(2), as the case may be, the reference in section 1441(c)(5) to section 871(a)(1)(D) shall be treated as referring to section 881(a)(4), the reference in section 1441(c)(8) to section 871(a)(1)(C) shall be treated as referring to section 881(a)(3), the references in section 1441(c)(9) to sections 871(h) and 871(h)(3) or (4) shall be treated as referring to sections 881(c) and 881(c)(3) or (4), the reference in section 1441(c)(10) to section 871(i)(2) shall be treated as referring to section 881(d), and the references in section 1441(c)(12) to sections 871(a) and 871(k) shall be treated as referring to sections 881(a) and 881(e) (except that for purposes of applying subparagraph (A) of section 1441(c)(12), as so modified, clause (ii) of section 881(e)(1)(B) shall not apply to any dividend unless the regulated investment company knows that such dividend is a dividend referred to in such clause).

(b) Exemption

Subject to such terms and conditions as may be provided by regulations prescribed by the Secretary, subsection (a) shall not apply in the case of a foreign corporation engaged in trade or business within the United States if the Secretary determines that the requirements of subsection (a) impose an undue administrative burden and that the collection of the tax imposed by section 881 on such corporation will not be jeopardized by the exemption.

(c) Exception for certain possessions corporations

(1) Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands

For purposes of this section, the term ''foreign corporation'' does not include a corpora-

tion created or organized in Guam, American Samoa, the Northern Mariana Islands, or the Virgin Islands or under the law of any such possession if the requirements of subparagraphs (A), (B), and (C) of section 881(b)(1) are met with respect to such corporation.

(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 section 881(b)(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.

(Aug. 16, 1954, ch. 736, 68A Stat. 358; Pub. L. 89–809, title I, §104(c), Nov. 13, 1966, 80 Stat. 1557; Pub. L. 92–178, title III, §313(e), Dec. 10, 1971, 85 Stat. 528; Pub. L. 92–606, §1(e)(2), Oct. 31, 1972, 86 Stat. 1497; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title I, §§127(e)(2), 130(b), title IV, §474(r)(29)(I), July 18, 1984, 98 Stat. 652, 661, 845; Pub. L. 99–514, title XII, §1273(b)(2)(B), title XVIII, §1810(d)(3)(E), Oct. 22, 1986, 100 Stat. 2596, 2825; Pub. L. 100–647, title I, §1012(g)(7), Nov. 10, 1988, 102 Stat. 3501; Pub. L. 103–66, title XIII, §13237(c)(5), Aug. 10, 1993, 107 Stat. 508; Pub. L. 108–357, title IV, §§411(a)(3)(B), 420(b), Oct. 22, 2004, 118 Stat. 1504, 1513.)

REFERENCES IN TEXT

The date of the enactment of this paragraph, referred to in subsec. (c)(2)(B), is the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–357, §411(a)(3)(B), substituted ''the reference in section 1441(c)(10)'' for ''and the reference in section 1441(c)(10)'' and inserted before period at end '', and the references in section 1441(c)(12) to sections 871(a) and 871(k) shall be treated as referring to sections 881(a) and 881(e) (except that for purposes of applying subparagraph (A) of section 1441(c)(12), as so modified, clause (ii) of section 881(e)(1)(B) shall not apply to any dividend unless the regulated investment company knows that such dividend is a dividend referred to in such clause)''.

Subsec. (c). Pub. L. 108–357, §420(b), designated existing provisions as par. (1), inserted heading, and added par. (2).

1993—Subsec. (a). Pub. L. 103–66 substituted ''871(h)(3) or (4)'' for ''871(h)(3)'' and ''881(c)(3) or (4)'' for ''881(c)(3)''.

1988—Subsec. (a). Pub. L. 100–647 struck out ''and'' after ''to section 881(a)(3),'' and inserted before period at end '', and the reference in section 1441(c)(10) to section 871(i)(2) shall be treated as referring to section 881(d)''.

1986—Subsec. (a). Pub. L. 99–514, §1810(d)(3)(E), substituted ''871(h)'' for ''871(h)(2)'', ''881(c)'' for ''881(c)(2)'', and ''1441(c)(9)'' for ''1449(c)(9)''.

Subsec. (c). Pub. L. 99–514, §1273(b)(2)(B), amended subsec. (c) generally, substituting reference to ''certain possessions corporations'' for reference to ''certain Guam and Virgin Islands corporations'' in heading, and in text extending ''foreign corporation'' exception so as to not include corporation created or organized in Guam, American Samoa, Northern Mariana Islands, or the Virgin Islands, and striking out par. (2) which declared that par. (1) not apply to tax imposed in Guam, and par. (3) which referred to sections 934 and 943a for tax imposed in Virgin Islands.

1984—Subsec. (a). Pub. L. 98–369, §474(r)(29)(I), struck out ''or section 1451'' after ''provided in section 1441'' and struck out ''; except that, in the case of interest described in section 1451 (relating to tax-free covenant bonds), the deduction and withholding shall be at the rate specified therein'' after ''a tax equal to 30 percent thereof''.

Pub. L. 98–369, §127(e)(2), struck out ''and'' after ''section 881(a)(4),'' and inserted '', and the references in section 1449(c)(9) to sections 871(h)(2) and 871(h)(3) shall be treated as referring to sections 881(c)(2) and 881(c)(3)''.

Subsec. (c). Pub. L. 98–369, §130(b), substituted provision relating to exception for certain Guam and Virgin Islands corporations for provision relating to exception for Guam corporations.

1976—Subsec. (b). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary'' in two places.

1972—Subsec. (c). Pub. L. 92–606 added subsec. (c).

1971—Subsec. (a). Pub. L. 92–178 provided that reference in section 1441(c)(8) to section 871(a)(1)(C) shall be treated as referring to section 881(a)(3).

1966—Pub. L. 89–809 limited the withholding of tax at the 30 percent rate to items of fixed or determinable United States source income not effectively connected with the conduct of a trade or business in the United States and authorized the granting of an exemption from the withholding requirement in the case of a foreign corporation engaged in trade or business within the United States if the Secretary or his delegate determines that the withholding imposes an undue administrative burden and that the collection of the tax will not be jeopardized by the exemption.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 411(a)(3)(B) 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.

Amendment by section 420(b) of Pub. L. 108–357 applicable to dividends paid after Oct. 22, 2004, see section 420(d) of Pub. L. 108–357, set out as a note under section 881 of this title.

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 1273(b)(2)(B) 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)(3)(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 127(e)(2) 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 130(b) of Pub. L. 98–369 applicable to payments made after Mar. 1, 1984, in taxable years ending after such date, see section 130(d) of Pub. L. 98–369, set out as a note under section 881 of this title.

Amendment by section 474(r)(29)(I) of Pub. L. 98–369 not applicable with respect to obligations issued before Jan. 1, 1984, see section 475(b) of Pub. L. 98–369, set out as a note under section 33 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Pub. L. 92–606, § 2, Oct. 31, 1972, 86 Stat. 1497, provided in part that: ''The amendment made by section 1(e)(2) [amending this section] shall take effect on the day after the date of enactment of this Act [Oct. 31, 1972].''

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–178 applicable with respect to payments occurring on or after Apr. 1, 1972, 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.

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.

WITHHOLDING OF TAX ON NONRESIDENT ALIENS AND FOREIGN CORPORATIONS

For provisions relating to withholding of tax on nonresident aliens and foreign corporations, see Pub. L. 97–248, title III, § 342, Sept. 3, 1982, 96 Stat. 635, set out as a note under section 1441 of this title.

§ 1443. Foreign tax-exempt organizations

(a) Income subject to section 511

In the case of income of a foreign organization subject to the tax imposed by section 511, this chapter shall apply to income includible under section 512 in computing its unrelated business taxable income, but only to the extent and subject to such conditions as may be provided under regulations prescribed by the Secretary.

(b) Income subject to section 4948

In the case of income of a foreign organization subject to the tax imposed by section 4948(a), this chapter shall apply, except that the deduction and withholding shall be at the rate of 4 percent and shall be subject to such conditions as may be provided under regulations prescribed by the Secretary.

(Aug. 16, 1954, ch. 736, 68A Stat. 358; Pub. L. 91–172, title I, §§ 101(j)(22), 121(d)(2)(C), Dec. 30, 1969, 83 Stat. 528, 547; 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'' in two places.

1969—Pub. L. 91–172, § 101(j)(22), designated existing provisions as subsec. (a) and added subsec. (b).

Subsec. (a). Pub. L. 91–172, § 121(d)(2)(C), substituted ''income'' for ''rents'' after ''this chapter shall apply to''.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 101(j)(22) 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)(C) 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.

§ 1444. Withholding on Virgin Islands source income

For purposes of determining the withholding tax liability incurred in the Virgin Islands pursuant to this title (as made applicable to the Virgin Islands) with respect to amounts received from sources within the Virgin Islands by citizens and resident alien individuals of the United States, and corporations organized in the United States, the rate of withholding tax under sections 1441 and 1442 on income subject to tax under section 871(a)(1) or 881 shall not exceed the rate of tax on such income under section 871(a)(1) or 881, as the case may be.

(Added Pub. L. 97–455, § 1(b), Jan. 12, 1983, 96 Stat. 2497; amended Pub. L. 100–647, title I, § 1012(x), Nov. 10, 1988, 102 Stat. 3530.)

AMENDMENTS

1988—Pub. L. 100–647 struck out ''(as modified by section 934A)'' before ''shall not exceed''.

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 payments made after Jan. 12, 1983, see section 1(e)(2) of Pub. L. 97–455, set out as a note under section 934 of this title.

§ 1445. Withholding of tax on dispositions of United States real property interests

(a) General rule

Except as otherwise provided in this section, in the case of any disposition of a United States real property interest (as defined in section 897(c)) by a foreign person, the transferee shall be required to deduct and withhold a tax equal to 15 percent of the amount realized on the disposition.

(b) Exemptions

(1) In general

No person shall be required to deduct and withhold any amount under subsection (a) with respect to a disposition if paragraph (2), (3), (4), (5), or (6) applies to the transaction.

(2) Transferor furnishes nonforeign affidavit

Except as provided in paragraph (7), this paragraph applies to the disposition if the transferor furnishes to the transferee an affidavit by the transferor stating, under penalty of perjury, the transferor's United States taxpayer identification number and that the transferor is not a foreign person.

(3) Nonpublicly traded domestic corporation furnishes affidavit that interests in corporation not United States real property interests

Except as provided in paragraph (7), this paragraph applies in the case of a disposition of any interest in any domestic corporation if the domestic corporation furnishes to the transferee an affidavit by the domestic corporation stating, under penalty of perjury, that—

(A) the domestic corporation is not and has not been a United States real property holding corporation (as defined in section 897(c)(2)) during the applicable period specified in section 897(c)(1)(A)(ii), or

(B) as of the date of the disposition, interests in such corporation are not United States real property interests by reason of section 897(c)(1)(B).

(4) Transferee receives qualifying statement

(A) In general

This paragraph applies to the disposition if the transferee receives a qualifying statement at such time, in such manner, and subject to such terms and conditions as the Secretary may by regulations prescribe.

(B) Qualifying statement

For purposes of subparagraph (A), the term ''qualifying statement'' means a statement by the Secretary that—

(i) the transferor either—

(I) has reached agreement with the Secretary (or such agreement has been reached by the transferee) for the payment of any tax imposed by section 871(b)(1) or 882(a)(1) on any gain recognized by the transferor on the disposition of the United States real property interest, or

(II) is exempt from any tax imposed by section 871(b)(1) or 882(a)(1) on any gain recognized by the transferor on the disposition of the United States real property interest, and

(ii) the transferor or transferee has satisfied any transferor's unsatisfied withholding liability or has provided adequate security to cover such liability.

(5) Residence where amount realized does not exceed $300,000

This paragraph applies to the disposition if—

(A) the property is acquired by the transferee for use by him as a residence, and

(B) the amount realized for the property does not exceed $300,000.

(6) Stock regularly traded on established securities market

This paragraph applies if the disposition is of a share of a class of stock that is regularly traded on an established securities market.

(7) Special rules for paragraphs (2), (3), and (9)

Paragraph (2), (3), or (9) (as the case may be) shall not apply to any disposition—

(A) if—

(i) the transferee or qualified substitute has actual knowledge that the affidavit referred to in such paragraph, or the statement referred to in paragraph (9)(A)(ii), is false, or

(ii) the transferee or qualified substitute receives a notice (as described in subsection (d)) from a transferor's agent, transferee's agent, or qualified substitute that such affidavit or statement is false, or

(B) if the Secretary by regulations requires the transferee or qualified substitute to furnish a copy of such affidavit or statement to the Secretary and the transferee or qualified substitute fails to furnish a copy of such affidavit or statement to the Secretary at such time and in such manner as required by such regulations.

(8) Applicable wash sales transactions

No person shall be required to deduct and withhold any amount under subsection (a) with respect to a disposition which is treated as a disposition of a United States real property interest solely by reason of section 897(h)(5).

(9) Alternative procedure for furnishing nonforeign affidavit

For purposes of paragraphs (2) and (7)—

(A) In general

Paragraph (2) shall be treated as applying to a transaction if, in connection with a disposition of a United States real property interest—

(i) the affidavit specified in paragraph (2) is furnished to a qualified substitute, and

(ii) the qualified substitute furnishes a statement to the transferee stating, under penalty of perjury, that the qualified substitute has such affidavit in his possession.

(B) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this paragraph.

(c) Limitations on amount required to be withheld

(1) Cannot exceed transferor's maximum tax liability

(A) In general

The amount required to be withheld under this section with respect to any disposition shall not exceed the amount (if any) determined under subparagraph (B) as the transferor's maximum tax liability.

(B) Request

At the request of the transferor or transferee, the Secretary shall determine, with respect to any disposition, the transferor's maximum tax liability.

(C) Refund of excess amounts withheld

Subject to such terms and conditions as the Secretary may by regulations prescribe, a transferor may seek and obtain a refund of any amounts withheld under this section in excess of the transferor's maximum tax liability.

(2) Authority of Secretary to prescribe reduced amount

At the request of the transferor or transferee, the Secretary may prescribe a reduced amount to be withheld under this section if the Secretary determines that to substitute such reduced amount will not jeopardize the collection of the tax imposed by section 871(b)(1) or 882(a)(1).

(3) Procedural rules

(A) Regulations

Requests for—

(i) qualifying statements under subsection (b)(4),

(ii) determinations of transferor's maximum tax liability under paragraph (1), and

(iii) reductions under paragraph (2) in the amount required to be withheld,

shall be made at the time and manner, and shall include such information, as the Secretary shall prescribe by regulations.

(B) Requests to be handled within 90 days

The Secretary shall take action with respect to any request described in subparagraph (A) within 90 days after the Secretary receives the request.

(4) Reduced rate of withholding for residence where amount realized does not exceed $1,000,000

In the case of a disposition—

(A) of property which is acquired by the transferee for use by the transferee as a residence,

(B) with respect to which the amount realized for such property does not exceed $1,000,000, and

(C) to which subsection (b)(5) does not apply,

subsection (a) shall be applied by substituting ''10 percent'' for ''15 percent''.

(d) Liability of transferor's agents, transferee's agents, or qualified substitutes

(1) Notice of false affidavit; foreign corporations

If—

(A) the transferor furnishes the transferee or qualified substitute an affidavit described in paragraph (2) of subsection (b) or a domestic corporation furnishes the transferee an affidavit described in paragraph (3) of subsection (b), and

(B) in the case of—

(i) any transferor's agent—

(I) such agent has actual knowledge that such affidavit is false, or

(II) in the case of an affidavit described in subsection (b)(2) furnished by a corporation, such corporation is a foreign corporation, or

(ii) any transferee's agent or qualified substitute, such agent or substitute has actual knowledge that such affidavit is false,

such agent or qualified substitute shall so notify the transferee at such time and in such manner as the Secretary shall require by regulations.

(2) Failure to furnish notice

(A) In general

If any transferor's agent, transferee's agent, or qualified substitute is required by paragraph (1) to furnish notice, but fails to furnish such notice at such time or times and in such manner as may be required by regulations, such agent or substitute shall have the same duty to deduct and withhold that the transferee would have had if such agent or substitute had complied with paragraph (1).

(B) Liability limited to amount of compensation

An agent's or substitute's liability under subparagraph (A) shall be limited to the amount of compensation the agent or substitute derives from the transaction.

(3) Transferor's agent

For purposes of this subsection, the term ''transferor's agent'' means any person who represents the transferor—

(A) in any negotiation with the transferee or any transferee's agent related to the transaction, or

(B) in settling the transaction.

(4) Transferee's agent

For purposes of this subsection, the term ''transferee's agent'' means any person who represents the transferee—

(A) in any negotiation with the transferor or any transferor's agent related to the transaction, or

(B) in settling the transaction.

(5) Settlement officer not treated as transferor's agent

For purposes of this subsection, a person shall not be treated as a transferor's agent or transferee's agent with respect to any transaction merely because such person performs 1 or more of the following acts:

(A) The receipt and the disbursement of any portion of the consideration for the transaction.

(B) The recording of any document in connection with the transaction.

(e) Special rules relating to distributions, etc., by corporations, partnerships, trusts, or estates

(1) Certain domestic partnerships, trusts, and estates

In the case of any disposition of a United States real property interest as defined in sec-

tion 897(c) (other than a disposition described in paragraph (4) or (5)) by a domestic partnership, domestic trust, or domestic estate, such partnership, the trustee of such trust, or the executor of such estate (as the case may be) shall be required to deduct and withhold under subsection (a) a tax equal to the highest rate of tax in effect for the taxable year under section 11(b) (or, to the extent provided in regulations, 20 percent) multiplied by the gain realized to the extent such gain—

(A) is allocable to a foreign person who is a partner or beneficiary of such partnership, trust, or estate, or

(B) is allocable to a portion of the trust treated as owned by a foreign person under subpart E of part I of subchapter J.

(2) Certain distributions by foreign corporations

In the case of any distribution by a foreign corporation on which gain is recognized under subsection (d) or (e) of section 897, the foreign corporation shall deduct and withhold under subsection (a) a tax equal to the highest rate of tax in effect for the taxable year under section 11(b) multiplied by the amount of gain recognized on such distribution under such subsection.

(3) Distributions by certain domestic corporations to foreign shareholders

If a domestic corporation which is or has been a United States real property holding corporation (as defined in section 897(c)(2)) during the applicable period specified in section 897(c)(1)(A)(ii) distributes property to a foreign person in a transaction to which section 302 or part II of subchapter C applies, such corporation shall deduct and withhold under subsection (a) a tax equal to 15 percent of the amount realized by the foreign shareholder. The preceding sentence shall not apply if, as of the date of the distribution, interests in such corporation are not United States real property interests by reason of section 897(c)(1)(B). Rules similar to the rules of the preceding provisions of this paragraph shall apply in the case of any distribution to which section 301 applies and which is not made out of the earnings and profits of such a domestic corporation.

(4) Taxable distributions by domestic or foreign partnerships, trusts, or estates

A domestic or foreign partnership, the trustee of a domestic or foreign trust, or the executor of a domestic or foreign estate shall be required to deduct and withhold under subsection (a) a tax equal to 15 percent of the fair market value (as of the time of the taxable distribution) of any United States real property interest distributed to a partner of the partnership or a beneficiary of the trust or estate, as the case may be, who is a foreign person in a transaction which would constitute a taxable distribution under the regulations promulgated by the Secretary pursuant to section 897.

(5) Rules relating to dispositions of interest in partnerships, trusts, or estates

To the extent provided in regulations, the transferee of a partnership interest or of a beneficial interest in a trust or estate shall be required to deduct and withhold under subsection (a) a tax equal to 15 percent of the amount realized on the disposition.

(6) Distributions by regulated investment companies and real estate investment trusts

If any portion of a distribution from a qualified investment entity (as defined in section 897(h)(4)) to a nonresident alien individual or a foreign corporation is treated under section 897(h)(1) as gain realized by such individual or corporation from the sale or exchange of a United States real property interest, the qualified investment entity shall deduct and withhold under subsection (a) a tax equal to the highest rate of tax in effect for the taxable year under section 11(b) (or, to the extent provided in regulations, 20 percent) multiplied by the amount so treated.

(7) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations providing for exceptions from provisions of this subsection and regulations for the application of this subsection in the case of payments through 1 or more entities.

(f) Definitions

For purposes of this section—

(1) Transferor

The term ''transferor'' means the person disposing of the United States real property interest.

(2) Transferee

The term ''transferee'' means the person acquiring the United States real property interest.

(3) Foreign person

The term ''foreign person'' means any person other than—

(A) a United States person, and

(B) except as otherwise provided by the Secretary, an entity with respect to which section 897 does not apply by reason of subsection (l) thereof.

(4) Transferor's maximum tax liability

The term ''transferor's maximum tax liability'' means, with respect to the disposition of any interest, the sum of—

(A) the maximum amount which the Secretary determines could be imposed as tax under section 871(b)(1) or 882(a)(1) by reason of the disposition, plus

(B) the amount the Secretary determines to be the transferor's unsatisfied withholding liability with respect to such interest.

(5) Transferor's unsatisfied withholding liability

The term ''transferor's unsatisfied withholding liability'' means the withholding obligation imposed by this section on the transferor's acquisition of the United States real property interest or on the acquisition of a predecessor interest, to the extent such obligation has not been satisfied.

(6) Qualified substitute

The term ''qualified substitute'' means, with respect to a disposition of a United States real property interest—

(A) the person (including any attorney or title company) responsible for closing the transaction, other than the transferor's agent, and

(B) the transferee's agent.

(Added Pub. L. 98–369, div. A, title I, § 129(a)(1), July 18, 1984, 98 Stat. 655; amended Pub. L. 99–514, title III, § 311(b)(4), title XVIII, § 1810(f)(2)–(4)(A), (5), (6), (8), Oct. 22, 1986, 100 Stat. 2219, 2827, 2828; Pub. L. 100–647, title I, § 1003(b)(3), Nov. 10, 1988, 102 Stat. 3384; Pub. L. 103–66, title XIII, § 13221(c)(3), Aug. 10, 1993, 107 Stat. 477; Pub. L. 104–188, title I, § 1704(c)(1), Aug. 20, 1996, 110 Stat. 1878; Pub. L. 105–34, title III, § 311(c)(1), Aug. 5, 1997, 111 Stat. 835; Pub. L. 108–27, title III, § 301(a)(2)(C), May 28, 2003, 117 Stat. 758; Pub. L. 109–222, title V, §§ 505(b), 506(b), May 17, 2006, 120 Stat. 356, 358; Pub. L. 110–289, div. C, title I, § 3024(a)–(c), July 30, 2008, 122 Stat. 2895; Pub. L. 112–240, title I, § 102(c)(1)(C), (3), Jan. 2, 2013, 126 Stat. 2319; Pub. L. 114–113, div. Q, title III, §§ 323(b), 324(a), (b), Dec. 18, 2015, 129 Stat. 3103; Pub. L. 115–97, title I, § 13001(b)(3)(A)–(C), Dec. 22, 2017, 131 Stat. 2097.)

AMENDMENTS

2017—Subsec. (e)(1). Pub. L. 115–97, § 13001(b)(3)(A), in introductory provisions, substituted ''the highest rate of tax in effect for the taxable year under section 11(b)'' for ''35 percent'' and ''multiplied by the gain'' for ''of the gain''.

Subsec. (e)(2). Pub. L. 115–97, § 13001(b)(3)(B), substituted ''the highest rate of tax in effect for the taxable year under section 11(b) multiplied by the amount'' for ''35 percent of the amount''.

Subsec. (e)(6). Pub. L. 115–97, § 13001(b)(3)(C), substituted ''the highest rate of tax in effect for the taxable year under section 11(b)'' for ''35 percent'' and ''multiplied by the amount'' for ''of the amount''.

2015—Subsec. (a). Pub. L. 114–113, § 324(a), substituted ''15 percent'' for ''10 percent''.

Subsec. (c)(4). Pub. L. 114–113, § 324(b), added par. (4).

Subsec. (e)(3) to (5). Pub. L. 114–113, § 324(a), substituted ''15 percent'' for ''10 percent''.

Subsec. (f)(3). Pub. L. 114–113, § 323(b), substituted ''any person other than—'' for ''any person other than a United States person.'' and added subpars. (A) and (B).

2013—Subsec. (e)(1). Pub. L. 112–240, § 102(c)(1)(C), substituted ''20 percent'' for ''15 percent'' in introductory provisions.

Subsec. (e)(6). Pub. L. 112–240, § 102(c)(3), substituted ''20 percent'' for ''15 percent (20 percent in the case of taxable years beginning after December 31, 2010)''.

2008—Subsec. (b)(7). Pub. L. 110–289, § 3024(c)(1), amended par. (7) generally. Prior to amendment, par. (7) related to special rules for paragraphs (2) and (3).

Subsec. (b)(9). Pub. L. 110–289, § 3024(a), added par. (9).

Subsec. (d). Pub. L. 110–289, § 3024(c)(2)(C), substituted '', transferee's agents, or qualified substitutes'' for ''or transferee's agents'' in heading.

Subsec. (d)(1). Pub. L. 110–289, § 3024(c)(2)(A), amended par. (1) generally. Prior to amendment, par. (1) related to notice of false affidavit; foreign corporations.

Subsec. (d)(2). Pub. L. 110–289, § 3024(c)(2)(B), amended par. (2) generally. Prior to amendment, par. (2) related to failure to furnish notice.

Subsec. (f)(6). Pub. L. 110–289, § 3024(b), added par. (6).

2006—Subsec. (b)(8). Pub. L. 109–222, § 506(b), added par. (8).

Subsec. (e)(6), (7). Pub. L. 109–222, § 505(b), added par. (6) and redesignated former par. (6) as (7).

2003—Subsec. (e)(1). Pub. L. 108–27 substituted ''15 percent'' for ''20 percent''.

1997—Subsec. (e)(1). Pub. L. 105–34 substituted ''20 percent'' for ''28 percent'' in introductory provisions.

1996—Subsec. (e)(3). Pub. L. 104–188 inserted at end ''Rules similar to the rules of the preceding provisions of this paragraph shall apply in the case of any distribution to which section 301 applies and which is not made out of the earnings and profits of such a domestic corporation.''

1993—Subsec. (e)(1), (2). Pub. L. 103–66 substituted ''35 percent'' for ''34 percent''.

1988—Subsec. (e)(1). Pub. L. 100–647 inserted ''(or, to the extent provided in regulations, 28 percent)'' after ''to 34 percent''.

1986—Subsec. (b)(3). Pub. L. 99–514, § 1810(f)(2), amended par. (3) generally, substituting ''interests in corporation not United States real property interests'' for ''it is not a United States real property holding corporation'' in heading, striking out the comma before ''if the domestic corporation'' in introductory provisions, inserting subpar. (A) designation and adding subpar. (B).

Subsec. (d)(1)(A). Pub. L. 99–514, § 1810(f)(3)(B), substituted ''paragraph (2)'' for ''paragraph (2)(A)''.

Subsec. (d)(1)(B)(i). Pub. L. 99–514, § 1810(f)(3)(A), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''any transferor's agent, the transferor is a foreign corporation or such agent has actual knowledge that such affidavit is false, or''.

Subsec. (e)(1). Pub. L. 99–514, § 311(b)(4), substituted ''34 percent'' for ''28 percent''.

Pub. L. 99–514, § 1810(f)(4), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''A domestic partnership, the trustee of a domestic trust, or the executor of a domestic estate shall be required to deduct and withhold under subsection (a) a tax equal to 10 percent of any amount of which such partnership, trustee, or executor has custody which is—

''(A) attributable to the disposition of a United States real property interest (as defined in section 897(c), other than a disposition described in paragraph (4) or (5)), and

''(B) either—

''(i) includible in the distributive share of a partner of the partnership who is a foreign person,

''(ii) includible in the income of a beneficiary of the trust or estate who is a foreign person, or

''(iii) includible in the income of a foreign person under the provisions of section 671.''

Subsec. (e)(2). Pub. L. 99–514, § 311(b)(4), substituted ''34 percent'' for ''28 percent''.

Subsec. (e)(3). Pub. L. 99–514, § 1810(f)(5), inserted ''The preceding sentence shall not apply if, as of the date of the distribution, interests in such corporation are not United States real property interests by reason of section 897(c)(1)(B).''

Subsec. (e)(4). Pub. L. 99–514, § 1810(f)(6), substituted ''section 897'' for ''section 897(g)''.

Subsec. (e)(6). Pub. L. 99–514, § 1810(f)(8), inserted ''and regulations for the application of this subsection in the case of payments through 1 or more entities''.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–97 applicable to distributions made after Dec. 31, 2017, see section 13001(c)(2) of Pub. L. 115–97, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by section 323(b) of Pub. L. 114–113 applicable to dispositions and distributions after Dec. 18, 2015, see section 323(c) of Pub. L. 114–113, set out as a note under section 897 of this title.

Pub. L. 114–113, div. Q, title III, § 324(c), Dec. 18, 2015, 129 Stat. 3103, provided that: ''The amendments made by this section [amending this section] shall apply to dispositions after the date which is 60 days after the date of the enactment of this Act [Dec. 18, 2015].''

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112–240 applicable to taxable years beginning after Dec. 31, 2012 and applicable to

amounts paid on or after Jan. 1, 2013, see section 102(d) of Pub. L. 112–240, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–289, div. C, title I, §3024(d), July 30, 2008, 122 Stat. 2896, provided that: ''The amendments made by this section [amending this section] shall apply to dispositions of United States real property interests after the date of the enactment of this Act [July 30, 2008].''

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 505(b) 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.

Amendment by section 506(b) of Pub. L. 109–222 applicable to taxable years beginning after Dec. 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 May 17, 2006, see section 506(c) of Pub. L. 109–222, set out as a note under section 897 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–27 applicable to amounts paid after May 28, 2003, see section 301(d)(2) 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 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable only to amounts paid after Aug. 5, 1997, see section 311(d)(2) of Pub. L. 105–34, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1704(c)(2), Aug. 20, 1996, 110 Stat. 1878, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to distributions after the date of the enactment of this Act [Aug. 20, 1996].''

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1003(b)(3), Nov. 10, 1988, 102 Stat. 3384, provided that the amendment made by that section is effective for taxable years beginning after Dec. 31, 1987.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 311(b)(4) of Pub. L. 99–514 applicable to payments made after Dec. 31, 1986, see section 311(c) of Pub. L. 99–514, as amended, set out as a note under section 593 of this title.

Amendment by section 1810(f)(2), (3), (5), (6), (8) 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, §1810(f)(4)(B), Oct. 22, 1986, 100 Stat. 2827, provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to dispositions after the day 30 days after the date of the enactment of this Act [Oct. 22, 1986].''

EFFECTIVE DATE

Pub. L. 98–369, div. A, title I, §129(c)(1), July 18, 1984, 98 Stat. 660, provided that: ''The amendment made by subsection (a) [enacting this section] shall apply to any disposition on or after January 1, 1985.''

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.

§1446. Withholding tax on foreign partners' share of effectively connected income

(a) General rule

If—

(1) a partnership has effectively connected taxable income for any taxable year, and

(2) any portion of such income is allocable under section 704 to a foreign partner,

such partnership shall pay a withholding tax under this section at such time and in such manner as the Secretary shall by regulations prescribe.

(b) Amount of withholding tax

(1) In general

The amount of the withholding tax payable by any partnership under subsection (a) shall be equal to the applicable percentage of the effectively connected taxable income of the partnership which is allocable under section 704 to foreign partners.

(2) Applicable percentage

For purposes of paragraph (1), the term ''applicable percentage'' means—

(A) the highest rate of tax specified in section 1 in the case of the portion of the effectively connected taxable income which is allocable under section 704 to foreign partners who are not corporations, and

(B) the highest rate of tax specified in section 11(b) in the case of the portion of the effectively connected taxable income which is allocable under section 704 to foreign partners which are corporations.

(c) Effectively connected taxable income

For purposes of this section, the term ''effectively connected taxable income'' means the taxable income of the partnership which is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States computed with the following adjustments:

(1) Paragraph (1) of section 703(a) shall not apply.

(2) The partnership shall be allowed a deduction for depletion with respect to oil and gas wells but the amount of such deduction shall be determined without regard to sections 613 and 613A.

(3) There shall not be taken into account any item of income, gain, loss, or deduction to the extent allocable under section 704 to any partner who is not a foreign partner.

(d) Treatment of foreign partners

(1) Allowance of credit

Each foreign partner of a partnership shall be allowed a credit under section 33 for such

partner's share of the withholding tax paid by the partnership under this section. Such credit shall be allowed for the partner's taxable year in which (or with which) the partnership taxable year (for which such tax was paid) ends.

(2) Credit treated as distributed to partner

Except as provided in regulations, a foreign partner's share of any withholding tax paid by the partnership under this section shall be treated as distributed to such partner by such partnership on the earlier of—

(A) the day on which such tax was paid by the partnership, or

(B) the last day of the partnership's taxable year for which such tax was paid.

(e) Foreign partner

For purposes of this section, the term ''foreign partner'' means any partner who is not a United States person.

(f) Special rules for withholding on dispositions of partnership interests

(1) In general

Except as provided in this subsection, if any portion of the gain (if any) on any disposition of an interest in a partnership would be treated under section 864(c)(8) as effectively connected with the conduct of a trade or business within the United States, the transferee shall be required to deduct and withhold a tax equal to 10 percent of the amount realized on the disposition.

(2) Exception if nonforeign affidavit furnished

(A) In general

No person shall be required to deduct and withhold any amount under paragraph (1) with respect to any disposition if the transferor furnishes to the transferee an affidavit by the transferor stating, under penalty of perjury, the transferor's United States taxpayer identification number and that the transferor is not a foreign person.

(B) False affidavit

Subparagraph (A) shall not apply to any disposition if—

(i) the transferee has actual knowledge that the affidavit is false, or the transferee receives a notice (as described in section 1445(d)) from a transferor's agent or transferee's agent that such affidavit or statement is false, or

(ii) the Secretary by regulations requires the transferee to furnish a copy of such affidavit or statement to the Secretary and the transferee fails to furnish a copy of such affidavit or statement to the Secretary at such time and in such manner as required by such regulations.

(C) Rules for agents

The rules of section 1445(d) shall apply to a transferor's agent or transferee's agent with respect to any affidavit described in subparagraph (A) in the same manner as such rules apply with respect to the disposition of a United States real property interest under such section.

(3) Authority of Secretary to prescribe reduced amount

At the request of the transferor or transferee, the Secretary may prescribe a reduced amount to be withheld under this section if the Secretary determines that to substitute such reduced amount will not jeopardize the collection of the tax imposed under this title with respect to gain treated under section 864(c)(8) as effectively connected with the conduct of a trade or business with in the United States.

(4) Partnership to withhold amounts not withheld by the transferee

If a transferee fails to withhold any amount required to be withheld under paragraph (1), the partnership shall be required to deduct and withhold from distributions to the transferee a tax in an amount equal to the amount the transferee failed to withhold (plus interest under this title on such amount).

(5) Definitions

Any term used in this subsection which is also used under section 1445 shall have the same meaning as when used in such section.

(6) Regulations

The Secretary shall prescribe such regulations or other guidance as may be necessary to carry out the purposes of this subsection, including regulations providing for exceptions from the provisions of this subsection.

(g) Regulations

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

(1) regulations providing for the application of this section in the case of publicly traded partnerships, and

(2) regulations providing—

(A) that, for purposes of section 6655, the withholding tax imposed under this section shall be treated as a tax imposed by section 11 and any partnership required to pay such tax shall be treated as a corporation, and

(B) appropriate adjustments in applying section 6655 with respect to such withholding tax.

(Added Pub. L. 99–514, title XII, § 1246(a), Oct. 22, 1986, 100 Stat. 2582; amended Pub. L. 100–647, title I, § 1012(s)(1)(A), Nov. 10, 1988, 102 Stat. 3526; Pub. L. 101–239, title VII, § 7811(i)(6), Dec. 19, 1989, 103 Stat. 2410; Pub. L. 115–97, title I, §§ 13001(b)(3)(D), 13501(b), Dec. 22, 2017, 131 Stat. 2098, 2139.)

AMENDMENTS

2017—Subsec. (b)(2)(B). Pub. L. 115–97, § 13001(b)(3)(D), substituted ''section 11(b)'' for ''section 11(b)(1)''.

Subsecs. (f), (g). Pub. L. 115–97, § 13501(b), added subsec. (f) and redesignated former subsec. (f) as (g).

1989—Subsec. (b)(2)(B). Pub. L. 101–239, § 7811(i)(6)(A), substituted ''section 11(b)(1)'' for ''section 11(b)''.

Subsec. (d)(2). Pub. L. 101–239, § 7811(i)(6)(B), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''A foreign partner's share of any withholding tax paid by the partnership under this section shall be treated as distributed to such partner by such partnership on the last day of the partnership's taxable year (for which such tax was paid).''

Subsec. (f). Pub. L. 101–239, § 7811(i)(6)(C), amended subsec. (f) generally. Prior to amendment, subsec. (f)

read as follows: ''The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section, including regulations providing for the application of this section in the case of publicly traded partnerships.''

1988—Pub. L. 100–647 amended section generally, substituting provisions relating to withholding tax on foreign partners' share of effectively connected income for provisions which related to withholding tax on amounts paid by partnerships to foreign partners.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 13001(b)(3)(D) of Pub. L. 115–97 applicable to distributions made after Dec. 31, 2017, see section 13001(c)(2) of Pub. L. 115–97, set out as a note under section 11 of this title.

Pub. L. 115–97, title I, §13501(c)(2), Dec. 22, 2017, 131 Stat. 2141, provided that: ''The amendment made by subsection (b) [amending this section] shall apply to sales, exchanges, and dispositions after December 31, 2017.''

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, §1012(s)(1)(D), Nov. 10, 1988, 102 Stat. 3527, provided that: ''The amendments made by this paragraph [amending sections 1446 and 6401 of this title] shall apply to taxable years beginning after December 31, 1987. No amount shall be required to be deducted and withheld under section 1446 of the 1986 Code (as in effect before the amendment made by subparagraph (A)).''

EFFECTIVE DATE

Pub. L. 99–514, title XII, §1246(d), Oct. 22, 1986, 100 Stat. 2583, provided that: ''The amendment made by this section [enacting this section and amending section 6401 of this title] shall apply to distributions after December 31, 1987 (or, if earlier, the effective date (which shall not be earlier than January 1, 1987) of the initial regulations issued under section 1446 of the Internal Revenue Code of 1986 as added by this section).''

Subchapter B—Application of Withholding Provisions

PRIOR PROVISIONS

A prior subchapter B, consisting of section 1451, acts Aug. 16, 1954, ch. 736, 68A Stat. 359; Oct. 4, 1976, Pub. L. 94–455, title XIX, §1906(b)(13)(A), 90 Stat. 1834, related to tax-free covenant bonds, prior to repeal by Pub. L. 98–369, div. A, title IV, §474(r)(29)(A), July 18, 1984, 98 Stat. 844, which repeal was not applicable with respect to obligations issued before Jan. 1, 1984, pursuant to section 475(b) of Pub. L. 98–369, set out as an Effective Date of 1984 Amendment note under section 33 of this title.

AMENDMENTS

1986—Pub. L. 99–514, title XVIII, §1899A(73), Oct. 22, 1986, 100 Stat. 2963, substituted ''Liability for withheld tax'' for ''Return and payment of withheld tax'' in item 1461.

1984—Pub. L. 98–369, div. A, title IV, §474(r)(29)(A), July 18, 1984, 98 Stat. 844, redesignated subchapter C as B, and struck out former subchapter B which related to tax-free covenant bonds.

1976—Pub. L. 94–455, title XIX, §1901(b)(41), Oct. 4, 1976, 90 Stat. 1803, struck out item 1465 ''Definition of withholding agent''.

[§ 1451. Repealed. Pub. L. 98–369, div. A, title IV, § 474(r)(29)(A), July 18, 1984, 98 Stat. 844]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 359; Oct. 4, 1976, Pub. L. 94–455, title XIX, §1906(b)(13)(A), 90 Stat. 1834, related to tax-free covenant bonds. The repeal was not applicable with respect to obligations issued before Jan. 1, 1984, pursuant to section 475(b) of Pub. L. 98–369, set out as an Effective Date of 1984 Amendment note under section 33 of this title.

§ 1461. Liability for withheld tax

Every person required to deduct and withhold any tax under this chapter is hereby made liable for such tax and is hereby indemnified against the claims and demands of any person for the amount of any payments made in accordance with the provisions of this chapter.

(Aug. 16, 1954, ch. 736, 68A Stat. 360; Pub. L. 89–809, title I, §103(i), Nov. 13, 1966, 80 Stat. 1554.)

AMENDMENTS

1966—Pub. L. 89–809 struck out requirement that persons required to deduct and withhold any tax under this chapter make return thereof on or before March 15 of each year and pay the tax to the officer designated in section 6151, and substituted ''Liability for withheld tax'' for ''Return and payment of withheld tax'' in section catchline.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to payments occurring after Dec. 31, 1966, see section 103(n)(3) of Pub. L. 89–809, set out as a note under section 871 of this title.

§ 1462. Withheld tax as credit to recipient of income

Income on which any tax is required to be withheld at the source under this chapter shall be included in the return of the recipient of such income, but any amount of tax so withheld shall be credited against the amount of income tax as computed in such return.

(Aug. 16, 1954, ch. 736, 68A Stat. 360.)

§ 1463. Tax paid by recipient of income

If—

(1) any person, in violation of the provisions of this chapter, fails to deduct and withhold any tax under this chapter, and

(2) thereafter the tax against which such tax may be credited is paid,

the tax so required to be deducted and withheld shall not be collected from such person; but this section shall in no case relieve such person from liability for interest or any penalties or additions to the tax otherwise applicable in respect of such failure to deduct and withhold.

(Aug. 16, 1954, ch. 736, 68A Stat. 360; Pub. L. 101–239, title VII, §7743(a), Dec. 19, 1989, 103 Stat. 2406; Pub. L. 104–188, title I, §1704(t)(9), Aug. 20, 1996, 110 Stat. 1887.)

AMENDMENTS

1996—Pub. L. 104–188 substituted ''this section'' for ''this subsection''.

1989—Pub. L. 101–239 amended section generally. Prior to amendment, section read as follows: ''If any tax required under this chapter to be deducted and withheld is paid by the recipient of the income, it shall not be re-collected from the withholding agent; nor in cases in which the tax is so paid shall any penalty be imposed on or collected from the recipient of the income or the withholding agent for failure to return or pay the same, unless such failure was fraudulent and for the purpose of evading payment.''

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, § 7743(b), Dec. 19, 1989, 103 Stat. 2406, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to failures after December 31, 1989.''

§ 1464. Refunds and credits with respect to withheld tax

Where there has been an overpayment of tax under this chapter, any refund or credit made under chapter 65 shall be made to the withholding agent unless the amount of such tax was actually withheld by the withholding agent.

(Aug. 16, 1954, ch. 736, 68A Stat. 360.)

[§ 1465. Repealed. Pub. L. 94–455, title XIX, § 1901(a)(156), Oct. 4, 1976, 90 Stat. 1789]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 360, defined withholding agent.

EFFECTIVE DATE OF REPEAL

Repeal 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.

CHAPTER 4—TAXES TO ENFORCE REPORTING ON CERTAIN FOREIGN ACCOUNTS

Sec.

PRIOR PROVISIONS

A prior chapter 4, consisting of sections 1481 and 1482, which related to rules applicable to recovery of excessive profits on government contracts, was repealed by Pub. L. 101–508, title XI, § 11801(a)(37), Nov. 5, 1990, 104 Stat. 1388–521.

Section 1481, acts Aug. 16, 1954, ch. 736, 68A Stat. 362; June 21, 1965, Pub. L. 89–44, title VIII, § 809(d)(5)(B), 79 Stat. 168; Oct. 4, 1976, Pub. L. 94–455, title XIX, §§ 1901(a)(157), 1906(b)(13)(A), 1951(b)(14)(A), 90 Stat. 1789, 1834, 1840, related to mitigation of effect of renegotiation of government contracts.

Section 1482, added Pub. L. 85–866, title I, § 62(a), Sept. 2, 1958, 72 Stat. 1648, related to readjustment for repayments made pursuant to price redeterminations.

§ 1471. Withholdable payments to foreign financial institutions

(a) In general

In the case of any withholdable payment to a foreign financial institution which does not meet the requirements of subsection (b), the withholding agent with respect to such payment shall deduct and withhold from such payment a tax equal to 30 percent of the amount of such payment.

(b) Reporting requirements, etc.

(1) In general

The requirements of this subsection are met with respect to any foreign financial institution if an agreement is in effect between such institution and the Secretary under which such institution agrees—

(A) to obtain such information regarding each holder of each account maintained by such institution as is necessary to determine which (if any) of such accounts are United States accounts,

(B) to comply with such verification and due diligence procedures as the Secretary may require with respect to the identification of United States accounts,

(C) in the case of any United States account maintained by such institution, to report on an annual basis the information described in subsection (c) with respect to such account,

(D) to deduct and withhold a tax equal to 30 percent of—

(i) any passthru payment which is made by such institution to a recalcitrant account holder or another foreign financial institution which does not meet the requirements of this subsection, and

(ii) in the case of any passthru payment which is made by such institution to a foreign financial institution which has in effect an election under paragraph (3) with respect to such payment, so much of such payment as is allocable to accounts held by recalcitrant account holders or foreign financial institutions which do not meet the requirements of this subsection,

(E) to comply with requests by the Secretary for additional information with respect to any United States account maintained by such institution, and

(F) in any case in which any foreign law would (but for a waiver described in clause (i)) prevent the reporting of any information referred to in this subsection or subsection (c) with respect to any United States account maintained by such institution—

(i) to attempt to obtain a valid and effective waiver of such law from each holder of such account, and

(ii) if a waiver described in clause (i) is not obtained from each such holder within a reasonable period of time, to close such account.

Any agreement entered into under this subsection may be terminated by the Secretary upon a determination by the Secretary that the foreign financial institution is out of compliance with such agreement.

(2) Financial institutions deemed to meet requirements in certain cases

A foreign financial institution may be treated by the Secretary as meeting the requirements of this subsection if—

(A) such institution—

(i) complies with such procedures as the Secretary may prescribe to ensure that such institution does not maintain United States accounts, and

(ii) meets such other requirements as the Secretary may prescribe with respect to accounts of other foreign financial institutions maintained by such institution, or

(B) such institution is a member of a class of institutions with respect to which the Secretary has determined that the application of this section is not necessary to carry out the purposes of this section.

(3) Election to be withheld upon rather than withhold on payments to recalcitrant account holders and nonparticipating foreign financial institutions

In the case of a foreign financial institution which meets the requirements of this subsection and such other requirements as the Secretary may provide and which elects the application of this paragraph—

(A) the requirements of paragraph (1)(D) shall not apply,

(B) the withholding tax imposed under subsection (a) shall apply with respect to any withholdable payment to such institution to the extent such payment is allocable to accounts held by recalcitrant account holders or foreign financial institutions which do not meet the requirements of this subsection, and

(C) the agreement described in paragraph (1) shall—

(i) require such institution to notify the withholding agent with respect to each such payment of the institution's election under this paragraph and such other information as may be necessary for the withholding agent to determine the appropriate amount to deduct and withhold from such payment, and

(ii) include a waiver of any right under any treaty of the United States with respect to any amount deducted and withheld pursuant to an election under this paragraph.

To the extent provided by the Secretary, the election under this paragraph may be made with respect to certain classes or types of accounts of the foreign financial institution.

(c) Information required to be reported on United States accounts

(1) In general

The agreement described in subsection (b) shall require the foreign financial institution to report the following with respect to each United States account maintained by such institution:

(A) The name, address, and TIN of each account holder which is a specified United States person and, in the case of any account holder which is a United States owned foreign entity, the name, address, and TIN of each substantial United States owner of such entity.

(B) The account number.

(C) The account balance or value (determined at such time and in such manner as the Secretary may provide).

(D) Except to the extent provided by the Secretary, the gross receipts and gross withdrawals or payments from the account (determined for such period and in such manner as the Secretary may provide).

(2) Election to be subject to same reporting as United States financial institutions

In the case of a foreign financial institution which elects the application of this paragraph—

(A) subparagraphs (C) and (D) of paragraph (1) shall not apply, and

(B) the agreement described in subsection (b) shall require such foreign financial institution to report such information with respect to each United States account maintained by such institution as such institution would be required to report under sections 6041, 6042, 6045, and 6049 if—

(i) such institution were a United States person, and

(ii) each holder of such account which is a specified United States person or United States owned foreign entity were a natural person and citizen of the United States.

An election under this paragraph shall be made at such time, in such manner, and subject to such conditions as the Secretary may provide.

(3) Separate requirements for qualified intermediaries

In the case of a foreign financial institution which is treated as a qualified intermediary by the Secretary for purposes of section 1441 and the regulations issued thereunder, the requirements of this section shall be in addition to any reporting or other requirements imposed by the Secretary for purposes of such treatment.

(d) Definitions

For purposes of this section—

(1) United States account

(A) In general

The term ''United States account'' means any financial account which is held by one or more specified United States persons or United States owned foreign entities.

(B) Exception for certain accounts held by individuals

Unless the foreign financial institution elects to not have this subparagraph apply, such term shall not include any depository account maintained by such financial institution if—

(i) each holder of such account is a natural person, and

(ii) with respect to each holder of such account, the aggregate value of all depository accounts held (in whole or in part) by such holder and maintained by the same financial institution which maintains such account does not exceed $50,000.

To the extent provided by the Secretary, financial institutions which are members of the same expanded affiliated group shall be treated for purposes of clause (ii) as a single financial institution.

(C) Elimination of duplicative reporting requirements

Such term shall not include any financial account in a foreign financial institution if—

(i) such account is held by another financial institution which meets the requirements of subsection (b), or

(ii) the holder of such account is otherwise subject to information reporting requirements which the Secretary determines would make the reporting required by this section with respect to United States accounts duplicative.

(2) Financial account

Except as otherwise provided by the Secretary, the term ''financial account'' means, with respect to any financial institution—

(A) any depository account maintained by such financial institution,

(B) any custodial account maintained by such financial institution, and

(C) any equity or debt interest in such financial institution (other than interests which are regularly traded on an established securities market).

Any equity or debt interest which constitutes a financial account under subparagraph (C) with respect to any financial institution shall be treated for purposes of this section as maintained by such financial institution.

(3) United States owned foreign entity

The term ''United States owned foreign entity'' means any foreign entity which has one or more substantial United States owners.

(4) Foreign financial institution

The term ''foreign financial institution'' means any financial institution which is a foreign entity. Except as otherwise provided by the Secretary, such term shall not include a financial institution which is organized under the laws of any possession of the United States.

(5) Financial institution

Except as otherwise provided by the Secretary, the term ''financial institution'' means any entity that—

(A) accepts deposits in the ordinary course of a banking or similar business,

(B) as a substantial portion of its business, holds financial assets for the account of others, or

(C) is engaged (or holding itself out as being engaged) primarily in the business of investing, reinvesting, or trading in securities (as defined in section 475(c)(2) without regard to the last sentence thereof), partnership interests, commodities (as defined in section 475(e)(2)), or any interest (including a futures or forward contract or option) in such securities, partnership interests, or commodities.

(6) Recalcitrant account holder

The term ''recalcitrant account holder'' means any account holder which—

(A) fails to comply with reasonable requests for the information referred to in subsection (b)(1)(A) or (c)(1)(A), or

(B) fails to provide a waiver described in subsection (b)(1)(F) upon request.

(7) Passthru payment

The term ''passthru payment'' means any withholdable payment or other payment to the extent attributable to a withholdable payment.

(e) Affiliated groups

(1) In general

The requirements of subsections (b) and (c)(1) shall apply—

(A) with respect to United States accounts maintained by the foreign financial institution, and

(B) except as otherwise provided by the Secretary, with respect to United States accounts maintained by each other foreign financial institution (other than any foreign financial institution which meets the requirements of subsection (b)) which is a member of the same expanded affiliated group as such foreign financial institution.

(2) Expanded affiliated group

For purposes of this section, the term ''expanded affiliated group'' means an affiliated group as defined in section 1504(a), determined—

(A) by substituting ''more than 50 percent'' for ''at least 80 percent'' each place it appears, and

(B) without regard to paragraphs (2) and (3) of section 1504(b).

A partnership or any other entity (other than a corporation) shall be treated as a member of an expanded affiliated group if such entity is controlled (within the meaning of section 954(d)(3)) by members of such group (including any entity treated as a member of such group by reason of this sentence).

(f) Exception for certain payments

Subsection (a) shall not apply to any payment to the extent that the beneficial owner of such payment is—

(1) any foreign government, any political subdivision of a foreign government, or any wholly owned agency or instrumentality of any one or more of the foregoing,

(2) any international organization or any wholly owned agency or instrumentality thereof,

(3) any foreign central bank of issue, or

(4) any other class of persons identified by the Secretary for purposes of this subsection as posing a low risk of tax evasion.

(Added Pub. L. 111–147, title V, § 501(a), Mar. 18, 2010, 124 Stat. 97.)

PRIOR PROVISIONS

A prior section 1471, act Aug. 16, 1954, ch. 736, 68A Stat. 361, related to recovery of excessive profits on government contracts, prior to repeal by Pub. L. 94–455, title XIX, § 1901(b)(13)(A), Oct. 4, 1976, 90 Stat. 1840.

EFFECTIVE DATE

Pub. L. 111–147, title V, § 501(d), Mar. 18, 2010, 124 Stat. 106, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section

[enacting this chapter and amending sections 6414, 6501, 6513, 6611, and 6724 of this title] shall apply to payments made after December 31, 2012.

''(2) GRANDFATHERED TREATMENT OF OUTSTANDING OBLIGATIONS.—The amendments made by this section shall not require any amount to be deducted or withheld from any payment under any obligation outstanding on the date which is 2 years after the date of the enactment of this Act [Mar. 18, 2010] or from the gross proceeds from any disposition of such an obligation.

''(3) INTEREST ON OVERPAYMENTS.—The amendment made by subsection (b) [amending section 6611 of this title] shall apply—

''(A) in the case of such amendment's application to paragraph (1) of section 6611(e) of the Internal Revenue Code of 1986, to returns the due date for which (determined without regard to extensions) is after the date of the enactment of this Act,

''(B) in the case of such amendment's application to paragraph (2) of such section, to claims for credit or refund of any overpayment filed after the date of the enactment of this Act (regardless of the taxable period to which such refund relates), and

''(C) in the case of such amendment's application to paragraph (3) of such section, to refunds paid after the date of the enactment of this Act (regardless of the taxable period to which such refund relates).''

§ 1472. Withholdable payments to other foreign entities

(a) In general

In the case of any withholdable payment to a non-financial foreign entity, if—

(1) the beneficial owner of such payment is such entity or any other non-financial foreign entity, and

(2) the requirements of subsection (b) are not met with respect to such beneficial owner,

then the withholding agent with respect to such payment shall deduct and withhold from such payment a tax equal to 30 percent of the amount of such payment.

(b) Requirements for waiver of withholding

The requirements of this subsection are met with respect to the beneficial owner of a payment if—

(1) such beneficial owner or the payee provides the withholding agent with either—

(A) a certification that such beneficial owner does not have any substantial United States owners, or

(B) the name, address, and TIN of each substantial United States owner of such beneficial owner,

(2) the withholding agent does not know, or have reason to know, that any information provided under paragraph (1) is incorrect, and

(3) the withholding agent reports the information provided under paragraph (1)(B) to the Secretary in such manner as the Secretary may provide.

(c) Exceptions

Subsection (a) shall not apply to—

(1) except as otherwise provided by the Secretary, any payment beneficially owned by—

(A) any corporation the stock of which is regularly traded on an established securities market,

(B) any corporation which is a member of the same expanded affiliated group (as defined in section 1471(e)(2) without regard to the last sentence thereof) as a corporation described in subparagraph (A),

(C) any entity which is organized under the laws of a possession of the United States and which is wholly owned by one or more bona fide residents (as defined in section 937(a)) of such possession,

(D) any foreign government, any political subdivision of a foreign government, or any wholly owned agency or instrumentality of any one or more of the foregoing,

(E) any international organization or any wholly owned agency or instrumentality thereof,

(F) any foreign central bank of issue, or

(G) any other class of persons identified by the Secretary for purposes of this subsection, and

(2) any class of payments identified by the Secretary for purposes of this subsection as posing a low risk of tax evasion.

(d) Non-financial foreign entity

For purposes of this section, the term ''non-financial foreign entity'' means any foreign entity which is not a financial institution (as defined in section 1471(d)(5)).

(Added Pub. L. 111–147, title V, § 501(a), Mar. 18, 2010, 124 Stat. 102.)

§ 1473. Definitions

For purposes of this chapter—

(1) Withholdable payment

Except as otherwise provided by the Secretary—

(A) In general

The term ''withholdable payment'' means—

(i) any payment of interest (including any original issue discount), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits, and income, if such payment is from sources within the United States, and

(ii) any gross proceeds from the sale or other disposition of any property of a type which can produce interest or dividends from sources within the United States.

(B) Exception for income connected with United States business

Such term shall not include any item of income which is taken into account under section 871(b)(1) or 882(a)(1) for the taxable year.

(C) Special rule for sourcing interest paid by foreign branches of domestic financial institutions

Subparagraph (B) of section 861(a)(1) shall not apply.

(2) Substantial United States owner

(A) In general

The term ''substantial United States owner'' means—

(i) with respect to any corporation, any specified United States person which owns,

directly or indirectly, more than 10 percent of the stock of such corporation (by vote or value),

(ii) with respect to any partnership, any specified United States person which owns, directly or indirectly, more than 10 percent of the profits interests or capital interests in such partnership, and

(iii) in the case of a trust—

(I) any specified United States person treated as an owner of any portion of such trust under subpart E of part I of subchapter J of chapter 1, and

(II) to the extent provided by the Secretary in regulations or other guidance, any specified United States person which holds, directly or indirectly, more than 10 percent of the beneficial interests of such trust.

(B) Special rule for investment vehicles

In the case of any financial institution described in section 1471(d)(5)(C), clauses (i), (ii), and (iii) of subparagraph (A) shall be applied by substituting ''0 percent'' for ''10 percent''.

(3) Specified United States person

Except as otherwise provided by the Secretary, the term ''specified United States person'' means any United States person other than—

(A) any corporation the stock of which is regularly traded on an established securities market,

(B) any corporation which is a member of the same expanded affiliated group (as defined in section 1471(e)(2) without regard to the last sentence thereof) as a corporation the stock of which is regularly traded on an established securities market,

(C) any organization exempt from taxation under section 501(a) or an individual retirement plan,

(D) the United States or any wholly owned agency or instrumentality thereof,

(E) any State, the District of Columbia, any possession of the United States, any political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing,

(F) any bank (as defined in section 581),

(G) any real estate investment trust (as defined in section 856),

(H) any regulated investment company (as defined in section 851),

(I) any common trust fund (as defined in section 584(a)), and

(J) any trust which—

(i) is exempt from tax under section 664(c), or

(ii) is described in section 4947(a)(1).

(4) Withholding agent

The term ''withholding agent'' means all persons, in whatever capacity acting, having the control, receipt, custody, disposal, or payment of any withholdable payment.

(5) Foreign entity

The term ''foreign entity'' means any entity which is not a United States person.

(Added Pub. L. 111–147, title V, § 501(a), Mar. 18, 2010, 124 Stat. 103.)

§ 1474. Special rules

(a) Liability for withheld tax

Every person required to deduct and withhold any tax under this chapter is hereby made liable for such tax and is hereby indemnified against the claims and demands of any person for the amount of any payments made in accordance with the provisions of this chapter.

(b) Credits and refunds

(1) In general

Except as provided in paragraph (2), the determination of whether any tax deducted and withheld under this chapter results in an overpayment by the beneficial owner of the payment to which such tax is attributable shall be made as if such tax had been deducted and withheld under subchapter A of chapter 3.

(2) Special rule where foreign financial institution is beneficial owner of payment

(A) In general

In the case of any tax properly deducted and withheld under section 1471 from a specified financial institution payment—

(i) if the foreign financial institution referred to in subparagraph (B) with respect to such payment is entitled to a reduced rate of tax with respect to such payment by reason of any treaty obligation of the United States—

(I) the amount of any credit or refund with respect to such tax shall not exceed the amount of credit or refund attributable to such reduction in rate, and

(II) no interest shall be allowed or paid with respect to such credit or refund, and

(ii) if such foreign financial institution is not so entitled, no credit or refund shall be allowed or paid with respect to such tax.

(B) Specified financial institution payment

The term ''specified financial institution payment'' means any payment if the beneficial owner of such payment is a foreign financial institution.

(3) Requirement to identify substantial United States owners

No credit or refund shall be allowed or paid with respect to any tax properly deducted and withheld under this chapter unless the beneficial owner of the payment provides the Secretary such information as the Secretary may require to determine whether such beneficial owner is a United States owned foreign entity (as defined in section 1471(d)(3)) and the identity of any substantial United States owners of such entity.

(c) Confidentiality of information

(1) In general

For purposes of this chapter, rules similar to the rules of section 3406(f) shall apply.

(2) Disclosure of list of participating foreign financial institutions permitted

The identity of a foreign financial institution which meets the requirements of section

1471(b) shall not be treated as return information for purposes of section 6103.

(d) Coordination with other withholding provisions

The Secretary shall provide for the coordination of this chapter with other withholding provisions under this title, including providing for the proper crediting of amounts deducted and withheld under this chapter against amounts required to be deducted and withheld under such other provisions.

(e) Treatment of withholding under agreements

Any tax deducted and withheld pursuant to an agreement described in section 1471(b) shall be treated for purposes of this title as a tax deducted and withheld by a withholding agent under section 1471(a).

(f) Regulations

The Secretary shall prescribe such regulations or other guidance as may be necessary or appropriate to carry out the purposes of, and prevent the avoidance of, this chapter.

(Added Pub. L. 111–147, title V, §501(a), Mar. 18, 2010, 124 Stat. 104.)

PRIOR PROVISIONS

For prior sections 1481 and 1482, see Prior Provisions note preceding section 1471 of this title.

[CHAPTER 5—REPEALED]

[§§ 1491, 1492. Repealed. Pub. L. 105–34, title XI, § 1131(a), Aug. 5, 1997, 111 Stat. 978]

Section 1491, acts Aug. 16, 1954, ch. 736, 68A Stat. 365; Oct. 4, 1976, Pub. L. 94–455, title X, §1015(a), 90 Stat. 1617; Nov. 6, 1978, Pub. L. 95–600, title VII, §701(u)(14)(A), 92 Stat. 2919; Aug. 20, 1996, Pub. L. 104–188, title I, §1907(b)(1), 110 Stat. 1916, imposed tax on transfers to avoid income tax.

Section 1492, acts Aug. 16, 1954, ch. 736, 68A Stat. 365; Jan. 12, 1971, Pub. L. 91–681, §1(b), 84 Stat. 2066; Oct. 4, 1976, Pub. L. 94–455, title X, §1015(b), title XIX, §1906(b)(13)(A), 90 Stat. 1618, 1834; Nov. 6, 1978, Pub. L. 95–600, title VII, §701(u)(14)(B), 92 Stat. 2919; July 18, 1984, Pub. L. 98–369, div. A, title I, §131(f)(1), 98 Stat. 665, related to nontaxable transfers.

[§ 1493. Repealed. Pub. L. 89–809, title I, § 103(*l*)(2), Nov. 13, 1966, 80 Stat. 1554]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 365, defined foreign trust.

EFFECTIVE DATE OF REPEAL

Repeal 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.

[§ 1494. Repealed. Pub. L. 105–34, title XI, § 1131(a), Aug. 5, 1997, 111 Stat. 978]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 365; Oct. 4, 1976, Pub. L. 94–455, title XIX, §1906 (b)(13)(A), 90 Stat. 1834; July 18, 1984, Pub. L. 98–369, div. A, title I, §131(f)(2), 98 Stat. 665; Aug. 20, 1996, Pub. L. 104–188, title I, §1902(a), 110 Stat. 1909, provided for payment and collection of the tax imposed under section 1491 of this title.

CHAPTER 6—CONSOLIDATED RETURNS

Subchapter A—Returns and Payment of Tax

§ 1501. Privilege to file consolidated returns

An affiliated group of corporations shall, subject to the provisions of this chapter, have the privilege of making a consolidated return with respect to the income tax imposed by chapter 1 for the taxable year in lieu of separate returns. The making of a consolidated return shall be upon the condition that all corporations which at any time during the taxable year have been members of the affiliated group consent to all the consolidated return regulations prescribed under section 1502 prior to the last day prescribed by law for the filing of such return. The making of a consolidated return shall be considered as such consent. In the case of a corporation which is a member of the affiliated group for a fractional part of the year, the consolidated return shall include the income of such corporation for such part of the year as it is a member of the affiliated group.

(Aug. 16, 1954, ch. 736, 68A Stat. 367.)

§ 1502. Regulations

The Secretary shall prescribe such regulations as he may deem necessary in order that the tax liability of any affiliated group of corporations making a consolidated return and of each corporation in the group, both during and after the period of affiliation, may be returned, determined, computed, assessed, collected, and adjusted, in such manner as clearly to reflect the income-tax liability and the various factors necessary for the determination of such liability, and in order to prevent avoidance of such tax liability. In carrying out the preceding sentence, the Secretary may prescribe rules that are different from the provisions of chapter 1 that would apply if such corporations filed separate returns.

(Aug. 16, 1954, ch. 736, 68A Stat. 367; Pub. L. 94–455, title XIX, §1906(b) (13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 108–357, title VIII, §844(a), Oct. 22, 2004, 118 Stat. 1600.)

AMENDMENTS

2004—Pub. L. 108–357 inserted at end ''In carrying out the preceding sentence, the Secretary may prescribe rules that are different from the provisions of chapter 1 that would apply if such corporations filed separate returns.''

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

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §844(c), Oct. 22, 2004, 118 Stat. 1600, provided that: ''This section [amending this section], and the amendment made by this section, shall apply to taxable years beginning before, on, or after the date of the enactment of this Act [Oct. 22, 2004].''

[1] Section numbers editorially supplied.

DUAL RESIDENT COMPANIES

Pub. L. 100–647, title VI, § 6126, Nov. 10, 1988, 102 Stat. 3713, provided that:

''(a) GENERAL RULE.—In the case of a transaction which—

''(1) involves the transfer after the date of the enactment of this Act [Nov. 10, 1988] by a domestic corporation, with respect to which there is a qualified excess loss account, of its assets and liabilities to a foreign corporation in exchange for all of the stock of such foreign corporation, followed by the complete liquidation of the domestic corporation into the common parent, and

''(2) qualifies, pursuant to Revenue Ruling 87–27, as a reorganization which is described in section 368(a)(1)(F) of the 1986 Code,

then, solely for purposes of applying Treasury Regulation section 1.1502–19 to such qualified excess loss account, such foreign corporation shall be treated as a domestic corporation in determining whether such foreign corporation is a member of the affiliated group of the common parent.

''(b) TREATMENT OF INCOME OF NEW FOREIGN CORPORATION.—

''(1) IN GENERAL.—In any case to which subsection (a) applies, for purposes of the 1986 Code—

''(A) the source and character of any item of income of the foreign corporation referred to in subsection (a) shall be determined as if such foreign corporation were a domestic corporation,

''(B) the net amount of any such income shall be treated as subpart F income (without regard to section 952(c) of the 1986 Code), and

''(C) the amount in the qualified excess loss account referred to in subsection (a) shall—

''(i) be reduced by the net amount of any such income, and

''(ii) be increased by the amount of any such income distributed directly or indirectly to the common parent described in subsection (a).

''(2) LIMITATION.—Paragraph (1) shall apply to any item of income only to the extent that the net amount of such income does not exceed the amount in the qualified excess loss account after being reduced under paragraph (1)(C) for prior income.

''(3) BASIS ADJUSTMENTS NOT APPLICABLE.—To the extent paragraph (1) applies to any item of income, there shall be no increase in basis under section 961(a) of such Code on account of such income (and there shall be no reduction in basis under section 961(b) of such Code on account of an exclusion attributable to the inclusion of such income).

''(4) RECOGNITION OF GAIN.—For purposes of paragraph (1), if the foreign corporation referred to in subsection (a) transfers any property acquired by such foreign corporation in the transaction referred to in subsection (a) (or transfers any other property the basis of which is determined in whole or in part by reference to the basis of property so acquired) and (but for this paragraph) there is not full recognition of gain on such transfer, the excess (if any) of—

''(A) the fair market value of the property transferred, over

''(B) its adjusted basis,

shall be treated as gain from the sale or exchange of such property and shall be recognized notwithstanding any other provision of law. Proper adjustment shall be made to the basis of any such property for gain recognized under the preceding sentence.

''(c) DEFINITIONS.—For purposes of this section—

''(1) COMMON PARENT.—The term 'common parent' means the common parent of the affiliated group which included the domestic corporation referred to in subsection (a)(1).

''(2) QUALIFIED EXCESS LOSS ACCOUNT.—The term 'qualified excess loss account' means any excess loss account (within the meaning of the consolidated return regulations) to the extent such account is attributable—

''(A) to taxable years beginning before January 1, 1988, and

''(B) to periods during which the domestic corporation was subject to an income tax of a foreign country on its income on a residence basis or without regard to whether such income is from sources in or outside of such foreign country.

The amount of such account shall be determined as of immediately after the transaction referred to in subsection (a) and without, except as provided in subsection (b), diminution for any future adjustment.

''(3) NET AMOUNT.—The net amount of any item of income is the amount of such income reduced by allocable deductions as determined under the rules of section 954(b)(5) of the 1986 Code.

''(4) SECOND SAME COUNTRY CORPORATION MAY BE TREATED AS DOMESTIC CORPORATION IN CERTAIN CASES.—If—

''(A) another foreign corporation acquires from the common parent stock of the foreign corporation referred to in subsection (a) after the transaction referred to in subsection (a),

''(B) both of such foreign corporations are subject to the income tax of the same foreign country on a residence basis, and

''(C) such common parent complies with such reporting requirements as the Secretary of the Treasury or his delegate may prescribe for purposes of this paragraph,

such other foreign corporation shall be treated as a domestic corporation in determining whether the foreign corporation referred to in subsection (a) is a member of the affiliated group referred to in subsection (a) (and the rules of subsection (b) shall apply (i) to any gain of such other foreign corporation on any disposition of such stock, and (ii) to any other income of such other foreign corporation except to the extent it establishes to the satisfaction of the Secretary of the Treasury or his delegate that such income is not attributable to property acquired from the foreign corporation referred to in subsection (a)).''

SPECIAL RULE FOR DISPOSITION OF STOCK OF SUBSIDIARY

Pub. L. 99–514, title VI, § 647, Oct. 22, 1986, 100 Stat. 2294, provided that: ''If for a taxable year of an affiliated group filing a consolidated return ending on or before December 31, 1987, there is a disposition of stock of a subsidiary (within the meaning of Treasury Regulation section 1.1502–19), the amount required to be included in income with respect to such disposition under Treasury Regulation section 1.1502–19(a) shall, notwithstanding such section, be included in income ratably over the 15-year period beginning with the taxable year in which the disposition occurs. The preceding sentence shall apply only if such subsidiary was incorporated on December 24, 1969, and is a participant in a mineral joint venture with a corporation organized under the laws of the foreign country in which the joint venture mineral project is located.''

§ 1503. Computation and payment of tax

(a) [General rule] [1]

In any case in which a consolidated return is made or is required to be made, the tax shall be determined, computed, assessed, collected, and adjusted in accordance with the regulations under section 1502 prescribed before the last day prescribed by law for the filing of such return.

[1] Subsec. (a) heading editorially supplied.

[(b) Repealed. Pub. L. 94–455, title X, § 1052(c)(5), Oct. 4, 1976, 90 Stat. 1648]

(c) Special rule for application of certain losses against income of insurance companies taxed under section 801

(1) In general

If an election under section 1504(c)(2) is in effect for the taxable year and the consolidated taxable income of the members of the group not taxed under section 801 results in a consolidated net operating loss for such taxable year, then under regulations prescribed by the Secretary, the amount of such loss which cannot be absorbed in the applicable carry-back periods against the taxable income of such members not taxed under section 801 shall be taken into account in determining the consolidated taxable income of the affiliated group for such taxable year to the extent of 35 percent of such loss or 35 percent of the taxable income of the members taxed under section 801, whichever is less. The unused portion of such loss shall be available as a carryover, subject to the same limitations (applicable to the sum of the loss for the carryover year and the loss (or losses) carried over to such year), in applicable carryover years.

(2) Losses of recent nonlife affiliates

Notwithstanding the provisions of paragraph (1), a net operating loss for a taxable year of a member of the group not taxed under section 801 shall not be taken into account in determining the taxable income of a member taxed under section 801 (either for the taxable year or as a carryover or carryback) if such taxable year precedes the sixth taxable year such members have been members of the same affiliated group (determined without regard to section 1504(b)(2)).

(d) Dual consolidated loss

(1) In general

The dual consolidated loss for any taxable year of any corporation shall not be allowed to reduce the taxable income of any other member of the affiliated group for the taxable year or any other taxable year.

(2) Dual consolidated loss

For purposes of this section—

(A) In general

Except as provided in subparagraph (B), the term ''dual consolidated loss'' means any net operating loss of a domestic corporation which is subject to an income tax of a foreign country on its income without regard to whether such income is from sources in or outside of such foreign country, or is subject to such a tax on a residence basis.

(B) Special rule where loss not used under foreign law

To the extent provided in regulations, the term ''dual consolidated loss'' shall not include any loss which, under the foreign income tax law, does not offset the income of any foreign corporation.

(3) Treatment of losses of separate business units

To the extent provided in regulations, any loss of a separate unit of a domestic corporation shall be subject to the limitations of this subsection in the same manner as if such unit were a wholly owned subsidiary of such corporation.

(4) Income on assets acquired after the loss

The Secretary shall prescribe such regulations as may be necessary or appropriate to prevent the avoidance of the purposes of this subsection by contributing assets to the corporation with the dual consolidated loss after such loss was sustained.

(e) Special rule for determining adjustments to basis

(1) In general

Solely for purposes of determining gain or loss on the disposition of intragroup stock and the amount of any inclusion by reason of an excess loss account, in determining the adjustments to the basis of such intragroup stock on account of the earnings and profits of any member of an affiliated group for any consolidated year (and in determining the amount in such account)—

(A) such earnings and profits shall be determined as if section 312 were applied for such taxable year (and all preceding consolidated years of the member with respect to such group) without regard to subsections (k) and (n) thereof, and

(B) earnings and profits shall not include any amount excluded from gross income under section 108 to the extent the amount so excluded was not applied to reduce tax attributes (other than basis in property).

(2) Definitions

For purposes of this subsection—

(A) Intragroup stock

The term ''intragroup stock'' means any stock which—

(i) is in a corporation which is or was a member of an affiliated group of corporations, and

(ii) is held by another corporation which is or was a member of such group.

Such term includes any other property the basis of which is determined (in whole or in part) by reference to the basis of stock described in the preceding sentence.

(B) Consolidated year

The term ''consolidated year'' means any taxable year for which the affiliated group makes a consolidated return.

(C) Application of section 312(n)(7) not affected

The reference in paragraph (1) to subsection (n) of section 312 shall be treated as not including a reference to paragraph (7) of such subsection.

(3) Adjustments

Under regulations prescribed by the Secretary, proper adjustments shall be made in the application of paragraph (1)—

(A) in the case of any property acquired by the corporation before consolidation, for the difference between the adjusted basis of such property for purposes of computing taxable income and its adjusted basis for purposes of computing earnings and profits, and

(B) in the case of any property, for any basis adjustment under section 50(c).

(4) Elimination of election to reduce basis of indebtedness

Nothing in the regulations prescribed under section 1502 shall permit any reduction in the amount otherwise included in gross income by reason of an excess loss account if such reduction is on account of a reduction in the basis of indebtedness.

(f) Limitation on use of group losses to offset income of subsidiary paying preferred dividends

(1) In general

In the case of any subsidiary distributing during any taxable year dividends on any applicable preferred stock—

(A) no group loss item shall be allowed to reduce the disqualified separately computed income of such subsidiary for such taxable year, and

(B) no group credit item shall be allowed against the tax imposed by this chapter on such disqualified separately computed income.

(2) Group items

For purposes of this subsection—

(A) Group loss item

The term ''group loss item'' means any of the following items of any other member of the affiliated group which includes the subsidiary:

(i) Any net operating loss and any net operating loss carryover or carryback under section 172.

(ii) Any loss from the sale or exchange of any capital asset and any capital loss carryover or carryback under section 1212.

(B) Group credit item

The term ''group credit item'' means any credit allowable under part IV of subchapter A of chapter 1 (other than section 34) to any other member of the affiliated group which includes the subsidiary and any carryover or carryback of any such credit.

(3) Other definitions

For purposes of this subsection—

(A) Disqualified separately computed income

The term ''disqualified separately computed income'' means the portion of the separately computed taxable income of the subsidiary which does not exceed the dividends distributed by the subsidiary during the taxable year on applicable preferred stock.

(B) Separately computed taxable income

The term ''separately computed taxable income'' means the separate taxable income of the subsidiary for the taxable year determined—

(i) by taking into account gains and losses from the sale or exchange of a capital asset and section 1231 gains and losses,

(ii) without regard to any net operating loss or capital loss carryover or carryback, and

(iii) with such adjustments as the Secretary may prescribe.

(C) Subsidiary

The term ''subsidiary'' means any corporation which is a member of an affiliated group filing a consolidated return other than the common parent.

(D) Applicable preferred stock

The term ''applicable preferred stock'' means stock described in section 1504(a)(4) in the subsidiary which is—

(i) issued after November 17, 1989, and

(ii) held by a person other than a member of the same affiliated group as the subsidiary.

(4) Regulations

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

(A) to prevent the avoidance of this subsection through the transfer of built-in losses to the subsidiary,

(B) to provide rules for cases in which the subsidiary owns (directly or indirectly) stock in another member of the affiliated group, and

(C) to provide for the application of this subsection where dividends are not paid currently, where the redemption and liquidation rights of the applicable preferred stock exceed the issue price for such stock, or where the stock is otherwise structured to avoid the purposes of this subsection.

(Aug. 16, 1954, ch. 736, 68A Stat. 367; Pub. L. 86–780, § 2, Sept. 14, 1960, 74 Stat. 1011; Pub. L. 88–272, title II, § 234(a), (b)(1), (2), Feb. 26, 1964, 78 Stat. 113; Pub. L. 94–455, title X, §§ 1031(b)(4), 1052(c)(5), title XV, § 1507(b)(3), title XIX, § 1901(b)(1)(Y), Oct. 4, 1976, 90 Stat. 1623, 1648, 1740, 1792; Pub. L. 98–369, div. A, title II, § 211(b)(19), July 18, 1984, 98 Stat. 756; Pub. L. 99–514, title XII, § 1249(a), Oct. 22, 1986, 100 Stat. 2584; Pub. L. 100–203, title X, § 10222(a)(1), Dec. 22, 1987, 101 Stat. 1330–410; Pub. L. 100–647, title I, § 1012(u), title II, § 2004(j)(1)(A), (2), (3)(A), Nov. 10, 1988, 102 Stat. 3528, 3604, 3605; Pub. L. 101–239, title VII, §§ 7201(a), 7207(a), 7821(c), Dec. 19, 1989, 103 Stat. 2328, 2337, 2424; Pub. L. 101–508, title XI, §§ 11802(f)(4), 11813(b)(25), Nov. 5, 1990, 104 Stat. 1388–530, 1388–555.)

AMENDMENTS

1990—Subsec. (c)(1). Pub. L. 101–508, § 11802(f)(4), struck out at end ''For taxable years ending with or within calendar year 1981, '25 percent' shall be substituted for '35 percent' each place it appears in the first sentence of this subsection. For taxable years ending with or within calendar year 1982, '30 percent' shall be substituted for '35 percent' each place it appears in that sentence.''

Subsec. (e)(3)(B). Pub. L. 101–508, § 11813(b)(25), substituted ''section 50(c)'' for ''section 48(q)''.

1989—Subsec. (e)(2)(A)(ii). Pub. L. 101–239, § 7821(c), substituted ''another corporation which is or was a member'' for ''another member''.

Subsec. (e)(4). Pub. L. 101–239, §7207(a), added par. (4).

Subsec. (f). Pub. L. 101–239, §7201(a), added subsec. (f).

1988—Subsec. (d)(3), (4). Pub. L. 100–647, §1012(u), added pars. (3) and (4).

Subsec. (e)(1). Pub. L. 100–647, §2004(j)(1)(A), amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: ''Solely for purposes of determining gain or loss on the disposition of intragroup stock, in determining the adjustments to the basis of such intragroup stock on account of the earnings and profits of any member of an affiliated group for any consolidated year—''.

Subsec. (e)(2)(C). Pub. L. 100–647, §2004(j)(3)(A), added subpar. (C).

Subsec. (e)(3). Pub. L. 100–647, §2004(j)(2), added par. (3).

1987—Subsec. (e). Pub. L. 100–203 added subsec. (e).

1986—Subsec. (d). Pub. L. 99–514 added subsec. (d).

1984—Subsec. (c). Pub. L. 98–369, §211(b)(19)(A), (C), substituted ''section 801'' for ''section 802'' in heading, and wherever appearing in text.

Subsec. (c)(1). Pub. L. 98–369, §211(b)(19)(B), struck out provision that for purposes of this subsection, in determining the taxable income of each insurance company subject to tax under section 802, section 802(b)(3) would not be taken into account.

1976—Subsec. (a). Pub. L. 94–455, §1052(c)(5), struck out subsec. (a) designation.

Subsec. (b). Pub. L. 94–455, §1052(c)(5), struck out subsec. (b) which provided for a special rule for application of foreign tax credit when overall limitation applies.

Subsec. (b)(1). Pub. L. 94–455, §1031(b)(4), struck out ''and if for the taxable year an election under section 904(b)(1) (relating to election of overall limitation on foreign tax credit) is in effect'' after ''section 921)''.

Subsec. (b)(3)(C). Pub. L. 94–455, §1901(b)(1)(Y), struck out subpar. (C) which defined ''consolidated taxable income''.

Subsec. (c). Pub. L. 94–455, §1507(b)(3), added subsec. (c).

1964—Subsec. (a). Pub. L. 88–272, §234(a), struck out provisions which increased the tax imposed under section 11(c), or section 831, by 2% of the consolidated taxable income of the affiliated group of includible corporations, and defined ''consolidated taxable income''.

Subsec. (b). Pub. L. 88–272, §234(b)(1), (2), redesignated subsec. (d) as (b), and substituted references to section 7701 for references to former subsection (c) of this section, in subpar. (A), and definition of ''consolidated taxable income'' for provisions relating to the computation of tax, for purposes of par. (1)(A), on the portion of consolidated taxable income attributable to any corporation, without regard to the increase of 2% as in subsec. (a), in subpar. (C). Former subsec. (b), which limited the 2% increase in subsec. (a) in cases where the affiliated group included one or more Western Hemisphere trade corporations or one or more regulated public utilities, to the amount by which the consolidated taxable income of the affiliated group exceed the income attributable to such corporations and utilities, was struck out.

Subsec. (c). Pub. L. 88–272, §234(b)(1), struck out subsec. (c) which defined regulated public utility. See section 7701(a)(33) of this title.

Subsec. (d). Pub. L. 88–272, §234(b)(1), redesignated subsec. (d) as (b).

1960—Subsec. (d). Pub. L. 86–780 added subsec. (d).

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11813(b)(25) 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, §7201(b), Dec. 19, 1989, 103 Stat. 2329, provided that:

''(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to taxable years ending after November 17, 1989.

''(2) BINDING CONTRACT EXCEPTION.—For purposes of section 1503(f)(3)(D) of the Internal Revenue Code of 1986, stock issued after November 17, 1989, pursuant to a written binding contract in effect on November 17, 1989, and at all times thereafter before such issuance, shall be treated as issued on November 17, 1989.

''(3) SPECIAL RULE WHEN SUBSIDIARY LEAVES GROUP.—If, by reason of a transaction after November 17, 1989, a corporation ceases to be, or becomes, a member of an affiliated group, the stock of such corporation shall be treated, for purposes of section 1503(f)(3)(D) of such Code, as issued on the date of such cessation or commencement, unless such transaction is of a kind which would not result in the recognition of any deferred intercompany gain under the consolidated return regulations by reason of the acquisition of the entire group.

''(4) RETIRED STOCK.—

''(A) Except as provided in subparagraph (B), if stock issued before November 18, 1989, (or described in paragraph (2)), is retired or acquired after November 17, 1989, by the corporation or another member of the same affiliated group, such stock shall be treated, for purposes of section 1503(f)(3)(D) of such Code, as issued on the date of such retirement or acquisition.

''(B) Subparagraph (A) shall not apply to any retirement or acquisition pursuant to an obligation to reissue under a binding written contract in effect on November 17, 1989, and at all times thereafter before such retirement or acquisition.

''(5) AUCTION RATE PREFERRED.—For purposes of section 1503(f)(3)(D) of such Code, auction rate preferred stock shall be treated as issued when the contract requiring the auction became binding.

''(6) SPECIAL RULE FOR CERTAIN AUCTION RATE PREFERRED.—For purposes of section 1503(f)(3)(D) of the Internal Revenue Code of 1986, any auction rate preferred stock shall be treated as issued before November 18, 1989, if—

''(A) a subsidiary was incorporated before July 10, 1989 for the special purpose of issuing such stock,

''(B) a rating agency was retained before July 10, 1989, and

''(C) such stock is issued before the date 30 days after the date of the enactment of this Act [Dec. 19, 1989].''

Pub. L. 101–239, title VII, §7207(b), Dec. 19, 1989, 103 Stat. 2337, 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 July 10, 1989, in taxable years ending after such date.

''(2) BINDING CONTRACT.—The amendment made by subsection (a) shall not apply to any disposition pursuant to a written binding contract in effect on July 10, 1989, and at all times thereafter before such disposition.''

Amendment by section 7821 of 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 section 1012(u) 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(j)(1)(A), (2), (3)(A) 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 re-

lates, 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, § 10222(a)(2), Dec. 22, 1987, 101 Stat. 1330–410, as amended by Pub. L. 100–647, title II, § 2004(j)(1)(B), Nov. 10, 1988, 102 Stat. 3604, provided that:

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendment made by paragraph (1) [amending this section] shall apply to any intragroup stock disposed of after December 15, 1987. For purposes of determining the adjustments to the basis of such stock, such amendment shall be deemed to have been in effect for all periods whether before, on, or after December 15, 1987.

''(B) EXCEPTION.—The amendment made by paragraph (1) shall not apply to any intragroup stock disposed of after December 15, 1987, and before January 1, 1989, if such disposition is pursuant to a written binding contract, governmental order, letter of intent or preliminary agreement, or stock acquisition agreement, in effect on or before December 15, 1987.

''(C) TREATMENT OF CERTAIN EXCESS LOSS ACCOUNTS.—

''(i) IN GENERAL.—If—

''(I) any disposition on or before December 15, 1987, of stock resulted in an inclusion of an excess loss account (or would have so resulted if the amendments made by paragraph (1) had applied to such disposition), and

''(II) there is an unrecaptured amount with respect to such disposition,

the portion of such unrecaptured amount allocable to stock disposed of in a disposition to which the amendment made by paragraph (1) applies shall be taken into account as negative basis. To the extent permitted by the Secretary of the Treasury or his delegate, the preceding sentence shall not apply to the extent the taxpayer elects to reduce its basis in indebtedness of the corporation with respect to which there would have been an excess loss account.

''(ii) SPECIAL RULES.—For purposes of this subparagraph—

''(I) UNRECAPTURED AMOUNT.—The term 'unrecaptured amount' means the amount by which the inclusion referred to in clause (i)(I) would have been increased if the amendment made by paragraph (1) and [had] applied to the disposition.

''(II) COORDINATION WITH BINDING CONTRACT EXCEPTION.—A disposition shall be treated as occurring on or before December 15, 1987, if the amendment made by paragraph (1) does not apply to such disposition by reason of subparagraph (B).''

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XII, § 1249(b), Oct. 22, 1986, 100 Stat. 2585, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to net operating losses for taxable years beginning after December 31, 1986.''

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 1976 AMENDMENT

Amendment by section 1031(b)(4) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, see section 1031(c) of Pub. L. 94–455, set out as a note under section 904 of this title.

Amendment by section 1052(c)(5) of Pub. L. 94–455 effective with respect to taxable years beginning after Dec. 31, 1979, see section 1052(d) of Pub. L. 94–455, set out as a note under section 170 of this title.

Amendment by section 1507(b)(3) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1980, see section 1507(c) of Pub. L. 94–455, set out as a note under section 1504 of this title.

Amendment by section 1901(b)(1)(Y) 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 1964 AMENDMENT

Pub. L. 88–272, title II, § 234(c), Feb. 26, 1964, 78 Stat. 116, provided that: ''The amendments made by subsections (a) and (b) [amending this section and sections 12, 172, 904, 1341, 1552, and 7701 of this title] shall apply with respect to taxable years beginning after December 31, 1963.''

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–780 applicable to taxable years beginning after Dec. 31, 1960, see section 4 of Pub. L. 86–780, set out as a note under section 904 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.

§ 1504. Definitions

(a) Affiliated group defined

For purposes of this subtitle—

(1) In general

The term ''affiliated group'' means—

(A) 1 or more chains of includible corporations connected through stock ownership with a common parent corporation which is an includible corporation, but only if—

(B)(i) the common parent owns directly stock meeting the requirements of paragraph (2) in at least 1 of the other includible corporations, and

(ii) stock meeting the requirements of paragraph (2) in each of the includible corporations (except the common parent) is owned directly by 1 or more of the other includible corporations.

(2) 80-percent voting and value test

The ownership of stock of any corporation meets the requirements of this paragraph if it—

(A) possesses at least 80 percent of the total voting power of the stock of such corporation, and

(B) has a value equal to at least 80 percent of the total value of the stock of such corporation.

(3) 5 years must elapse before reconsolidation

(A) In general

If—

(i) a corporation is included (or required to be included) in a consolidated return filed by an affiliated group, and

(ii) such corporation ceases to be a member of such group,

with respect to periods after such cessation, such corporation (and any successor of such corporation) may not be included in any consolidated return filed by the affiliated group (or by another affiliated group with

the same common parent or a successor of such common parent) before the 61st month beginning after its first taxable year in which it ceased to be a member of such affiliated group.

(B) Secretary may waive application of subparagraph (A)

The Secretary may waive the application of subparagraph (A) to any corporation for any period subject to such conditions as the Secretary may prescribe.

(4) Stock not to include certain preferred stock

For purposes of this subsection, the term ''stock'' does not include any stock which—

(A) is not entitled to vote,

(B) is limited and preferred as to dividends and does not participate in corporate growth to any significant extent,

(C) has redemption and liquidation rights which do not exceed the issue price of such stock (except for a reasonable redemption or liquidation premium), and

(D) is not convertible into another class of stock.

(5) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, including (but not limited to) regulations—

(A) which treat warrants, obligations convertible into stock, and other similar interests as stock, and stock as not stock,

(B) which treat options to acquire or sell stock as having been exercised,

(C) which provide that the requirements of paragraph (2)(B) shall be treated as met if the affiliated group, in reliance on a good faith determination of value, treated such requirements as met,

(D) which disregard an inadvertent ceasing to meet the requirements of paragraph (2)(B) by reason of changes in relative values of different classes of stock,

(E) which provide that transfers of stock within the group shall not be taken into account in determining whether a corporation ceases to be a member of an affiliated group, and

(F) which disregard changes in voting power to the extent such changes are disproportionate to related changes in value.

(b) Definition of "includible corporation"

As used in this chapter, the term ''includible corporation'' means any corporation except—

(1) Corporations exempt from taxation under section 501.

(2) Insurance companies subject to taxation under section 801.

(3) Foreign corporations.

(4) Corporations with respect to which an election under section 936 (relating to possession tax credit) is in effect for the taxable year.

[(5) Repealed. Pub. L. 94–455, title X, §1053(d)(2), Oct. 4, 1976, 90 Stat. 1649.]

(6) Regulated investment companies and real estate investment trusts subject to tax under subchapter M of chapter 1.

(7) A DISC (as defined in section 992(a)(1)).

(8) An S corporation.

(c) Includible insurance companies

Notwithstanding the provisions of paragraph (2) of subsection (b)—

(1) Two or more domestic insurance companies each of which is subject to tax under section 801 shall be treated as includible corporations for purposes of applying subsection (a) to such insurance companies alone.

(2)(A) If an affiliated group (determined without regard to subsection (b)(2)) includes one or more domestic insurance companies taxed under section 801, the common parent of such group may elect (pursuant to regulations prescribed by the Secretary) to treat all such companies as includible corporations for purposes of applying subsection (a) except that no such company shall be so treated until it has been a member of the affiliated group for the 5 taxable years immediately preceding the taxable year for which the consolidated return is filed.

(B) If an election under this paragraph is in effect for a taxable year—

(i) section 243(b)(3) and the exception provided under section 243(b)(2) with respect to subsections (b)(2) and (c) of this section,

(ii) section 542(b)(5), and

(iii) subsection (a)(4) and (b)(2)(D) of section 1563, and the reference to section 1563(b)(2)(D) contained in section 1563(b)(3)(C),

shall not be effective for such taxable year.

(d) Subsidiary formed to comply with foreign law

In the case of a domestic corporation owning or controlling, directly or indirectly, 100 percent of the capital stock (exclusive of directors' qualifying shares) of a corporation organized under the laws of a contiguous foreign country and maintained solely for the purpose of complying with the laws of such country as to title and operation of property, such foreign corporation may, at the option of the domestic corporation, be treated for the purpose of this subtitle as a domestic corporation.

(e) Includible tax-exempt organizations

Despite the provisions of paragraph (1) of subsection (b), two or more organizations exempt from taxation under section 501, one or more of which is described in section 501(c)(2) and the others of which derive income from such 501(c)(2) organizations, shall be considered as includible corporations for the purpose of the application of subsection (a) to such organizations alone.

(f) Special rule for certain amounts derived from a corporation previously treated as a DISC

In determining the consolidated taxable income of an affiliated group for any taxable year beginning after December 31, 1984, a corporation which had been a DISC and which would otherwise be a member of such group shall not be treated as such a member with respect to—

(1) any distribution (or deemed distribution) of accumulated DISC income which was not treated as previously taxed income under sec-

tion 805(b)(2)(A) of the Tax Reform Act of 1984, and

(2) any amount treated as received under section 805(b)(3) of such Act.

(Aug. 16, 1954, ch. 736, 68A Stat. 369; Mar. 13, 1956, ch. 83, § 5(8), 70 Stat. 49; Pub. L. 85–866, title I, § 64(d)(3), Sept. 2, 1958, 72 Stat. 1657; Pub. L. 86–69, § 3(f)(1), June 25, 1959, 73 Stat. 140; Pub. L. 86–376, § 2(c), Sept. 23, 1959, 73 Stat. 699; Pub. L. 86–779, § 10(j), Sept. 14, 1960, 74 Stat. 1009; Pub. L. 89–389, § 4(b)(3), Apr. 14, 1966, 80 Stat. 116; Pub. L. 91–172, title I, § 121(a)(4), Dec. 30, 1969, 83 Stat. 537; Pub. L. 92–178, title V, § 502(e), Dec. 10, 1971, 85 Stat. 550; Pub. L. 94–455, title VIII, § 803(b)(3), title X, §§ 1051(g), 1053(d)(2), title XV, § 1507(a), Oct. 4, 1976, 90 Stat. 1584, 1646, 1649, 1739; Pub. L. 95–600, title I, § 141(f)(4), Nov. 6, 1978, 92 Stat. 2795; Pub. L. 96–222, title I, § 101(a)(7)(L)(i)(VIII), (iv)(II), Apr. 1, 1980, 94 Stat. 199, 200; Pub. L. 98–369, div. A, title I, § 60(a), title II, § 211(b)(20), July 18, 1984, 98 Stat. 577, 756; Pub. L. 99–514, title X, § 1024(c)(15), (16), title XVIII, §§ 1804(e)(1), (10), 1899A(35), Oct. 22, 1986, 100 Stat. 2408, 2800, 2804, 2960; Pub. L. 100–647, title I, § 1018(d)(10), Nov. 10, 1988, 102 Stat. 3581; Pub. L. 101–508, title XI, § 11814(b), Nov. 5, 1990, 104 Stat. 1388–557; Pub. L. 104–188, title I, §§ 1308(d)(2), 1702(h)(6), Aug. 20, 1996, 110 Stat. 1783, 1874; Pub. L. 113–295, div. A, title II, § 221(a)(93), Dec. 19, 2014, 128 Stat. 4050.)

REFERENCES IN TEXT

Section 805(b)(2)(A) and (3) of the Tax Reform Act of 1984, referred to in subsec. (f)(1), (2), is section 805(b)(2)(A) and (3) of Pub. L. 98–369, which is set out as a note under section 991 of this title.

AMENDMENTS

2014—Subsec. (a)(3)(A). Pub. L. 113–295 struck out ''for a taxable year which includes any period after December 31, 1984'' after ''affiliated group'' in cl. (i) and struck out ''in a taxable year beginning after December 31, 1984'' after ''such group'' in cl. (ii).

1996—Subsec. (b)(8). Pub. L. 104–188, § 1308(d)(2), added par. (8).

Subsec. (c)(2)(B)(i). Pub. L. 104–188, § 1702(h)(6), inserted ''section'' before ''243(b)(2)''.

1990—Subsec. (c)(2)(B)(i). Pub. L. 101–508, § 11814(b), substituted ''section 243(b)(3)'' for ''section 243(b)(6)'' and ''243(b)(2)'' for ''section 243(b)(5)''.

1988—Subsec. (b)(7). Pub. L. 100–647, § 1018(d)(10)(A), amended par. (7) generally, striking out '', or any other corporation which has accumulated DISC income which is derived after December 31, 1984'' after ''in section 992(a)(1))''.

Subsec. (f). Pub. L. 100–647, § 1018(d)(10)(B), added subsec. (f).

1986—Subsec. (a)(4)(C). Pub. L. 99–514, § 1804(e)(1), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''has redemption and liquidation rights which do not exceed the paid-in capital or par value represented by such stock (except for a reasonable redemption premium in excess of such paid-in capital or par value), and''.

Subsec. (b)(2). Pub. L. 99–514, § 1024(c)(15), struck out ''or 821'' after ''section 802''.

Subsec. (b)(7). Pub. L. 99–514, § 1804(e)(10), amended par. (7) generally. Prior to amendment, par. (7) read as follows: ''A DISC or former DISC (as defined in section 992(a)).''

Subsec. (c)(2)(A). Pub. L. 99–514, § 1899A(35), struck out ''or 821'' after ''section 801''.

Pub. L. 99–514, § 1024(c)(16), substituted ''subsection (b)(2)) includes'' for ''subsection (b)(2) includes''.

1984—Subsec. (a). Pub. L. 98–369, § 60(a), in amending subsec. (a), generally, revised existing provisions of subsec. (a) into pars. (1), (2), and (4), added pars. (3) and (5), revised definition of ''affiliated group'', and expanded the enumeration of securities not included under term ''stock''.

Subsecs. (b)(2), (c)(1), (2)(A). Pub. L. 98–369, § 211(b)(20), substituted ''section 801'' for ''section 802''.

1980—Subsec. (a). Pub. L. 96–222 substituted ''a tax credit employee stock ownership plan'' for ''an ESOP'' and ''employee'' for ''leveraged employee''.

1978—Subsec. (a). Pub. L. 95–600 substituted ''(within the meaning for section 409A(*l*)) while such securities are held under an ESOP, or qualifying employer securities (within the meaning of section 4975(e)(8)) while such securities are held under a leveraged employee stock ownership plan which meets the requirements of section 4975(e)(7)'' for ''within the meaning of section 301(d)(9)(A) of the Tax Reduction Act of 1975, or qualifying employer securities within the meaning of section 4975(e)(8) while such securities are held under an employee stock ownership plan which meets the requirements of section 301(d) of such Act or section 4975(e)(7), respectively''.

1976—Subsec. (a). Pub. L. 94–455, § 803(b)(3), substituted ''dividends, employer securities within the meaning of section 301(d)(9)(A) of the Tax Reduction Act of 1976, or qualifying employer securities within the meaning of section 4975(e)(8) while such securities are held under an employee stock ownership plan which meets the requirements of section 301(d) of such Act or section 4975(e)(7), respectively'' for ''dividends'' after ''preferred as to''.

Subsec. (b)(4). Pub. L. 94–455, § 1051(g), substituted ''Corporations with respect to which an election under section 936 (relating to possession tax credit) is in effect for the taxable year'' for ''Corporations entitled to the benefits of section 931, by reason of receiving a large percentage of their income from sources within possessions of the United States'' in par. (4).

Subsec. (b)(5). Pub. L. 94–455, § 1053(d)(2), struck out par. (5) which included corporations organized under the China Trade Act, 1922, within term ''includible corporation''.

Subsec. (c). Pub. L. 94–455, § 1507(a), designated existing provisions as provision preceding par. (1) and par. (1), in provision preceding par. (1) as so designated, substituted ''Notwithstanding the provisions'' for ''Despite the provisions'', in par. (1) as so designated, substituted ''tax under section 802 shall be treated'' for ''taxation under the same section of this subtitle shall be considered'' and added par. (2).

1971—Subsec. (b)(7). Pub. L. 92–178 added par. (7).

1969—Subsec. (e). Pub. L. 91–172 added subsec. (e).

1966—Subsec. (b)(7). Pub. L. 89–389 struck out par. (7) exception to definition of ''includible corporation'' of unincorporated business enterprises subject to tax as corporations under section 1361 of this title.

1960—Subsec. (b)(6). Pub. L. 86–779 inserted ''and real estate investment trusts'' after ''Regulated investment companies''.

1959—Subsec. (b)(2). Pub. L. 86–69 struck out reference to section 811.

Subsec. (b)(8). Pub. L. 86–376 struck out par. (8) which excepted an electing small business corporation from term ''includible corporation''.

1958—Subsec. (b)(8). Pub. L. 85–866 added par. (8).

1956—Subsec. (b)(2), Act Mar. 13, 1956, inserted reference to section 811.

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 1996 AMENDMENT

Amendment by section 1308(d)(2) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1317(a) of Pub. L. 104–188, set out as a note under section 641 of this title.

Amendment by section 1702(h)(6) of Pub. L. 104–188 effective, except as otherwise expressly provided, as if in-

cluded 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 Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, and for purposes of section 243(b)(3) of this title, references to elections under such section to include references to an election under section 243(b) of this title as in effect on Nov. 4, 1990, see section 11814(c) of Pub. L. 101–508, set out as a note under section 243 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 1024(c)(15), (16) 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 1804(e)(1), (10) 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, §60(b), July 18, 1984, 98 Stat. 579, as amended by Pub. L. 99–514, §2, title XVIII, §1804(e)(2)–(5), Oct. 22, 1986, 100 Stat. 2095, 2800, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1984.

''(2) SPECIAL RULE FOR CORPORATIONS AFFILIATED ON JUNE 22, 1984.—In the case of a corporation which on June 22, 1984, is a member of an affiliated group which files a consolidated return for such corporation's taxable year which includes June 22, 1984, for purposes of determining whether such corporation continues to be a member of such group for taxable years beginning before January 1, 1988, the amendment made by subsection (a) [amending this section] shall not apply. The preceding sentence shall cease to apply as of the first day after June 22, 1984, on which such corporation does not qualify as a member of such group under section 1504(a) of the Internal Revenue Code of 1954 [now 1986] (as in effect on the day before the date of the enactment of this Act [July 18, 1984]).

''(3) SPECIAL RULE NOT TO APPLY TO CERTAIN SELL-DOWNS AFTER JUNE 22, 1984.—If—

''(A) the requirements of paragraph (2) are satisfied with respect to a corporation,

''(B) more than a de minimis amount of the stock of such corporation—

''(i) is sold or exchanged (including in a redemption), or

''(ii) is issued,

after June 22, 1984 (other than in the ordinary course of business), and

''(C) the requirements of the amendment made by subsection (a) are not satisfied after such sale, exchange, or issuance,

then the amendment made by subsection (a) [amending this section] shall apply for purposes of determining whether such corporation continues to be a member of the group. The preceding sentence shall not apply to any transaction if such transaction does not reduce the percentage of the fair market value of the stock of the corporation referred to in the preceding sentence held by members of the group determined without regard to this paragraph.

''(4) EXCEPTION FOR CERTAIN SELL-DOWNS.—Subsection (b)(2) (and not subsection (b)(3)) will apply to a corporation if such corporation issues or sells stock after June 22, 1984, pursuant to a registration statement filed with the Securities and Exchange Commission on or before June 22, 1984, but only if the requirements of the amendment made by subsection (a) [amending this section] (substituting 'more than 50 percent' for 'at least 80 percent' in paragraph (2)(B) of section 1504(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) are satisfied immediately after such issuance or sale and at all times thereafter until the first day of the first taxable year beginning after December 31, 1987. For purposes of the preceding sentence, if there is a letter of intent between a corporation and a securities underwriter entered into on or before June 22, 1984, and the subsequent issuance or sale is effected pursuant to a registration statement filed with the Securities and Exchange Commission, such stock shall be treated as issued or sold pursuant to a registration statement filed with the Securities and Exchange Commission on or before June 22, 1984.

''(5) NATIVE CORPORATIONS.—

''(A) In the case of a Native Corporation established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), or a corporation all of whose stock is owned directly by such a corporation, during any taxable year (beginning after the effective date of these amendments and before 1992), or any part thereof, in which the Native Corporation is subject to the provisions of section 7(h)(1) of such Act (43 U.S.C. 1606(h)(1))—

''(i) the amendment made by subsection (a) [amending this section] shall not apply, and

''(ii) the requirements for affiliation under section 1504(a) of the Internal Revenue Code of 1986 before the amendment made by subsection (a) shall be applied solely according to the provisions expressly contained therein, without regard to escrow arrangements, redemption rights, or similar provisions.

''(B) Except as provided in subparagraph (C), during the period described in subparagraph (A), no provision of the Internal Revenue Code of 1986 (including sections 269 and 482) or principle of law shall apply to deny the benefit or use of losses incurred or credits earned by a corporation described in subparagraph (A) to the affiliated group of which the Native Corporation is the common parent.

''(C) Losses incurred or credits earned by a corporation described in subparagraph (A) shall be subject to the general consolidated return regulations, including the provisions relating to separate return limitation years, and to sections 382 and 383 of the Internal Revenue Code of 1986.

''(D) Losses incurred and credits earned by a corporation which is affiliated with a corporation described in subparagraph (A) shall be treated as having been incurred or earned in a separate return limitation year, unless the corporation incurring the losses or earning the credits satisfies the affiliation requirements of section 1504(a) without application of subparagraph (A).

''(6) TREATMENT OF CERTAIN CORPORATIONS AFFILIATED ON JUNE 22, 1984.—In the case of an affiliated group which—

''(A) has as its common parent a Minnesota corporation incorporated on April 23, 1940, and

''(B) has a member which is a New York corporation incorporated on November 13, 1969,

for purposes of determining whether such New York corporation continues to be a member of such group, paragraph (2) shall be applied by substituting for 'January 1, 1988,' the earlier of January 1, 1994, or the date on which the voting power of the preferred stock in such New York corporation terminates.

''(7) ELECTION TO HAVE AMENDMENTS APPLY FOR YEARS BEGINNING AFTER 1983.—If the common parent of any group makes an election under this paragraph, notwithstanding any other provision of this subsection,

the amendments made by subsection (a) [amending this section] shall apply to such group for taxable years beginning after December 31, 1983. Any such election, once made, shall be irrevocable.

''(8) TREATMENT OF CERTAIN AFFILIATED GROUPS.—If—

''(A) a corporation (hereinafter in this paragraph referred to as the 'parent') was incorporated in 1968 and filed consolidated returns as the parent of an affiliated group for each of its taxable years ending after 1969 and before 1985,

''(B) another corporation (hereinafter in this paragraph referred to as the 'subsidiary') became a member of the parent's affiliated group in 1978 by reason of a recapitalization pursuant to which the parent increased its voting interest in the subsidiary from not less than 56 percent to not less than 85 percent, and

''(C) such subsidiary is engaged (or was on September 27, 1985, engaged) in manufacturing and distributing a broad line of business systems and related supplies for binding, laminating, shredding, graphics, and providing secure identification,

then, for purposes of determining whether such subsidiary corporation is a member of the parent's affiliated group under section 1504(a) of the Internal Revenue Code of 1954 [now 1986] (as amended by subsection (a)), paragraph (2)(B) of such section 1504(a) shall be applied by substituting '55 percent' for '80 percent'.

''(9) TREATMENT OF CERTAIN CORPORATIONS AFFILIATED DURING 1971.— In the case of a group of corporations which filed a consolidated Federal income tax return for the taxable year beginning during 1971 and which—

''(A) included as a common parent on December 31, 1971, a Delaware corporation incorporated on August 26, 1969, and

''(B) included as a member thereof a Delaware corporation incorporated on November 8, 1971,

for taxable years beginning after December 31, 1970, and ending before January 1, 1988, the requirements for affiliation for each member of such group under section 1504(a) of the Internal Revenue Code of 1954 [now 1986] (before the amendment made by subsection (a) [amending this section]) shall be limited solely to the provisions expressly contained therein and by reference to stock issued under State law as common or preferred stock. During the period described in the preceding sentence, no provision of the Internal Revenue Code of 1986 (including sections 269 and 482) or principle of law, except the general consolidated return regulations (including the provisions relating to separate return limitation years) and sections 382 and 383 of such Code, shall apply to deny the benefit or use of losses incurred or credits earned by members of such group.''

Amendment by section 211(b)(20) of 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 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 effective with respect to qualified investment for taxable years beginning after Dec. 31, 1978, see section 141(g)(1) of Pub. L. 95–600, set out as a Effective Date note under section 409 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 803(b)(3) of Pub. L. 94–455 applicable for taxable years beginning after Dec. 31, 1974, see section 803(j) of Pub. L. 94–455, set out as a note under section 46 of this title.

Amendment by section 1051(g) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, see section 1051(i) of Pub. L. 94–455, set out as a note under section 27 of this title.

Pub. L. 94–455, title X, §1053(e), Oct. 4, 1976, 90 Stat. 1649, provided that: ''The amendments made by subsections (a) and (b) [amending section 941 and 943 of this title] shall apply with respect to taxable years beginning after December 31, 1975. The amendments made by subsections (c) and (d) [amending this section and sections 116, 6072, and 6091 of this title and repealing sections 941–943 of this title] shall apply with respect to taxable years beginning after December 31, 1977.''

Pub. L. 94–455, title XV, §1507(c)(1), Oct. 4, 1976, 90 Stat. 1740, provided that: ''The amendments made by subsections (a) and (b) [amending this section and sections 821, 843, and 1503 of this title] shall apply to taxable years beginning after December 31, 1980.''

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 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

Pub. L. 89–389, §4(b), Apr. 14, 1966, 80 Stat. 116, provided that the amendment made by that section is effective on Jan. 1, 1969.

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.

EFFECTIVE DATE OF 1959 AMENDMENTS

Pub. L. 86–376, §2(d), Sept. 23, 1959, 73 Stat. 699, provided that: ''The amendment made by subsection (a) [amending section 1371 of this title] shall apply to taxable years beginning after December 31, 1959. The amendments made by subsections (b) and (c) [amending this section and section 1374 of this title] shall take effect on the day after the date of the enactment of this Act [Sept. 23, 1959].''

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 an Effective Date note under section 381 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable only with respect to taxable years beginning after Dec. 31, 1958, see section 64(e) of Pub. L. 85–866, set out as a note under section 172 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.

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.

REPEAL OF RULES PERMITTING LOSS TRANSFERS BY ALASKA NATIVE CORPORATIONS

Pub. L. 100–647, title V, §5021, Nov. 10, 1988, 102 Stat. 3666, as amended by Pub. L. 101–239, title VII, §7815(b), Dec. 19, 1989, 103 Stat. 2414, provided that:

''(a) GENERAL RULE.—Nothing in section 60(b)(5) of the Tax Reform Act of 1984 (as amended by section 1804(e)(4) of the Tax Reform Act of 1986) [section 60(b)(5) of Pub. L. 98–369, set out as an Effective Date of 1984 Amendment note above]—

''(1) shall allow any loss (or credit) of any corporation which arises after April 26, 1988, to be used to offset the income (or tax) of another corporation if such use would not be allowable without regard to such section 60(b)(5) as so amended, or

''(2) shall allow any loss (or credit) of any corporation which arises on or before such date to be used to offset disqualified income (or tax attributable to such income) of another corporation if such use would not be allowable without regard to such section 60(b)(5) as so amended.

''(b) EXCEPTION FOR EXISTING CONTRACTS.—

''(1) IN GENERAL.—Subsection (a) shall not apply to any loss (or credit) of any corporation if—

''(A) such corporation was in existence on April 26, 1988, and

''(B) such loss (or credit) is used to offset income assigned (or attributable to property contributed) pursuant to a binding contract entered into before July 26, 1988.

''(2) $40,000,000 LIMITATION.—The aggregate amount of losses (and the deduction equivalent of credits as determined in the same manner as under section 469(j)(5) of the 1986 Code) to which paragraph (1) applies with respect to any corporation shall not exceed $40,000,000. For purposes of this paragraph, a Native Corporation and all other corporations all of the stock of which is owned directly by such corporation shall be treated as 1 corporation.

''(3) SPECIAL RULE FOR CORPORATIONS UNDER TITLE 11.—In the case of a corporation which on April 26, 1988, was under the jurisdiction of a Federal district court under title 11 of the United States Code—

''(A) paragraph (1)(B) shall be applied by substituting the date 1 year after the date of the enactment of this Act [Nov. 10, 1988] for 'July 26, 1988',

''(B) paragraph (1) shall not apply to any loss or credit which arises on or after the date 1 year after the date of the enactment of this Act, and

''(C) paragraph (2) shall be applied by substituting '$99,000,000' for '$40,000,000'.

''(c) SPECIAL ADMINISTRATIVE RULES.—

''(1) NOTICE TO NATIVE CORPORATIONS OF PROPOSED TAX ADJUSTMENTS.—Notwithstanding section 6103 of the 1986 Code, the Secretary of the Treasury or his delegate shall notify a Native Corporation or its designated representative of any proposed adjustment—

''(A) of the tax liability of a taxpayer which has contracted with the Native Corporation (or other corporation all of the stock of which is owned directly by the Native Corporation) for the use of losses of such Native Corporation (or such other corporation), and

''(B) which is attributable to an asserted overstatement of losses by, or misassignment of income (or income attributable to property contributed) to, an affiliated group of which the Native Corporation (or such other corporation) is a member.

Such notice shall only include information with respect to the transaction between the taxpayer and the Native Corporation.

''(2) RIGHTS OF NATIVE CORPORATION.—

''(A) IN GENERAL.—If a Native Corporation receives a notice under paragraph (1), the Native Corporation shall have the right to—

''(i) submit to the Secretary of the Treasury or his delegate a written statement regarding the proposed adjustment, and

''(ii) meet with the Secretary of the Treasury or his delegate with respect to such proposed adjustment.

The Secretary of the Treasury or his delegate may discuss such proposed adjustment with the Native Corporation or its designated representative.

''(B) EXTENSION OF STATUTE OF LIMITATIONS.—Subparagraph (A) shall not apply if the Secretary of the Treasury or his delegate determines that an extension of the statute of limitation[s] is necessary to permit the participation described in subparagraph (A) and the taxpayer and the Secretary or his delegate have not agreed to such extension.

''(3) JUDICIAL PROCEEDINGS.—In the case of any proceeding in a Federal court or the United States Tax Court involving a proposed adjustment under paragraph (1), the Native Corporation, subject to the rules of such court, may file an amicus brief concerning such adjustment.

''(4) FAILURES.—For purposes of the 1986 Code, any failure by the Secretary of the Treasury or his delegate to comply with the provisions of this subsection shall not affect the validity of the determination of the Internal Revenue Service of any adjustment of tax liability of any taxpayer described in paragraph (1).

''(d) DISQUALIFIED INCOME DEFINED.—For purposes of subsection (a), the term 'disqualified income' means any income assigned (or attributable to property contributed) after April 26, 1988, by a person who is not a Native Corporation or a corporation all the stock of which is owned directly by a Native Corporation.

''(e) BASIS DETERMINATION.—For purposes of determining basis for Federal tax purposes, no provision in any law enacted after the date of the enactment of this Act [Nov. 10, 1988] shall affect the date on which the transfer to the Native Corporation is made. The preceding sentence shall apply to all taxable years whether beginning before, on, or after such date of enactment.''

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.

TRANSACTION RULES

Pub. L. 94–455, title XV, §1507(c)(2), Oct. 4, 1976, 90 Stat. 1740, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(A) LIMITATIONS ON CARRYOVERS OR CARRYBACKS FOR GROUPS ELECTING UNDER SECTION 1504(c)(2).—If an affiliated group elects to file a consolidated return pursuant to section 1501(c)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] a carryover of a loss or credit from a taxable year ending before January 1, 1981, and losses or credits which may be carried back to taxable years ending before such date, shall be taken into account as if this section had not been enacted.

''(B) NONTERMINATION OF AFFILIATED GROUP.—The mere election to file a consolidated return pursuant to such section 1504(c)(2) shall not cause the termination of an affiliated group filing consolidated returns.''

§ 1505. Cross references

(1) For suspension of running of statute of limitations when notice in respect of a deficiency is mailed to one corporation, see section 6503(a)(1).

(2) For allocation of income and deductions of related trades or businesses, see section 482.

(Aug. 16, 1954, ch. 736, 68A Stat. 370.)

Subchapter B—Related Rules

Part Sec.[1]

[1] Section numbers editorially supplied.

PART I—IN GENERAL

AMENDMENTS

2017—Pub. L. 115–97, title I, § 13001(b)(5)(A), Dec. 22, 2017, 131 Stat. 2098, which directed amendment of the table of sections for part I of subchapter B of chapter 5 by striking out item 1551 ''Disallowance of the benefits of the graduated corporate rates and accumulated earnings credit'', was executed to the table of sections for part I of subchapter B of this chapter to reflect the probable intent of Congress.

1978—Pub. L. 95–600, title III, § 301(b)(18)(C), Nov. 6, 1978, 92 Stat. 2823, in item 1551 substituted ''the benefits of the graduated corporate rates'' for ''surtax exemption''.

1964—Pub. L. 88–272, title II, § 235(c)(4), Feb. 26, 1964, 78 Stat. 127, inserted table of parts, and heading for part I.

[§ 1551. Repealed. Pub. L. 115–97, title I, § 13001(b)(5)(A), Dec. 22, 2017, 131 Stat. 2098]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 371; Pub. L. 85–866, title II, § 205(a), Sept. 2, 1958, 72 Stat. 1680; Pub. L. 88–272, title II, § 235(b), Feb. 26, 1964, 78 Stat. 125; Pub. L. 94–12, title III, § 304(b), Mar. 29, 1975, 89 Stat. 45; Pub. L. 94–455, title XIX, §§ 1901(a)(158), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1790, 1834; Pub. L. 95–600, title III, § 301(b)(18)(A), (B), Nov. 6, 1978, 92 Stat. 2823; Pub. L. 97–34, title II, § 232(b)(2), Aug. 13, 1981, 95 Stat. 250; Pub. L. 99–514, title XVIII, § 1899A(36), Oct. 22, 1986, 100 Stat. 2960; Pub. L. 113–295, div. A, title II, § 221(a)(94), Dec. 19, 2014, 128 Stat. 4051, related to disallowance of the benefits of the graduated corporate rates and accumulated earnings credit. Repeal was executed to this section, which is in part I of subchapter B of chapter 6, to reflect the probable intent of Congress, notwithstanding directory language of Pub. L. 115–97, which repealed section 1551 in part I of subchapter B of chapter 5.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 2017, see section 13001(c)(1) of Pub. L. 115–97, set out as an Effective Date of 2017 Amendment note under section 11 of this title.

§ 1552. Earnings and profits

(a) General rule

Pursuant to regulations prescribed by the Secretary the earnings and profits of each member of an affiliated group required to be included in a consolidated return for such group filed for a taxable year shall be determined by allocating the tax liability of the group for such year among the members of the group in accord with whichever of the following methods the group shall elect in its first consolidated return filed for such a taxable year:

(1) The tax liability shall be apportioned among the members of the group in accordance with the ratio which that portion of the consolidated taxable income attributable to each member of the group having taxable income bears to the consolidated taxable income.

(2) The tax liability of the group shall be allocated to the several members of the group on the basis of the percentage of the total tax which the tax of such member if computed on a separate return would bear to the total amount of the taxes for all members of the group so computed.

(3) The tax liability of the group (excluding the tax increases arising from the consolidation) shall be allocated on the basis of the contribution of each member of the group to the consolidated taxable income of the group. Any tax increases arising from the consolidation shall be distributed to the several members in direct proportion to the reduction in tax liability resulting to such members from the filing of the consolidated return as measured by the difference between their tax liabilities determined on a separate return basis and their tax liabilities based on their contributions to the consolidated taxable income.

(4) The tax liability of the group shall be allocated in accord with any other method selected by the group with the approval of the Secretary.

(b) Failure to elect

If no election is made in such first return, the tax liability shall be allocated among the several members of the group pursuant to the method prescribed in subsection (a)(1).

(Aug. 16, 1954, ch. 736, 68A Stat. 371; Pub. L. 88–272, title II, § 234(b)(8), Feb. 26, 1964, 78 Stat. 116; Pub. L. 94–455, title XIX, §§ 1901(a)(159), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1790, 1834.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–455, §§ 1901(a)(159), 1906(b)(13)(A), struck out ''beginning after December 31, 1953, and ending after the date of enactment of this title'' after ''group filed for a taxable year'', and ''or his delegate'' after ''Secretary'' in two places.

1964—Subsec. (a)(3). Pub. L. 88–272 struck out ''(determined without regard to the 2 percent increase provided by section 1503(a))'', before ''based on their contributions''.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(159) 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 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 234(c) of Pub. L. 88–272, set out as a note under section 1503 of this title.

PART II—CERTAIN CONTROLLED CORPORATIONS

AMENDMENTS

2017—Pub. L. 115–97, title I, § 13001(b)(6)(B), Dec. 22, 2017, 131 Stat. 2098, which directed amendment of the table of sections for part II of subchapter B of chapter 5 by substituting ''Limitation on accumulated earnings credit in the case of certain controlled corporations'' for ''Limitations on certain multiple tax benefits in the case of certain controlled corporations'' in item 1561, was executed to the table of sections for part II of subchapter B of this chapter to reflect the probable intent of Congress.

1990—Pub. L. 101–508, title XI, § 11801(b)(12), Nov. 5, 1990, 104 Stat. 1388–522, struck out item 1564 ''Transitional rules in the case of certain controlled corporations''.

1969—Pub. L. 91–172, title IV, § 401(a)(3), (b)(2)(E), Dec. 30, 1969, 83 Stat. 600, 602, substituted ''Sec. 1561. Limitations on certain multiple tax benefits in the case of certain controlled corporations.'' for ''Sec. 1561. Surtax exemptions in case of certain controlled corporations.'', and struck out item 1562, effective with respect to taxable years beginning after Dec. 31, 1974, and added item 1564.

1964—Pub. L. 88–272, title II, § 235(a), Feb. 26, 1964, 78 Stat. 116, added designation of part II, and items 1561 to 1563.

§ 1561. Limitation on accumulated earnings credit in the case of certain controlled corporations

(a) In general

The component members of a controlled group of corporations on a December 31 shall, for their taxable years which include such December 31, be limited for purposes of this subtitle to one $250,000 ($150,000 if any component member is a corporation described in section 535(c)(2)(B)) amount for purposes of computing the accumulated earnings credit under section 535(c)(2) and (3). Such amount shall be divided equally among the component members of such group on such December 31 unless the Secretary prescribes regulations permitting an unequal allocation of such amount.

(b) Certain short taxable years

If a corporation has a short taxable year which does not include a December 31 and is a component member of a controlled group of corporations with respect to such taxable year, then for purposes of this subtitle, the amount to be used in computing the accumulated earnings credit under section 535(c)(2) and (3) of such corporation for such taxable year shall be the amount specified in subsection (a) with respect to such group, divided by the number of corporations which are component members of such group on the last day of such taxable year. For purposes of the preceding sentence, section 1563(b) shall be applied as if such last day were substituted for December 31.

(Added Pub. L. 88–272, title II, § 235(a), Feb. 26, 1964, 78 Stat. 116; amended Pub. L. 91–172, title IV, § 401(a)(1), Dec. 30, 1969, 83 Stat. 599; Pub. L. 94–12, title III, §§ 303(c)(1), 304(b), Mar. 29, 1975, 89 Stat. 44, 45; Pub. L. 94–164, § 4(d)(1), Dec. 23, 1975, 89 Stat. 974; Pub. L. 94–455, title IX, § 901(c)(1), title XIX, §§ 1901(b)(1)(J)(v), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1607, 1791, 1834; Pub. L. 95–600, title III, § 301(b)(19), title VII, § 703(j)(7), Nov. 6, 1978, 92 Stat. 2823, 2941; Pub. L. 97–34, title II, § 232(b)(3), Aug. 13, 1981, 95 Stat. 250; Pub. L. 97–248, title II, § 259(b), (c), Sept. 3, 1982, 96 Stat. 539; Pub. L. 98–369, div. A, title I, § 66(b), title II, § 211(b)(21), July 18, 1984, 98 Stat. 585, 756; Pub. L. 99–499, title V, § 516(b)(3), Oct. 17, 1986, 100 Stat. 1771; Pub. L. 99–514, title VII, § 701(e)(2), Oct. 22, 1986, 100 Stat. 2342; Pub. L. 100–647, title II, § 2004(*l*), Nov. 10, 1988, 102 Stat. 3606; Pub. L. 104–188, title I, § 1703(f), Aug. 20, 1996, 110 Stat. 1876; Pub. L. 113–295, div. A, title II, § 221(a)(12)(H), Dec. 19, 2014, 128 Stat. 4038; Pub. L. 115–97, title I, §§ 12001(b)(16), 13001(b)(6)(A), Dec. 22, 2017, 131 Stat. 2094, 2098.)

AMENDMENTS

2017—Pub. L. 115–97, § 13001(b)(6)(A), amended section generally. Prior to amendment, section related to limitations on certain multiple tax benefits in the case of certain controlled corporations.

Subsec. (a). Pub. L. 115–97, § 12001(b)(16)(B), struck out at end ''In applying section 55(d)(3), the alternative minimum taxable income of all component members shall be taken into account and any decrease in the exemption amount shall be allocated to the component members in the same manner as under paragraph (3).''

Subsec. (a)(3). Pub. L. 115–97, § 12001(b)(16)(A), struck out par. (3) which read as follows: ''one $40,000 exemption amount for purposes of computing the amount of the minimum tax.''

2014—Subsec. (a). Pub. L. 113–295, § 221(a)(12)(H)(ii), substituted ''and the amount specified in paragraph (3)'' for '', the amount specified in paragraph (3), and the amount specified in paragraph (4)'' in concluding provisions.

Subsec. (a)(2) to (4). Pub. L. 113–295, § 221(a)(12)(H)(i), inserted ''and'' at end of par. (2), substituted a period for '', and'' at end of par. (3), and struck out par. (4) which read as follows: ''one $2,000,000 amount for purposes of computing the tax imposed by section 59A.''

1996—Subsec. (a). Pub. L. 104–188 in closing provisions substituted ''last 2 sentences'' for ''last sentence'' in two places.

1988—Subsec. (a). Pub. L. 100–647 substituted ''section 11(b)(1)'' for ''section 11(b)'' in par. (1) and in penultimate sentence.

1986—Subsec. (a). Pub. L. 99–514 added par. (3), and in concluding provisions, substituted ''amounts specified in paragraph (1) (and the amount specified in paragraph (3))'' for ''amounts specified in paragraph (1)'' and inserted ''In applying section 55(d)(3), the alternative minimum taxable income of all component members shall be taken into account and any decrease in the exemption amount shall be allocated to the component members in the same manner as under paragraph (3).''

Pub. L. 99–499, in subsec. (a) as amended by Pub. L. 99–514 above, added par. (4), and in concluding provisions substituted '', the amount specified in paragraph (3), and the amount specified in paragraph (4)'' for ''(and the amount specified in paragraph (3))''.

1984—Subsec. (a). Pub. L. 98–369, § 211(b)(21)(A), inserted ''and'' at end of par. (1), substituted a period for the comma at end of par. (2), struck out par. (3) which read as follows: ''one $25,000 amount for purposes of computing the limitation on the small business deduction of life insurance companies under sections 804(a)(3) and 809(d)(10), and'', struck out par. (4) which read as follows: ''one $1,000,000 amount (adjusted as provided in section 809(f)(3) for purposes of computing the limitation under paragraph (1) or (2) of section 809(f).'', and substituted ''paragraph (2)'' for ''paragraphs (2), (3), and (4)'' in concluding provisions.

Pub. L. 98–369, § 66(b), inserted provision that notwithstanding paragraph (1), in applying last sentence of section 11(b) to such component members, the taxable income of all such component members shall be taken into account and any increase in tax under the last sentence shall be divided among such component members in the same manner as amounts under paragraph (1).

Subsec. (b). Pub. L. 98–369, § 211(b)(21)(B), inserted ''and'' at end of par. (1), struck out par. (3) which read as follows: ''the amount to be used in computing the limitation on the small business deduction of life insurance companies under sections 804(a)(3) and 809(d)(10), and'', struck out par. (4) which read as follows: ''the amount (adjusted as provided in section 809(f)(3)) to be used in computing the limitation under paragraph (1) or (2) of section 809(f),'', and substituted ''or (2)'' for '', (2), (3), or (4)'' in concluding provisions.

1982—Subsec. (a). Pub. L. 97–248, § 259(b), added par. (4) and inserted reference to par. (4) in text following par. (4).

Subsec. (b). Pub. L. 97–248, § 259(c), added par. (4) and inserted reference to subsec. (a)(4) in text following par. (4).

1981—Subsec. (a)(2). Pub. L. 97–34 substituted ''$250,000 ($150,000 if any component member is a corporation described in section 535(c)(2)(B))'' for ''$150,000''.

1978—Subsec. (a). Pub. L. 95–600, § 301(b)(19)(A), in par. (1) substituted ''amounts in each taxable income bracket in the tax table in section 11(b) which do not aggregate more than the maximum amount in such bracket to which a corporation is not a component member of a controlled group is entitled'' for ''the surtax exemption under section 11(d)'' and in provisions following par. (3) substituted ''amounts'' for ''amount'' in two places and struck out provision that in applying section 11(b)(2), the first $25,000 of taxable income and the second $25,000 of taxable income each be allocated among the component members of a controlled group of corporations in the same manner as the surtax exemption is allocated.

Subsec. (b)(1). Pub. L. 95–600, § 301(b)(19)(B), substituted ''the amount in each taxable income bracket in the tax table in section 11(b)'' for ''the surtax exemption under section 11(d)''.

Subsec. (b)(3). Pub. L. 95–600, § 703(j)(7), substituted ''804(a)(3)'' for ''804(a)(4)''.

1976—Subsec. (a). Pub. L. 94–455, §§ 901(c)(1), 1906(b)(13)(A), inserted ''In applying section 11(b)(2), the first $25,000 of taxable income and the second $25,000 of taxable income shall each be allocated among the component members of a controlled group of corporations in the same manner as the surtax exemption is allocated'' after ''unequal allocation of such amounts'' and struck out ''or his delegate'' after ''Secretary'' in two places.

Subsec. (a)(3). Pub. L. 94–455, § 1901(b)(1)(J)(v), substituted ''804(a)(3)'' for ''804(a)(4)'' after ''under sections''.

1975—Subsec. (a)(1). Pub. L. 94–164 struck out ''$25,000'' in par. (1) as par. (1) is in effect for taxable years ending after Dec. 31, 1975.

Pub. L. 94–12, § 303(c)(1), substituted ''$50,000'' for ''$25,000''.

Subsec. (a)(2). Pub. L. 94–12, § 304(b), substituted ''$150,000'' for ''$100,000''.

1969—Pub. L. 91–172 provided, with respect to taxable years beginning after Dec. 31, 1974, that a controlled group of corporations is limited to one $25,000 surtax exemption under section 11(d), one $100,000 amount for purposes of computing the accumulated earnings credit under section 535(c)(2) and (3), and one $25,000 amount for purposes of computing the limitation on the small business deduction of life insurance companies under sections 804(a)(4) and 809(d)(10).

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 12001(b)(16) 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)(6)(A) of Pub. L. 115–97 applicable to transfers made after Dec. 31, 2017, see section 13001(c)(3) 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 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§ 13001–13444, to which such amendment relates, see section 1703(*o*) of Pub. L. 104–188, set out as a note under section 39 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 1986 AMENDMENT

Amendment by 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 Pub. L. 99–499 applicable to taxable years beginning after Dec. 31, 1986, see section 516(c) of Pub. L. 99–499, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 66(b) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 66(c) of Pub. L. 98–369, set out as a note under section 11 of this title.

Amendment by section 211(b)(21) of 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 AND TERMINATION DATE OF 1982 AMENDMENT

Pub. L. 97–248, title II, § 263(a)(1), Sept. 3, 1982, 96 Stat. 541, provided that the amendment made by section 259(b), (c) of Pub. L. 97–248 is applicable to taxable years beginning after Dec. 31, 1981, and before Jan. 1, 1984.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 232(c) of Pub. L. 97–34, set out as a note under section 535 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 301(b)(19) 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 703(j)(7) 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.

EFFECTIVE DATES OF 1976 AMENDMENT

Amendment by section 901(c)(1) of Pub. L. 94–455 applicable to taxable years ending after Dec. 31, 1975, see section 901(d) of Pub. L. 94–455, set out as a note under section 11 of this title.

Amendment by section 1901(b)(1)(J)(v) 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 AND TERMINATION DATES OF 1975 AMENDMENT

Amendment by Pub. L. 94–164 applicable to taxable years beginning after Dec. 31, 1975, see section 4(e) of Pub. L. 94–164, set out as a note under section 11 of this title.

Amendment by section 303(c)(1) of Pub. L. 94–12 applicable to taxable years ending after Dec. 31, 1974, but to cease to apply for taxable years ending after Dec. 31, 1975, see section 305(b)(1) of Pub. L. 94–12, set out as a note under section 11 of this title.

Amendment by section 304(b) of Pub. L. 94–12 applicable to taxable years beginning after Dec. 31, 1974, see section 305(c) of Pub. L. 94–12, set out as an Effective Date of 1975 Amendment note under section 535 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title IV, § 401(h), Dec. 30, 1969, 83 Stat. 604, provided that:

''(1) The amendments made by subsection (a) [amending this section and repealing section 1562 of this title]

shall apply with respect to taxable years beginning after December 31, 1974.

''(2) The amendments made by subsection (b) [enacting section 1564 and amending sections 11, 535, 804, and 1562] shall apply with respect to taxable years beginning after December 31, 1969.

''(3) The amendments made by subsections (c), (d), (e), and (f) [amending sections 46, 48, 179, and 1563] shall apply with respect to taxable years ending on or after December 31, 1970.''

EFFECTIVE DATE

Section applicable with respect to taxable years ending after Dec. 31, 1963, see section 235(d) of Pub. L. 88–272, set out as an Effective Date of 1964 Amendment note under section 269 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)(2) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, see section 1012(aa)(2) of Pub. L. 100–647, set out as a note under section 861 of this title.

[§ 1562. Repealed. Pub. L. 91–172, title IV, § 401(a)(2), Dec. 30, 1969, 83 Stat. 600]

Section, added Pub. L. 88–272, title II, § 235(a), Feb. 26, 1964, 78 Stat. 117, amended Pub. L. 91–172, title IV, § 401(b)(2)(A), Dec. 30, 1969, 83 Stat. 602, set limits on the privilege of groups to elect multiple surtax exemptions.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to taxable years beginning after Dec. 31, 1974, see section 401(h)(1) of Pub. L. 91–172, set out as an Effective Date of 1969 Amendment note under section 1561 of this title.

RETROACTIVE TERMINATION OF ELECTIONS

Pub. L. 91–172, title IV, § 401(g), Dec. 30, 1969, 83 Stat. 604, authorized an affiliated group of corporations making a consolidated return for the taxable year which included Dec. 31, 1970, to terminate the election under section 1562 of this title with respect to any prior Dec. 31 which was included in a taxable year of any such corporations from which there was a net operating loss carryover to the 1970 consolidated return year and provided that the termination of such election was to be valid only if in accord with subsecs. (c)(1) and (e) of section 1562 of this title other than the requirement of making the termination prior to the expiration of the 3 year period specified in subsec. (e) of section 1562 of this title.

§ 1563. Definitions and special rules

(a) Controlled group of corporations

For purposes of this part, the term ''controlled group of corporations'' means any group of—

(1) Parent-subsidiary controlled group

One or more chains of corporations connected through stock ownership with a common parent corporation if—

(A) stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is owned (within the meaning of subsection (d)(1)) by one or more of the other corporations; and

(B) the common parent corporation owns (within the meaning of subsection (d)(1)) stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of stock of at least one of the other corporations, excluding, in computing such voting power or value, stock owned directly by such other corporations.

(2) Brother-sister controlled group

Two or more corporations if 5 or fewer persons who are individuals, estates, or trusts own (within the meaning of subsection (d)(2)) stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.

(3) Combined group

Three or more corporations each of which is a member of a group of corporations described in paragraph (1) or (2), and one of which—

(A) is a common parent corporation included in a group of corporations described in paragraph (1), and also

(B) is included in a group of corporations described in paragraph (2).

(4) Certain insurance companies

Two or more insurance companies subject to taxation under section 801 which are members of a controlled group of corporations described in paragraph (1), (2), or (3). Such insurance companies shall be treated as a controlled group of corporations separate from any other corporations which are members of the controlled group of corporations described in paragraph (1), (2), or (3).

(b) Component member

(1) General rule

For purposes of this part, a corporation is a component member of a controlled group of corporations on a December 31 of any taxable year (and with respect to the taxable year which includes such December 31) if such corporation—

(A) is a member of such controlled group of corporations on the December 31 included in such year and is not treated as an excluded member under paragraph (2), or

(B) is not a member of such controlled group of corporations on the December 31 included in such year but is treated as an additional member under paragraph (3).

(2) Excluded members

A corporation which is a member of a controlled group of corporations on December 31 of any taxable year shall be treated as an excluded member of such group for the taxable year including such December 31 if such corporation—

(A) is a member of such group for less than one-half the number of days in such taxable year which precede such December 31,

(B) is exempt from taxation under section 501(a) (except a corporation which is subject

to tax on its unrelated business taxable income under section 511) for such taxable year,

(C) is a foreign corporation subject to tax under section 881 for such taxable year,

(D) is an insurance company subject to taxation under section 801 (other than an insurance company which is a member of a controlled group described in subsection (a)(4)), or

(E) is a franchised corporation, as defined in subsection (f)(4).

(3) Additional members

A corporation which—

(A) was a member of a controlled group of corporations at any time during a calendar year,

(B) is not a member of such group on December 31 of such calendar year, and

(C) is not described, with respect to such group, in subparagraph (B), (C), (D), or (E) of paragraph (2),

shall be treated as an additional member of such group on December 31 for its taxable year including such December 31 if it was a member of such group for one-half (or more) of the number of days in such taxable year which precede such December 31.

(4) Overlapping groups

If a corporation is a component member of more than one controlled group of corporations with respect to any taxable year, such corporation shall be treated as a component member of only one controlled group. The determination as to the group of which such corporation is a component member shall be made under regulations prescribed by the Secretary which are consistent with the purposes of this part.

(c) Certain stock excluded

(1) General rule

For purposes of this part, the term ''stock'' does not include—

(A) nonvoting stock which is limited and preferred as to dividends,

(B) treasury stock, and

(C) stock which is treated as ''excluded stock'' under paragraph (2).

(2) Stock treated as "excluded stock"

(A) Parent-subsidiary controlled group

For purposes of subsection (a)(1), if a corporation (referred to in this paragraph as ''parent corporation'') owns (within the meaning of subsections (d)(1) and (e)(4)), 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock in another corporation (referred to in this paragraph as ''subsidiary corporation''), the following stock of the subsidiary corporation shall be treated as excluded stock—

(i) stock in the subsidiary corporation held by a trust which is part of a plan of deferred compensation for the benefit of the employees of the parent corporation or the subsidiary corporation,

(ii) stock in the subsidiary corporation owned by an individual (within the meaning of subsection (d)(2)) who is a principal stockholder or officer of the parent corporation. For purposes of this clause, the term ''principal stockholder'' of a corporation means an individual who owns (within the meaning of subsection (d)(2)) 5 percent or more of the total combined voting power of all classes of stock entitled to vote or 5 percent or more of the total value of shares of all classes of stock in such corporation,

(iii) stock in the subsidiary corporation owned (within the meaning of subsection (d)(2)) by an employee of the subsidiary corporation if such stock is subject to conditions which run in favor of such parent (or subsidiary) corporation and which substantially restrict or limit the employee's right (or if the employee constructively owns such stock, the direct owner's right) to dispose of such stock, or

(iv) stock in the subsidiary corporation owned (within the meaning of subsection (d)(2)) by an organization (other than the parent corporation) to which section 501 (relating to certain educational and charitable organizations which are exempt from tax) applies and which is controlled directly or indirectly by the parent corporation or subsidiary corporation, by an individual, estate, or trust that is a principal stockholder (within the meaning of clause (ii)) of the parent corporation, by an officer of the parent corporation, or by any combination thereof.

(B) Brother-sister controlled group

For purposes of subsection (a)(2), if 5 or fewer persons who are individuals, estates, or trusts (referred to in this subparagraph as ''common owners'') own (within the meaning of subsection (d)(2)), 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock in a corporation, the following stock of such corporation shall be treated as excluded stock—

(i) stock in such corporation held by an employees' trust described in section 401(a) which is exempt from tax under section 501(a), if such trust is for the benefit of the employees of such corporation,

(ii) stock in such corporation owned (within the meaning of subsection (d)(2)) by an employee of the corporation if such stock is subject to conditions which run in favor of any of such common owners (or such corporation) and which substantially restrict or limit the employee's right (or if the employee constructively owns such stock, the direct owner's right) to dispose of such stock. If a condition which limits or restricts the employee's right (or the direct owner's right) to dispose of such stock also applies to the stock held by any of the common owners pursuant to a bona fide reciprocal stock purchase arrangement, such condition shall not be treated as one which

restricts or limits the employee's right to dispose of such stock, or

(iii) stock in such corporation owned (within the meaning of subsection (d)(2)) by an organization to which section 501 (relating to certain educational and charitable organizations which are exempt from tax) applies and which is controlled directly or indirectly by such corporation, by an individual, estate, or trust that is a principal stockholder (within the meaning of subparagraph (A)(ii)) of such corporation, by an officer of such corporation, or by any combination thereof.

(d) Rules for determining stock ownership

(1) Parent-subsidiary controlled group

For purposes of determining whether a corporation is a member of a parent-subsidiary controlled group of corporations (within the meaning of subsection (a)(1)), stock owned by a corporation means—

(A) stock owned directly by such corporation, and

(B) stock owned with the application of paragraphs (1), (2), and (3) of subsection (e).

(2) Brother-sister controlled group

For purposes of determining whether a corporation is a member of a brother-sister controlled group of corporations (within the meaning of subsection (a)(2)), stock owned by a person who is an individual, estate, or trust means—

(A) stock owned directly by such person, and

(B) stock owned with the application of subsection (e).

(e) Constructive ownership

(1) 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.

(2) Attribution from partnerships

Stock owned, directly or indirectly, by or for a partnership shall be considered as owned by any partner having an interest of 5 percent or more in either the capital or profits of the partnership in proportion to his interest in capital or profits, whichever such proportion is the greater.

(3) Attribution from estates or trusts

(A) Stock owned, directly or indirectly, by or for an estate or trust shall be considered as owned by any beneficiary who has an actuarial interest of 5 percent or more in such stock, to the extent of such actuarial interest. For purposes of this subparagraph, the actuarial interest of each beneficiary shall be determined by assuming the maximum exercise of discretion by the fiduciary in favor of such beneficiary and the maximum use of such stock to satisfy his rights as a beneficiary.

(B) Stock owned, directly or indirectly, by or for any portion of a trust of which a person is considered the owner under subpart E of part I of subchapter J (relating to grantors and others treated as substantial owners) shall be considered as owned by such person.

(C) This paragraph shall not apply to stock owned by any employees' trust described in section 401(a) which is exempt from tax under section 501(a).

(4) Attribution from corporations

Stock owned, directly or indirectly, by or for a corporation shall be considered as owned by any person who owns (within the meaning of subsection (d)) 5 percent or more in value of its stock in that proportion which the value of the stock which such person so owns bears to the value of all the stock in such corporation.

(5) Spouse

An individual shall be considered as owning stock in a corporation owned, directly or indirectly, by or for his spouse (other than a spouse who is legally separated from the individual under a decree of divorce whether interlocutory or final, or a decree of separate maintenance), except in the case of a corporation with respect to which each of the following conditions is satisfied for its taxable year—

(A) The individual does not, at any time during such taxable year, own directly any stock in such corporation;

(B) The individual is not a director or employee and does not participate in the management of such corporation at any time during such taxable year;

(C) Not more than 50 percent of such corporation's gross income for such taxable year was derived from royalties, rents, dividends, interest, and annuities; and

(D) Such stock in such corporation is not, at any time during such taxable year, subject to conditions which substantially restrict or limit the spouse's right to dispose of such stock and which run in favor of the individual or his children who have not attained the age of 21 years.

(6) Children, grandchildren, parents, and grandparents

(A) Minor children

An individual shall be considered as owning stock owned, directly or indirectly, by or for his children who have not attained the age of 21 years, and, if the individual has not attained the age of 21 years, the stock owned, directly or indirectly, by or for his parents.

(B) Adult children and grandchildren

An individual who owns (within the meaning of subsection (d)(2), but without regard to this subparagraph) more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock in a corporation shall be considered as owning the stock in such corporation owned, directly or indirectly, by or for his parents, grandparents, grandchildren, and children who have attained the age of 21 years.

(C) Adopted child

For purposes of this section, a legally adopted child of an individual shall be treated as a child of such individual by blood.

(f) Other definitions and rules

(1) Employee defined

For purposes of this section the term ''employee'' has the same meaning such term is given by paragraphs (1) and (2) of section 3121(d).

(2) Operating rules

(A) In general

Except as provided in subparagraph (B), stock constructively owned by a person by reason of the application of paragraph (1), (2), (3), (4), (5), or (6) of subsection (e) shall, for purposes of applying such paragraphs, be treated as actually owned by such person.

(B) Members of family

Stock constructively owned by an individual by reason of the application of paragraph (5) or (6) of subsection (e) shall not be treated as owned by him for purposes of again applying such paragraphs in order to make another the constructive owner of such stock.

(3) Special rules

For purposes of this section—

(A) If stock may be considered as owned by a person under subsection (e)(1) and under any other paragraph of subsection (e), it shall be considered as owned by him under subsection (e)(1).

(B) If stock is owned (within the meaning of subsection (d)) by two or more persons, such stock shall be considered as owned by the person whose ownership of such stock results in the corporation being a component member of a controlled group. If by reason of the preceding sentence, a corporation would (but for this sentence) become a component member of two controlled groups, it shall be treated as a component member of one controlled group. The determination as to the group of which such corporation is a component member shall be made under regulations prescribed by the Secretary which are consistent with the purposes of this part.

(C) If stock is owned by a person within the meaning of subsection (d) and such ownership results in the corporation being a component member of a controlled group, such stock shall not be treated as excluded stock under subsection (c)(2), if by reason of treating such stock as excluded stock the result is that such corporation is not a component member of a controlled group of corporations.

(4) Franchised corporation

If—

(A) a parent corporation (as defined in subsection (c)(2)(A)), or a common owner (as defined in subsection (c)(2)(B)), of a corporation which is a member of a controlled group of corporations is under a duty (arising out of a written agreement) to sell stock of such corporation (referred to in this paragraph as ''franchised corporation'') which is franchised to sell the products of another member, or the common owner, of such controlled group;

(B) such stock is to be sold to an employee (or employees) of such franchised corporation pursuant to a bona fide plan designed to eliminate the stock ownership of the parent corporation or of the common owner in the franchised corporation;

(C) such plan—

(i) provides a reasonable selling price for such stock, and

(ii) requires that a portion of the employee's share of the profits of such corporation (whether received as compensation or as a dividend) be applied to the purchase of such stock (or the purchase of notes, bonds, debentures or other similar evidence of indebtedness of such franchised corporation held by such parent corporation or common owner);

(D) such employee (or employees) owns directly more than 20 percent of the total value of shares of all classes of stock in such franchised corporation;

(E) more than 50 percent of the inventory of such franchised corporation is acquired from members of the controlled group, the common owner, or both; and

(F) all of the conditions contained in subparagraphs (A), (B), (C), (D), and (E) have been met for one-half (or more) of the number of days preceding the December 31 included within the taxable year (or if the taxable year does not include December 31, the last day of such year) of the franchised corporation,

then such franchised corporation shall be treated as an excluded member of such group, under subsection (b)(2), for such taxable year.

(5) Brother-sister controlled group definition for provisions other than this part

(A) In general

Except as specifically provided in an applicable provision, subsection (a)(2) shall be applied to an applicable provision as if it read as follows:

''(2) Brother-sister controlled group

''Two or more corporations if 5 or fewer persons who are individuals, estates, or trusts own (within the meaning of subsection (d)(2) stock possessing—

''(A) at least 80 percent of the total combined voting power of all classes of stock entitled to vote, or at least 80 percent of the total value of shares of all classes of stock, of each corporation, and

''(B) more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.''

(B) Applicable provision

For purposes of this paragraph, an applicable provision is any provision of law (other than this part) which incorporates the definition of controlled group of corporations under subsection (a).

(Added Pub. L. 88–272, title II, § 235(a), Feb. 26, 1964, 78 Stat. 120; amended Pub. L. 91–172, title

IV, § 401(c), (d), Dec. 30, 1969, 83 Stat. 602; Pub. L. 91–373, title I, § 102(b), Aug. 10, 1970, 84 Stat. 696; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title II, § 211(b)(22), July 18, 1984, 98 Stat. 757; Pub. L. 99–514, title X, § 1024(c)(17), Oct. 22, 1986, 100 Stat. 2408; Pub. L. 100–647, title I, § 1018(s)(3)(A), Nov. 10, 1988, 102 Stat. 3587; Pub. L. 108–357, title VIII, § 900(a), (b), Oct. 22, 2004, 118 Stat. 1650.)

AMENDMENTS

2004—Subsec. (a)(2). Pub. L. 108–357, § 900(a), substituted ''possessing'' for ''possessing—'', struck out ''(B)'' before ''more than 50 percent of the total combined voting power'', and struck out subpar. (A) which read as follows: ''at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of the stock of each corporation, and''.

Subsec. (f)(5). Pub. L. 108–357, § 900(b), added par. (5).

1988—Subsec. (d)(1)(B). Pub. L. 100–647 substituted ''paragraphs (1), (2), and (3) of subsection (e)'' for ''subsection (e)(1)''.

1986—Subsec. (b)(2)(D). Pub. L. 99–514 struck out ''or section 821'' after ''section 801''.

1984—Subsecs. (a)(4), (b)(2)(D). Pub. L. 98–369 substituted ''section 801'' for ''section 802''.

1976—Subsecs. (b)(4), (f)(3)(B). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

1970—Subsec. (f)(1). Pub. L. 91–373 substituted ''by paragraphs (1) and (2) of section 2131(d)'' for ''in section 3306(i)''.

1969—Subsec. (a)(2). Pub. L. 91–172, § 401(c), redesignated existing provisions with minor changes as par. (A) and added par. (B).

Subsec. (c)(2)(A)(iv). Pub. L. 91–172, § 401(d)(1), added cl. (iv).

Subsec. (c)(2)(B). Pub. L. 91–172, § 401(d)(2), substituted ''5 or fewer persons who are individuals, estates, or trusts (referred to in this subparagraph as 'common owners') own'' for ''a person who is an individual, estate, or trust (referred to in this paragraph as 'common owner') owns'' and in cl. (ii), substituted ''any of such common owners'', ''any of the common owners'' for ''such common owner'' and ''the common owner'', respectively and added cl. (iii).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, § 900(c), Oct. 22, 2004, 118 Stat. 1650, 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].''

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, § 1018(s)(3)(B), Nov. 10, 1988, 102 Stat. 3587, provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Nov. 10, 1988].''

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 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to taxable years ending on or after Dec. 31, 1970, see section 401(h)(3) of Pub. L. 91–172, set out as a note under section 1561 of this title.

EFFECTIVE DATE

Section applicable with respect to taxable years ending after Dec. 31, 1963, see section 235(d) of Pub. L. 88–272, set out as an Effective Date of 1964 Amendment note under section 269 of this title.

[§ 1564. Repealed. Pub. L. 101–508, title XI, § 11801(a)(38), Nov. 5, 1990, 104 Stat. 1388–521]

Section, added Pub. L. 91–172, title IV, § 401(b)(1), Dec. 30, 1969, 83 Stat. 600; amended Pub. L. 94–455, title XIX, §§ 1901(b)(1)(J)(vi), (21)(A)(ii), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1791, 1797, 1834, related to transitional rules in the case of certain controlled corporations.

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.

Subtitle B—Estate and Gift Taxes

AMENDMENTS

2008—Pub. L. 110–245, title III, § 301(b)(2), June 17, 2008, 122 Stat. 1646, added item for chapter 15.

1990—Pub. L. 101–508, title XI, § 11602(c), Nov. 5, 1990, 104 Stat. 1388–500, added item for chapter 14.

1986—Pub. L. 99–514, title XIV, § 1431(b), Oct. 22, 1986, 100 Stat. 2729, struck out ''certain'' after ''Tax on'' in item for chapter 13.

1976—Pub. L. 94–455, title XX, § 2006(b)(1), Oct. 4, 1976, 90 Stat. 1888, added item for chapter 13.

CHAPTER 11—ESTATE TAX

Subchapter A—Estates of Citizens or Residents

PART I—TAX IMPOSED

AMENDMENTS

1976—Pub. L. 94–455, title XX, § 2001(c)(1)(N)(i), Oct. 4, 1976, 90 Stat. 1853, substituted ''Imposition and rate of tax'' for ''Rate of tax'' in item 2001.

§ 2001. Imposition and rate of tax

(a) Imposition

A tax is hereby imposed on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

[1] Section numbers editorially supplied.

[1] Section numbers editorially supplied.

(b) Computation of tax

The tax imposed by this section shall be the amount equal to the excess (if any) of—

(1) a tentative tax computed under subsection (c) on the sum of—

(A) the amount of the taxable estate, and

(B) the amount of the adjusted taxable gifts, over

(2) the aggregate amount of tax which would have been payable under chapter 12 with respect to gifts made by the decedent after December 31, 1976, if the modifications described in subsection (g) had been applicable at the time of such gifts.

For purposes of paragraph (1)(B), the term ''adjusted taxable gifts'' means the total amount of the taxable gifts (within the meaning of section 2503) made by the decedent after December 31, 1976, other than gifts which are includible in the gross estate of the decedent.

(c) Rate schedule

If the amount with respect to which the tentative tax to be computed is:	The tentative tax is:
Not over $10,000	18 percent of such amount.
Over $10,000 but not over $20,000.	$1,800, plus 20 percent of the excess of such amount over $10,000.
Over $20,000 but not over $40,000.	$3,800, plus 22 percent of the excess of such amount over $20,000.
Over $40,000 but not over $60,000.	$8,200 plus 24 percent of the excess of such amount over $40,000.
Over $60,000 but not over $80,000.	$13,000, plus 26 percent of the excess of such amount over $60,000.
Over $80,000 but not over $100,000.	$18,200, plus 28 percent of the excess of such amount over $80,000.
Over $100,000 but not over $150,000.	$23,800, plus 30 percent of the excess of such amount over $100,000.
Over $150,000 but not over $250,000.	$38,800, plus 32 percent of the excess of such amount over $150,000.
Over $250,000 but not over $500,000.	$70,800, plus 34 percent of the excess of such amount over $250,000.
Over $500,000 but not over $750,000.	$155,800, plus 37 percent of the excess of such amount over $500,000.
Over $750,000 but not over $1,000,000.	$248,300, plus 39 percent of the excess of such amount over $750,000.
Over $1,000,000	$345,800, plus 40 percent of the excess of such amount over $1,000,000.

(d) Adjustment for gift tax paid by spouse

For purposes of subsection (b)(2), if—

(1) the decedent was the donor of any gift one-half of which was considered under section 2513 as made by the decedent's spouse, and

(2) the amount of such gift is includible in the gross estate of the decedent,

any tax payable by the spouse under chapter 12 on such gift (as determined under section 2012(d)) shall be treated as a tax payable with respect to a gift made by the decedent.

(e) Coordination of sections 2513 and 2035

If—

(1) the decedent's spouse was the donor of any gift one-half of which was considered under section 2513 as made by the decedent, and

(2) the amount of such gift is includible in the gross estate of the decedent's spouse by reason of section 2035,

such gift shall not be included in the adjusted taxable gifts of the decedent for purposes of subsection (b)(1)(B), and the aggregate amount determined under subsection (b)(2) shall be reduced by the amount (if any) determined under subsection (d) which was treated as a tax payable by the decedent's spouse with respect to such gift.

(f) Valuation of gifts

(1) In general

If the time has expired under section 6501 within which a tax may be assessed under chapter 12 (or under corresponding provisions of prior laws) on—

(A) the transfer of property by gift made during a preceding calendar period (as defined in section 2502(b)); or

(B) an increase in taxable gifts required under section 2701(d),

the value thereof shall, for purposes of computing the tax under this chapter, be the value as finally determined for purposes of chapter 12.

(2) Final determination

For purposes of paragraph (1), a value shall be treated as finally determined for purposes of chapter 12 if—

(A) the value is shown on a return under such chapter and such value is not contested by the Secretary before the expiration of the time referred to in paragraph (1) with respect to such return;

(B) in a case not described in subparagraph (A), the value is specified by the Secretary and such value is not timely contested by the taxpayer; or

(C) the value is determined by a court or pursuant to a settlement agreement with the Secretary.

For purposes of subparagraph (A), the value of an item shall be treated as shown on a return if the item is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature of such item.

(g) Modifications to tax payable

(1) Modifications to gift tax payable to reflect different tax rates

For purposes of applying subsection (b)(2) with respect to 1 or more gifts, the rates of tax under subsection (c) in effect at the decedent's death shall, in lieu of the rates of tax in effect at the time of such gifts, be used both to compute—

(A) the tax imposed by chapter 12 with respect to such gifts, and

(B) the credit allowed against such tax under section 2505, including in computing—

(i) the applicable credit amount under section 2505(a)(1), and

(ii) the sum of the amounts allowed as a credit for all preceding periods under section 2505(a)(2).

(2) Modifications to estate tax payable to reflect different basic exclusion amounts

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this section with respect to any difference between—

(A) the basic exclusion amount under section 2010(c)(3) applicable at the time of the decedent's death, and

(B) the basic exclusion amount under such section applicable with respect to any gifts made by the decedent.

(Aug. 16, 1954, ch. 736, 68A Stat. 373; Pub. L. 94–455, title XX, §2001(a)(1), Oct. 4, 1976, 90 Stat. 1846; Pub. L. 95–600, title VII, §702(h)(1), Nov. 6, 1978, 92 Stat. 2930; Pub. L. 97–34, title IV, §402(a)–(c), Aug. 13, 1981, 95 Stat. 300; Pub. L. 98–369, div. A, title I, §21(a), July 18, 1984, 98 Stat. 506; Pub. L. 100–203, title X, §10401(a)–(b)(2)(A), Dec. 22, 1987, 101 Stat. 1330–430, 1330–431; Pub. L. 103–66, title XIII, §13208(a)–(b)(2), Aug. 10, 1993, 107 Stat. 469; Pub. L. 105–34, title V, §§501(a)(1)(D), 506(a), Aug. 5, 1997, 111 Stat. 845, 855; Pub. L. 105–206, title VI, §6007(e)(2)(B), July 22, 1998, 112 Stat. 810; Pub. L. 105–277, div. J, title IV, §4003(c), Oct. 21, 1998, 112 Stat. 2681–909; Pub. L. 107–16, title V, §511(a)–(c), June 7, 2001, 115 Stat. 70; Pub. L. 111–312, title III, §302(a)(2), (d)(1), Dec. 17, 2010, 124 Stat. 3301, 3302; Pub. L. 112–240, title I, §101(c)(1), Jan. 2, 2013, 126 Stat. 2317; Pub. L. 115–97, title I, §11061(b), Dec. 22, 2017, 131 Stat. 2091.)

AMENDMENTS

2017—Subsec. (g). Pub. L. 115–97 amended subsec. (g) generally. Prior to amendment, text read as follows: ''For purposes of applying subsection (b)(2) with respect to 1 or more gifts, the rates of tax under subsection (c) in effect at the decedent's death shall, in lieu of the rates of tax in effect at the time of such gifts, be used both to compute—

''(1) the tax imposed by chapter 12 with respect to such gifts, and

''(2) the credit allowed against such tax under section 2505, including in computing—

''(A) the applicable credit amount under section 2505(a)(1), and

''(B) the sum of the amounts allowed as a credit for all preceding periods under section 2505(a)(2).''

2013—Subsec. (c). Pub. L. 112–240 substituted in table separate tentative tax rates for amounts over $500,000 but not over $750,000, over $750,000 but not over $1,000,000, and over $1,000,000, respectively, for single tentative tax rate for amounts over $500,000.

2010—Subsec. (b)(2). Pub. L. 111–312, §302(d)(1)(A), substituted ''if the modifications described in subsection (g)'' for ''if the provisions of subsection (c) (as in effect at the decedent's death)''.

Subsec. (c). Pub. L. 111–312, §302(a)(2), struck out par. (1) designation and heading preceding table, substituted in table a single tentative tax rate for any amount over $500,000 for separate tentative tax rates for amounts ranging from over $500,000 to over $2,500,000, and struck out par. (2) which related to phasedown of maximum rate of tax.

Subsec. (g). Pub. L. 111–312, §302(d)(1)(B), added subsec. (g).

2001—Subsec. (c)(1). Pub. L. 107–16, §511(a), substituted in table provisions that if the amount on which the tax is computed is over $2,500,000, then the tentative tax is $1,025,800, plus 50% of the excess over $2,500,000 for provisions that if the amount on which the tax is computed is over $2,500,000 but not over $3,000,000, then the tentative tax is $1,025,800, plus 53% of the excess over $2,500,000, and if the amount on which the tax is computed is over $3,000,000, then the tentative tax is $1,290,800, plus 55% of the excess over $3,000,000.

Subsec. (c)(2). Pub. L. 107–16, §511(c), added par. (2).

Pub. L. 107–16, §511(b), struck out heading and text of par. (2). Text read as follows: ''The tentative tax determined under paragraph (1) shall be increased by an amount equal to 5 percent of so much of the amount (with respect to which the tentative tax is to be computed) as exceeds $10,000,000 but does not exceed the amount at which the average tax rate under this section is 55 percent.''

1998—Subsec. (f). Pub. L. 105–206, §6007(e)(2)(B), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''If—

''(1) the time has expired within which a tax may be assessed under chapter 12 (or under corresponding provisions of prior laws) on the transfer of property by gift made during a preceding calendar period (as defined in section 2502(b)), and

''(2) the value of such gift is shown on the return for such preceding calendar period or is disclosed in such return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature of such gift,

the value of such gift shall, for purposes of computing the tax under this chapter, be the value of such gift as finally determined for purposes of chapter 12.''

Subsec. (f)(2). Pub. L. 105–277 inserted concluding provisions.

1997—Subsec. (c)(2). Pub. L. 105–34, §501(a)(1)(D), substituted ''the amount at which the average tax rate under this section is 55 percent'' for ''$21,040,000''.

Subsec. (f). Pub. L. 105–34, §506(a), added subsec. (f).

1993—Subsec. (c)(1). Pub. L. 103–66, §13208(a), substituted in table provisions that if the amount on which the tax is computed is over $2,500,000 but not over $3,000,000, then the tentative tax is $1,025,800, plus 53% of the excess over $2,500,000 and if the amount on which the tax is computed is over $3,000,000, then the tentative tax is $1,290,800, plus 55% of the excess over $3,000,000 for provisions that if the amount on which the tax is computed is over $2,500,000, then the tentative tax is $1,025,800, plus 50% of the excess over $2,500,000.

Subsec. (c)(2), (3). Pub. L. 103–66, §13208(b)(1), (2), redesignated par. (3) as (2), struck out ''($18,340,000 in the case of decedents dying, and gifts made, after 1992)'' after ''exceed $21,040,000'', and struck out former par. (2) which related to the rates of tax on estates under this section for the years 1982 to 1992.

1987—Subsec. (b)(1). Pub. L. 100–203, §10401(b)(2)(A)(i), substituted ''under subsection (c)'' for ''in accordance with the rate schedule set forth in subsection (c)''.

Subsec. (b)(2). Pub. L. 100–203, §10401(b)(2)(A)(ii), substituted ''the provisions of subsec. (c)'' for ''the rate schedule set forth in subsection (c)''.

Subsec. (c)(2)(A). Pub. L. 100–203, §10401(a)(1), substituted ''1993'' for ''1988''.

Subsec. (c)(2)(D). Pub. L. 100–203, §10401(a)(2), (3), substituted in heading ''After 1983 and before 1993'' for ''For 1984, 1985, 1986, or 1987'', and in text ''after 1983 and before 1993'' for ''in 1984, 1985, 1986, or 1987''.

Subsec. (c)(3). Pub. L. 100–203, §10401(b)(1), added par. (3).

1984—Subsec. (c)(2)(A), (D). Pub. L. 98–369 substituted ''1988'' for ''1985'' in subpar. (A) and substituted ''1984, 1985, 1986, or 1987'' for ''1984'' in heading and text of subpar. (D).

1981—Subsec. (b)(2). Pub. L. 97–34, §402(c), inserted ''which would have been'' before ''payable'' and '', if the rate schedule set forth in subsection (c) (as in effect at the decedent's death) had been applicable at the time of such gifts'' after ''December 31, 1976,''.

Subsec. (c). Pub. L. 97–34, §402(a), (b)(1), designated existing provision as par. (1), inserted heading ''In general'' and substituted in table provision that if the amount computed is over $2,500,000 then the tentative

tax is $1,025,800 plus 50% of the excess over $2,500,000 for provisions that if the amount computed is over $2,500,000 but not over $3,000,000, then the tentative tax is $1,025,800 plus 53% of the excess over $2,500,000, over $3,000,000 but not over $3,500,000 then the tentative tax is $1,290,000 plus 57% of the excess over $3,000,000, over $3,500,000 but not over $4,000,000 then the tentative tax is $1,575,800 plus 61% of the excess over $3,500,000, over $4,000,000 but not over $4,500,000 then the tentative tax is $1,880,800 plus 65% of the excess over $4,000,000, over $4,500,000 but not over $5,000,000 then the tentative tax is $2,205,800 plus 69% of the excess over $4,500,000, over $5,000,000 then the tentative tax is $2,550,800 plus 70% of the excess over $5,000,000, and added par. (2).

1978—Subsec. (e). Pub. L. 95–600 added subsec. (e).

1976—Pub. L. 94–455 substituted provisions setting a unified rate schedule for estate and gift taxes ranging from 18 percent for the first $10,000 in taxable transfers to 70 percent of taxable transfers in excess of $5,000,000, with provision for adjustments for gift taxes paid by spouses, for provisions setting an estate tax of 3 percent of the first $5,000 of the taxable estate to 77 percent of the taxable estate in excess of $10,000,000.

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–97, title I, §11061(c), Dec. 22, 2017, 131 Stat. 2091, provided that: ''The amendments made by this section [amending this section and section 2010 of this title] shall apply to estates of decedents dying and gifts made after December 31, 2017.''

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title I, §101(c)(3), Jan. 2, 2013, 126 Stat. 2318, provided that:

''(A) IN GENERAL.—Except as otherwise provided by in this paragraph, the amendments made by this subsection [amending this section and section 2010 of this title] shall apply to estates of decedents dying, generation-skipping transfers, and gifts made, after December 31, 2012.

''(B) TECHNICAL CORRECTION.—The amendment made by paragraph (2) [amending section 2010 of this title] shall take effect as if included in the amendments made by section 303 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 [Pub. L. 111–312].''

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title III, §302(f), Dec. 17, 2010, 124 Stat. 3302, as amended by Pub. L. 113–295, div. A, title II, §206(b)(2), Dec. 19, 2014, 128 Stat. 4027, provided that: ''Except as otherwise provided in this section, the amendments made by this section [amending this section and sections 2010, 2502, 2505 and 2511 of this title] shall apply to estates of decedents dying, generation-skipping transfers, and gifts made, after December 31, 2009.''

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title V, §511(f)(1), (2), June 7, 2001, 115 Stat. 71, provided that:

''(1) SUBSECTIONS (a) AND (b).—The amendments made by subsections (a) and (b) [amending this section] shall apply to estates of decedents dying, and gifts made, after December 31, 2001.

''(2) SUBSECTION (c).—The amendment made by subsection (c) [amending this section] shall apply to estates of decedents dying, and gifts made, after December 31, 2002.''

EFFECTIVE DATE OF 1998 AMENDMENTS

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.

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 V, §501(f), Aug. 5, 1997, 111 Stat. 847, as amended by Pub. L. 105–206, title VI, §6007(a)(2), July 22, 1998, 112 Stat. 807, provided that: ''The amendments made by this section [amending this section and sections 2010, 2032A, 2102, 2503, 2505, 2631, 6018, and 6601 of this title] (other than the amendment made by subsection (d) [amending section 2631 of this title]) shall apply to the estates of decedents dying, and gifts made, after December 31, 1997.''

Pub. L. 105–34, title V, §506(e)(1), Aug. 5, 1997, 111 Stat. 856, as amended by Pub. L. 105–206, title VI, §6007(e)(1), July 22, 1998, 112 Stat. 809, provided that: ''The amendments made by subsections (a), (c), and (d) [enacting section 7477 of this title and amending this section and section 2504 of this title] shall apply to gifts made after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13208(c), Aug. 10, 1993, 107 Stat. 469, provided that: ''The amendments made by this section [amending this section and section 2101 of this title] shall apply in the case of decedents dying and gifts made after December 31, 1992.''

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title X, §10401(c), Dec. 22, 1987, 101 Stat. 1330–431, provided that: ''The amendments made by this section [amending this section and section 2502 of this title] shall apply in the case of decedents dying, and gifts made, after December 31, 1987.''

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §21(b), July 18, 1984, 98 Stat. 506, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to the estates of decedents dying after, and gifts made after, December 31, 1983.''

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title IV, §402(d), Aug. 13, 1981, 95 Stat. 301, provided that: ''The amendments made by this section [amending this section] shall apply to estates of decedents dying after, and gifts made after, December 31, 1981.''

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title VII, §702(h)(3), Nov. 6, 1978, 92 Stat. 2931, provided that: ''The amendments made by this subsection [amending this section and section 2602 of this title] shall apply with respect to the estates of decedents dying after December 31, 1976, except that such amendments shall not apply to transfers made before January 1, 1977.''

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XX, §2001(d)(1), Oct. 4, 1976, 90 Stat. 1854, provided that: ''The amendments made by subsections (a) [enacting section 2010, amending this section and sections 2012 and 2035, and repealing section 2052 of this title] and (c)(1) [amending sections 2011, 2012, 2013, 2014, 2038, 2044, 2101, 2102, 2104, 2106, 2107, 2206, 2207, and 6018 of this title] shall apply to the estates of decedents dying after December 31, 1976; except that the amendments made by subsection (a)(5) [amending section 2035 of this title] and subparagraphs (K) and (L) of subsection (c)(1) [amending sections 2038 and 2104 of this title] shall not apply to transfers made before January 1, 1977.''

SHORT TITLE

Pub. L. 91–614, §1(a), Dec. 31, 1970, 84 Stat. 1836, provided that: ''This Act [enacting section 6905 of this title, section 1232a of Title 15, Commerce and Trade, and section 1033 of former Title 31, Money and Finance,

amending sections 56, 1015, 1223, 2012, 2032, 2055, 2204, 2501, 2502, 2503, 2504, 2512, 2513, 2515, 2521, 2522, 2523, 4061, 4063, 4216, 4251, 4491, 6019, 6040, 6075, 6091, 6161, 6212, 6214, 6324, 6412, 6416, 6501, 6504, and 6512 of this title, and enacting provisions set out as notes under sections 56, 2032, 2204, 2501, 4063, 4216, 4251, 4491, and 6905 of this title] may be cited as the 'Excise, Estate, and Gift Tax Adjustment Act of 1970'.''

SPECIAL ELECTION WITH RESPECT TO ESTATES OF DECEDENTS DYING IN 2010

Pub. L. 111–312, title III, §301(c), Dec. 17, 2010, 124 Stat. 3300, provided that: ''Notwithstanding subsection (a) [amending sections 121, 170, 684, 1014, 1040, 1221, 1246, 1291, 1296, 4947, 6018, 6019, 6075, and 7701 of this title and repealing sections 1022, 2210, 2664, and 6716 of this title], in the case of an estate of a decedent dying after December 31, 2009, and before January 1, 2011, the executor (within the meaning of section 2203 of the Internal Revenue Code of 1986) may elect to apply such Code as though the amendments made by subsection (a) do not apply with respect to chapter 11 of such Code and with respect to property acquired or passing from such decedent (within the meaning of section 1014(b) of such Code). Such election shall be made at such time and in such manner as the Secretary of the Treasury or the Secretary's delegate shall provide. Such an election once made shall be revocable only with the consent of the Secretary of the Treasury or the Secretary's delegate. For purposes of section 2652(a)(1) of such Code, the determination of whether any property is subject to the tax imposed by such chapter 11 shall be made without regard to any election made under this subsection.''

CLARIFICATION OF TREATMENT OF CERTAIN EXEMPTIONS FOR PURPOSES OF FEDERAL ESTATE AND GIFT TAXES

Pub. L. 98–369, div. A, title VI, §641, July 18, 1984, 98 Stat. 939, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) GENERAL RULE.—Nothing in any provision of law exempting any property (or interest therein) from taxation shall exempt the transfer of such property (or interest therein) from Federal estate, gift, and generation-skipping transfer taxes. In the case of any provision of law enacted after the date of the enactment of this Act [July 18, 1984], such provision shall not be treated as exempting the transfer of property from Federal estate, gift, and generation-skipping transfer taxes unless it refers to the appropriate provisions of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].

''(b) EFFECTIVE DATE.—

''(1) IN GENERAL.—The provisions of subsection (a) shall apply to the estates of decedents dying, gifts made, and transfers made on or after June 19, 1984.

''(2) TREATMENT OF CERTAIN TRANSFERS TREATED AS TAXABLE.—The provisions of subsection (a) shall also apply in the case of any transfer of property (or interest therein) if at any time there was filed an estate or gift tax return showing such transfer as subject to Federal estate or gift tax.

''(3) NO INFERENCE.—No inference shall arise from paragraphs (1) and (2) that any transfer of property (or interest therein) before June 19, 1984, is exempt from Federal estate and gift taxes.''

REPORTS WITH TRANSFERS OF PUBLIC HOUSING BONDS

Pub. L. 98–369, div. A, title VI, §642, July 18, 1984, 98 Stat. 939, provided that:

''(a) GENERAL RULE.—With respect to transfers of public housing bonds occurring after December 31, 1983, and before June 19, 1984, the taxpayer shall report the date and amount of such transfer and such other information as the Secretary of the Treasury or his delegate shall prescribe by regulations to allow the determination of the tax and interest due if it is ultimately determined that such transfers are subject to estate, gift, or generation-skipping tax.

''(b) PENALTY FOR FAILURE TO REPORT.—Any taxpayer failing to provide the information required by subsection (a) shall be liable for a penalty equal to 25 percent of the excess of (1) the estate, gift, or generation-skipping tax that is payable assuming that such transfers are subject to tax, over (2) the tax payable assuming such transfers are not so subject.''

§ 2002. Liability for payment

The tax imposed by this chapter shall be paid by the executor.

(Aug. 16, 1954, ch. 736, 68A Stat. 374; Pub. L. 98–369, div. A, title V, §544(b)(1), July 18, 1984, 98 Stat. 894; Pub. L. 101–239, title VII, §7304(b)(2)(A), Dec. 19, 1989, 103 Stat. 2353.)

AMENDMENTS

1989—Pub. L. 101–239 substituted ''The'' for ''Except as provided in section 2210, the''.

1984—Pub. L. 98–369 inserted exception phrase.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7304(b)(3), Dec. 19, 1989, 103 Stat. 2353, provided that: ''The amendments made by this subsection [amending this section and section 6018 of this title and repealing section 2210 of this title] shall apply to estates of decedents dying after July 12, 1989.''

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title V, §544(d), July 18, 1984, 98 Stat. 894, provided that: ''The amendments made by this section [enacting section 2210 of this title and amending this section and sections 6018 and 6166 of this title] shall apply to those estates of decedents which are required to file returns on a date (including any extensions) after the date of enactment of this Act [July 18, 1984].''

PART II—CREDITS AGAINST TAX

AMENDMENTS

2014—Pub. L. 113–295, div. A, title II, §221(a)(95)(A)(i), Dec. 19, 2014, 128 Stat. 4051, which directed amendment of part II of subchapter A of chapter 11 of this title by striking item 2011 from the table of sections for ''such subpart'', was executed by striking item 2011 ''Credit for State death taxes'' from the table of sections for this part, to reflect the probable intent of Congress.

2004—Pub. L. 108–311, title IV, §408(a)(20), Oct. 4, 2004, 118 Stat. 1192, added item 2011.

2001—Pub. L. 107–16, title V, §532(c)(13), June 7, 2001, 115 Stat. 75, struck out item 2011 ''Credit for State death taxes''.

1976—Pub. L. 94–455, title XX, §2001(c)(1)(N)(ii), Oct. 4, 1976, 90 Stat. 1853, added item 2010.

§ 2010. Unified credit against estate tax

(a) General rule

A credit of the applicable credit amount shall be allowed to the estate of every decedent against the tax imposed by section 2001.

(b) Adjustment to credit for certain gifts made before 1977

The amount of the credit allowable under subsection (a) shall be reduced by an amount equal to 20 percent of the aggregate amount allowed

as a specific exemption under section 2521 (as in effect before its repeal by the Tax Reform Act of 1976) with respect to gifts made by the decedent after September 8, 1976.

(c) Applicable credit amount

(1) In general

For purposes of this section, the applicable credit amount is the amount of the tentative tax which would be determined under section 2001(c) if the amount with respect to which such tentative tax is to be computed were equal to the applicable exclusion amount.

(2) Applicable exclusion amount

For purposes of this subsection, the applicable exclusion amount is the sum of—

(A) the basic exclusion amount, and

(B) in the case of a surviving spouse, the deceased spousal unused exclusion amount.

(3) Basic exclusion amount

(A) In general

For purposes of this subsection, the basic exclusion amount is $5,000,000.

(B) Inflation adjustment

In the case of any decedent dying in a calendar year after 2011, 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 such calendar year by substituting ''calendar year 2010'' for ''calendar year 2016'' in subparagraph (A)(ii) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of $10,000, such amount shall be rounded to the nearest multiple of $10,000.

(C) Increase in basic exclusion amount

In the case of estates of decedents dying or gifts made after December 31, 2017, and before January 1, 2026, subparagraph (A) shall be applied by substituting ''$10,000,000'' for ''$5,000,000''.

(4) Deceased spousal unused exclusion amount

For purposes of this subsection, with respect to a surviving spouse of a deceased spouse dying after December 31, 2010, the term ''deceased spousal unused exclusion amount'' means the lesser of—

(A) the basic exclusion amount, or

(B) the excess of—

(i) the applicable exclusion amount of the last such deceased spouse of such surviving spouse, over

(ii) the amount with respect to which the tentative tax is determined under section 2001(b)(1) on the estate of such deceased spouse.

(5) Special rules

(A) Election required

A deceased spousal unused exclusion amount may not be taken into account by a surviving spouse under paragraph (2) unless the executor of the estate of the deceased spouse files an estate tax return on which such amount is computed and makes an election on such return that such amount may be so taken into account. Such election, once made, shall be irrevocable. No election may be made under this subparagraph if such return is filed after the time prescribed by law (including extensions) for filing such return.

(B) Examination of prior returns after expiration of period of limitations with respect to deceased spousal unused exclusion amount

Notwithstanding any period of limitation in section 6501, after the time has expired under section 6501 within which a tax may be assessed under chapter 11 or 12 with respect to a deceased spousal unused exclusion amount, the Secretary may examine a return of the deceased spouse to make determinations with respect to such amount for purposes of carrying out this subsection.

(6) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this subsection.

(d) Limitation based on amount of tax

The amount of the credit allowed by subsection (a) shall not exceed the amount of the tax imposed by section 2001.

(Added Pub. L. 94–455, title XX, § 2001(a)(2), Oct. 4, 1976, 90 Stat. 1848; amended Pub. L. 97–34, title IV, § 401(a)(1), (2)(A), Aug. 13, 1981, 95 Stat. 299; Pub. L. 101–508, title XI, § 11801(a)(39), (c)(19)(A), Nov. 5, 1990, 104 Stat. 1388–521, 1388–528; Pub. L. 105–34, title V, § 501(a)(1)(A), (B), Aug. 5, 1997, 111 Stat. 845; Pub. L. 107–16, title V, § 521(a), June 7, 2001, 115 Stat. 71; Pub. L. 111–312, title III, §§ 302(a)(1), 303(a), Dec. 17, 2010, 124 Stat. 3301, 3302; Pub. L. 112–240, title I, § 101(c)(2), Jan. 2, 2013, 126 Stat. 2318; Pub. L. 115–97, title I, §§ 11002(d)(1)(CC), 11061(a), Dec. 22, 2017, 131 Stat. 2060, 2091.)

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 Tax Reform Act of 1976, referred to in subsec. (b), is Pub. L. 94–455, Oct. 4, 1976, 90 Stat. 1520, as amended. For complete classification of this Act to the Code, see Tables.

Section 2521 of this title, referred to in subsec. (b), was repealed by section 2001(b)(3) of Pub. L. 94–455, applicable to gifts made after Dec. 31, 1976.

AMENDMENTS

2017—Subsec. (c)(3)(B)(ii). Pub. L. 115–97, § 11002(d)(1)(CC), substituted ''for 'calendar year 2016' in subparagraph (A)(ii)'' for ''for 'calendar year 1992' in subparagraph (B)''.

Subsec. (c)(3)(C). Pub. L. 115–97, § 11061(a), added subpar. (C).

2013—Subsec. (c)(4)(B)(i). Pub. L. 112–240 substituted ''applicable exclusion amount'' for ''basic exclusion amount''.

2010—Subsec. (c). Pub. L. 111–312, § 302(a)(1), amended subsec. (c) generally, substituting pars. (1) and (2) for text which provided that the applicable credit amount for purposes of this section was the amount of the ten-

tative tax which would be determined under the rate schedule set forth in section 2001(c) if the amount with respect to which such tentative tax was to be computed were the applicable exclusion amount determined in accordance with the table, covering years 2002 to 2009, included in that text.

Subsec. (c)(2) to (6). Pub. L. 111–312, §303(a), added pars. (2) to (6) and struck out former par. (2). Prior to amendment, text of par. (2) read as follows:

''(A) IN GENERAL.—For purposes of this subsection, the applicable exclusion amount is $5,000,000.

''(B) INFLATION ADJUSTMENT.—In the case of any decedent dying in a calendar year after 2011, 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 such calendar year by substituting 'calendar year 2010' for 'calendar year 1992' in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of $10,000, such amount shall be rounded to the nearest multiple of $10,000.''

2001—Subsec. (c). Pub. L. 107–16, in table, substituted provision that in the case of estates of decedents dying during the years 2002 and 2003, the years 2004 and 2005, the years 2006, 2007, and 2008, and the year 2009, the applicable exclusion amount is $1,000,000, $1,500,000, $2,000,000, and $3,500,000, respectively, for provision that in the case of decedents dying, and gifts made, during the year 1998, the year 1999, the years 2000 and 2001, the years 2002 and 2003, the year 2004, the year 2005, and the year 2006 or thereafter, the applicable exclusion amount is $625,000, $650,000, $675,000, $700,000, $850,000, $950,000, and $1,000,000, respectively.

1997—Subsec. (a). Pub. L. 105–34, §501(a)(1)(A), substituted ''the applicable credit amount'' for ''$192,800''.

Subsecs. (c), (d). Pub. L. 105–34, §501(a)(1)(B), added subsec. (c) and redesignated former subsec. (c) as (d).

1990—Subsecs. (b) to (d). Pub. L. 101–508 redesignated subsecs. (c) and (d) as (b) and (c), respectively, and struck out former subsec. (b) which provided for a phase-in of the unified credit against estate tax.

1981—Subsec. (a). Pub. L. 97–34, §401(a)(1), substituted ''$192,800'' for ''$47,000''.

Subsec. (b). Pub. L. 97–34, §401(a)(2)(A), struck out ''$47,000'' before ''credit'' from heading and in text substituted in subsec. (a) substitutions for ''$192,800'' amounts of ''$62,800'', ''$79,300'', ''$96,300'', ''$121,800'', and ''$155,800'' in the case of decedents dying in 1982, 1983, 1984, 1985, and 1986, respectively, for subsec. (a) substitutions for ''$47,000'' amounts of ''$30,000'', ''$34,000'', ''$38,000'', and ''$42,500'' in the case of decedents dying in 1977, 1978, 1979, and 1980, respectively.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 11002(d)(1)(CC) 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 11061(a) of Pub. L. 115–97 applicable to estates of decedents dying and gifts made after Dec. 31, 2017, see section 11061(c) of Pub. L. 115–97, set out as a note under section 2001 of this title.

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112–240 effective as if included in the amendments made by section 303 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. 111–312, see section 101(c)(3)(B) of Pub. L. 112–240, set out as a note under section 2001 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 302(a)(1) of Pub. L. 111–312 applicable to estates of decedents dying, generation-skipping transfers, and gifts made, after Dec. 31, 2009, see section 302(f) of Pub. L. 111–312, set out as a note under section 2001 of this title.

Pub. L. 111–312, title III, §303(c), Dec. 17, 2010, 124 Stat. 3303, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 2505, 2631, and 6018 of this title] shall apply to estates of decedents dying and gifts made after December 31, 2010.

''(2) CONFORMING AMENDMENT RELATING TO GENERATION-SKIPPING TRANSFERS.—The amendment made by subsection (b)(2) [amending section 2631 of this title] shall apply to generation-skipping transfers after December 31, 2010.''

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title V, §521(e), June 7, 2001, 115 Stat. 72, provided that:

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this section and sections 2057, 2505, and 2631 of this title] shall apply to estates of decedents dying, and gifts made, after December 31, 2001.

''(2) SUBSECTION (b)(2).—The amendments made by subsection (b)(2) [amending section 2505 of this title] shall apply to gifts made after December 31, 2009.

''(3) SUBSECTIONS (c) AND (d).—The amendments made by subsections (c) and (d) [amending sections 2057 and 2631 of this title] shall apply to estates of decedents dying, and generation-skipping transfers, after December 31, 2003.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to estates of decedents dying, and gifts made, after Dec. 31, 1997, see section 501(f) of Pub. L. 105–34, set out as a note under section 2001 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title IV, §401(c)(1), Aug. 13, 1981, 95 Stat. 300, provided that: ''The amendments made by subsection (a) [amending this section and section 6018 of this title] shall apply to the estates of decedents dying after December 31, 1981''.

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.

[§ 2011. Repealed. Pub. L. 113–295, div. A, title II, § 221(a)(95)(A)(i), Dec. 19, 2014, 128 Stat. 4051]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 374; Feb. 20, 1956, ch. 63, §3, 70 Stat. 24; Pub. L. 85–866, title I, §§65(a), 102(c)(1), Sept. 2, 1958, 72 Stat. 1657, 1674; Pub. L. 86–175, §3, Aug. 21, 1959, 73 Stat. 397; Pub. L. 94–455, title XIX, §§1902(a)(12)(B), 1906(b)(13)(A), title XX, §§2001(c)(1)(A), 2004(f)(3), Oct. 4, 1976, 90 Stat. 1806, 1834, 1849, 1872; Pub. L. 97–34, title IV, §422(e)(2), Aug. 13, 1981, 95 Stat. 316; Pub. L. 107–16, title V, §§531(a), 532(a), June 7, 2001, 115 Stat. 72, 73; Pub. L. 107–134, title I, §103(b)(1), Jan. 23, 2002, 115 Stat. 2431, related to credit for State death taxes.

EFFECTIVE DATE OF REPEAL

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

§ 2012. Credit for gift tax

(a) In general

If a tax on a gift has been paid under chapter 12 (sec. 2501 and following), or under correspond-

ing provisions of prior laws, and thereafter on the death of the donor any amount in respect of such gift is required to be included in the value of the gross estate of the decedent for purposes of this chapter, then there shall be credited against the tax imposed by section 2001 the amount of the tax paid on a gift under chapter 12, or under corresponding provisions of prior laws, with respect to so much of the property which constituted the gift as is included in the gross estate, except that the amount of such credit shall not exceed an amount which bears the same ratio to the tax imposed by section 2001 (after deducting from such tax the unified credit provided by section 2010) as the value (at the time of the gift or at the time of the death, whichever is lower) of so much of the property which constituted the gift as is included in the gross estate bears to the value of the entire gross estate reduced by the aggregate amount of the charitable and marital deductions allowed under sections 2055, 2056, and 2106(a)(2).

(b) Valuation reductions

In applying, with respect to any gift, the ratio stated in subsection (a), the value at the time of the gift or at the time of the death, referred to in such ratio, shall be reduced—

(1) by such amount as will properly reflect the amount of such gift which was excluded in determining (for purposes of section 2503(a)), or of corresponding provisions of prior laws, the total amount of gifts made during the calendar quarter (or calendar year if the gift was made before January 1, 1971) in which the gift was made;

(2) if a deduction with respect to such gift is allowed under section 2056(a) (relating to marital deduction), then by the amount of such value, reduced as provided in paragraph (1); and

(3) if a deduction with respect to such gift is allowed under sections 2055 or 2106(a)(2) (relating to charitable deduction), then by the amount of such value, reduced as provided in paragraph (1) of this subsection.

(c) Where gift considered made one-half by spouse

Where the decedent was the donor of the gift but, under the provisions of section 2513, or corresponding provisions of prior laws, the gift was considered as made one-half by his spouse—

(1) the term ''the amount of the tax paid on a gift under chapter 12'', as used in subsection (a), includes the amounts paid with respect to each half of such gift, the amount paid with respect to each being computed in the manner provided in subsection (d); and

(2) in applying, with respect to such gift, the ratio stated in subsection (a), the value at the time of the gift or at the time of the death, referred to in such ratio, includes such value with respect to each half of such gift, each such value being reduced as provided in paragraph (1) of subsection (b).

(d) Computation of amount of gift tax paid

(1) Amount of tax

For purposes of subsection (a), the amount of tax paid on a gift under chapter 12, or under corresponding provisions of prior laws, with respect to any gift shall be an amount which bears the same ratio to the total tax paid for the calendar quarter (or calendar year if the gift was made before January 1, 1971) in which the gift was made as the amount of such gift bears to the total amount of taxable gifts (computed without deduction of the specific exemption) for such quarter or year.

(2) Amount of gift

For purposes of paragraph (1), the ''amount of such gift'' shall be the amount included with respect to such gift in determining (for the purposes of section 2503(a), or of corresponding provisions of prior laws) the total amount of gifts made during such quarter or year, reduced by the amount of any deduction allowed with respect to such gift under section 2522, or under corresponding provisions of prior laws (relating to charitable deduction), or under section 2523 (relating to marital deduction).

(e) Section inapplicable to gifts made after December 31, 1976

No credit shall be allowed under this section with respect to the amount of any tax paid under chapter 12 on any gift made after December 31, 1976.

(Aug. 16, 1954, ch. 736, 68A Stat. 375; Pub. L. 91–614, title I, § 102(d)(2), Dec. 31, 1970, 84 Stat. 1841; Pub. L. 94–455, title XIX, § 1902(a)(1), title XX, § 2001(a)(3), (c)(1)(B), Oct. 4, 1976, 90 Stat. 1804, 1848, 1850; Pub. L. 97–34, title IV, § 403(a)(2)(A), Aug. 13, 1981, 95 Stat. 301; Pub. L. 107–16, title V, § 532(c)(1), June 7, 2001, 115 Stat. 73.)

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–16 struck out ''the credit for State death taxes provided by section 2011 and'' before ''the unified credit''.

1981—Subsec. (b)(2). Pub. L. 97–34 substituted ''the amount of such value, reduced as provided in paragraph (1)'' for ''an amount which bears the same ratio to such value (reduced as provided in paragraph (1) of this subsection) as the aggregate amount of the marital deductions allowed under section 2056(a) bears to the aggregate amount of such marital deductions computed without regard to subsection (c) thereof''.

1976—Subsec. (a). Pub. L. 94–455, § 2001(c)(1)(B), substituted ''provided by section 2011 and the unified credit provided by section 2010'' for ''provided by section 2011''.

Subsec. (b). Pub. L. 94–455, § 1902(a)(1)(A), added heading and substituted a comma for a dash after ''deduction)'' in pars. (2) and (3).

Subsec. (c). Pub. L. 94–455, § 1902(a)(1)(B), added heading.

Subsec. (d). Pub. L. 94–455, § 1902(a)(1)(C), (D), added headings for subsec. (d) and for pars. (1) and (2).

Subsec. (e). Pub. L. 94–455, § 2001(a)(3), added subsec. (e).

1970—Subsec. (b)(1). Pub. L. 91–614, § 102(d)(2)(A), substituted ''the calendar quarter (or calendar year if the gift was made before January 1, 1971)'' for ''the year''.

Subsec. (d). Pub. L. 91–614, § 102(d)(2)(B), substituted ''such quarter or year'' for ''such year'' in two places.

Subsec. (d)(1). Pub. L. 91–614, § 102(d)(2)(A), substituted ''the calendar quarter (or calendar year if the gift was made before January 1, 1971)'' for ''the year''.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title V, § 532(d), June 7, 2001, 115 Stat. 75, provided that: ''The amendments made by this sec-

tion [enacting section 2058 of this title and amending this section and sections 2011, 2013 to 2016, 2053, 2056A, 2102, 2106, 2107, 2201, 2604, 6511, and 6612 of this title] shall apply to estates of decedents dying, and generation-skipping transfers, after December 31, 2004.''

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 1976 AMENDMENT

Pub. L. 94–455, title XIX, §1902(c)(1), Oct. 4, 1976, 90 Stat. 1806, as amended by Pub. L. 95–600, title VII, §703(j)(12), Nov. 6, 1978, 92 Stat. 2942, provided that: ''The amendments made by paragraphs (1) through (8), and paragraphs (12)(A), (B), and (C), of subsection (a) and by subsection (b) [amending this section and sections 2011, 2013, 2016, 2038, 2053, 2055, 2056, 2106, 2107, 2108, 2201, 6167, and 6503 of this title, repealing section 2202 of this title, and enacting provisions set out as a note under section 2201 of this title] shall apply in the case of estates of decedents dying after the date of the enactment of this Act [Oct. 4, 1976], and the amendment made by paragraph (9) of subsection (a) [amending section 2204 of this title] shall apply in the case of estates of decedents dying after December 31, 1970.''

Amendment by section 2001(a)(3), (c)(1)(B) of Pub. L. 94–455 applicable to estates of decedents dying after Dec. 31, 1976, see section 2001(d)(1) of Pub. L. 94–455, set out as a note under section 2001 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91–614, set out as a note under section 2501 of this title.

§ 2013. Credit for tax on prior transfers

(a) General rule

The tax imposed by section 2001 shall be credited with all or a part of the amount of the Federal estate tax paid with respect to the transfer of property (including property passing as a result of the exercise or non-exercise of a power of appointment) to the decedent by or from a person (herein designated as a ''transferor'') who died within 10 years before, or within 2 years after, the decedent's death. If the transferor died within 2 years of the death of the decedent, the credit shall be the amount determined under subsections (b) and (c). If the transferor predeceased the decedent by more than 2 years, the credit shall be the following percentage of the amount so determined—

(1) 80 percent, if within the third or fourth years preceding the decedent's death;

(2) 60 percent, if within the fifth or sixth years preceding the decedent's death;

(3) 40 percent, if within the seventh or eighth years preceding the decedent's death; and

(4) 20 percent, if within the ninth or tenth years preceding the decedent's death.

(b) Computation of credit

Subject to the limitation prescribed in subsection (c), the credit provided by this section shall be an amount which bears the same ratio to the estate tax paid (adjusted as indicated hereinafter) with respect to the estate of the transferor as the value of the property transferred bears to the taxable estate of the transferor (determined for purposes of the estate tax) decreased by any death taxes paid with respect to such estate. For purposes of the preceding sentence, the estate tax paid shall be the Federal estate tax paid increased by any credits allowed against such estate tax under section 2012, or corresponding provisions of prior laws, on account of gift tax, and for any credits allowed against such estate tax under this section on account of prior transfers where the transferor acquired property from a person who died within 10 years before the death of the decedent.

(c) Limitation on credit

(1) In general

The credit provided in this section shall not exceed the amount by which—

(A) the estate tax imposed by section 2001 or section 2101 (after deducting the credits provided for in sections 2010, 2012, and 2014) computed without regard to this section, exceeds

(B) such tax computed by excluding from the decedent's gross estate the value of such property transferred and, if applicable, by making the adjustment hereinafter indicated.

If any deduction is otherwise allowable under section 2055 or section 2106(a)(2) (relating to charitable deduction) then, for the purpose of the computation indicated in subparagraph (B), the amount of such deduction shall be reduced by that part of such deduction which the value of such property transferred bears to the decedent's entire gross estate reduced by the deductions allowed under sections 2053 and 2054, or section 2106(a)(1) (relating to deduction for expenses, losses, etc.). For purposes of this section, the value of such property transferred shall be the value as provided for in subsection (d) of this section.

(2) Two or more transferors

If the credit provided in this section relates to property received from 2 or more transferors, the limitation provided in paragraph (1) of this subsection shall be computed by aggregating the value of the property so transferred to the decedent. The aggregate limitation so determined shall be apportioned in accordance with the value of the property transferred to the decedent by each transferor.

(d) Valuation of property transferred

The value of property transferred to the decedent shall be the value used for the purpose of determining the Federal estate tax liability of the estate of the transferor but—

(1) there shall be taken into account the effect of the tax imposed by section 2001 or 2101, or any estate, succession, legacy, or inheritance tax, on the net value to the decedent of such property;

(2) where such property is encumbered in any manner, or where the decedent incurs any obligation imposed by the transferor with respect to such property, such encumbrance or obligation shall be taken into account in the same manner as if the amount of a gift to the decedent of such property was being determined; and

(3) if the decedent was the spouse of the transferor at the time of the transferor's death, the net value of the property transferred to the decedent shall be reduced by the amount allowed under section 2056 (relating to marital deductions), as a deduction from the gross estate of the transferor.

(e) Property defined

For purposes of this section, the term ''property'' includes any beneficial interest in property, including a general power of appointment (as defined in section 2041).

(f) Treatment of additional tax imposed under section 2032A

If section 2032A applies to any property included in the gross estate of the transferor and an additional tax is imposed with respect to such property under section 2032A(c) before the date which is 2 years after the date of the decedent's death, for purposes of this section—

(1) the additional tax imposed by section 2032A(c) shall be treated as a Federal estate tax payable with respect to the estate of the transferor; and

(2) the value of such property and the amount of the taxable estate of the transferor shall be determined as if section 2032A did not apply with respect to such property.

(Aug. 16, 1954, ch. 736, 68A Stat. 377; Pub. L. 94–455, title XIX, § 1902(a)(2), title XX, §§ 2001(c)(1)(C), 2003(c), 2006(b)(2), Oct. 4, 1976, 90 Stat. 1804, 1850, 1862, 1888; Pub. L. 99–514, title XIV, § 1432(c)(2), Oct. 22, 1986, 100 Stat. 2730; Pub. L. 100–647, title I, § 1011A(g)(7), Nov. 10, 1988, 102 Stat. 3481; Pub. L. 105–34, title X, § 1073(b)(2), Aug. 5, 1997, 111 Stat. 948; Pub. L. 107–16, title V, § 532(c)(2), June 7, 2001, 115 Stat. 74.)

AMENDMENTS

2001—Subsec. (c)(1)(A). Pub. L. 107–16 struck out ''2011,'' after ''sections 2010,''.

1997—Subsec. (g). Pub. L. 105–34 struck out heading and text of subsec. (g). Prior to amendment, text read as follows: ''For purposes of this section, the estate tax paid shall not include any portion of such tax attributable to section 4980A(d).''

1988—Subsec. (g). Pub. L. 100–647 added subsec. (g).

1986—Subsec. (g). Pub. L. 99–514 struck out subsec. (g) which provided for treatment of tax imposed on certain generation-skipping transfers.

1976—Subsec. (b). Pub. L. 94–455, § 2001(c)(1)(C)(i), struck out ''and increased by the exemption provided for by section 2052 or section 2106(a)(3), or the corresponding provisions of prior laws, in determining the taxable estate of the transferor for purposes of the estate tax'' after ''death taxes paid with respect to such estate''.

Subsec. (c)(1)(A). Pub. L. 94–455, § 2001(c)(1)(C)(ii), substituted ''credits provided for in sections 2010, 2011, 2012, and 2014) computed'' for ''credits for State death taxes, gift tax, and foreign death taxes provided for in sections 2011, 2012, and 2014) computed''.

Subsec. (d)(3). Pub. L. 94–455, § 1902(a)(2), struck out '', or the corresponding provision of prior law,'' after ''marital deductions)''.

Subsec. (f). Pub. L. 94–455, § 2003(c), added subsec. (f).

Subsec. (g). Pub. L. 94–455, § 2006(b)(2), added subsec. (g).

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to estates of decedents dying, and generation-skipping transfers, after Dec. 31, 2004, see section 532(d) of Pub. L. 107–16, set out as a note under section 2012 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 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 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 1976 AMENDMENT

Amendment by section 1902(a)(2) of Pub. L. 94–455 applicable to estates of decedents dying after Oct. 4, 1976, see section 1902(c)(1) of Pub. L. 94–455, set out as a note under section 2012 of this title.

§ 2014. Credit for foreign death taxes

(a) In general

The tax imposed by section 2001 shall be credited with the amount of any estate, inheritance, legacy, or succession taxes actually paid to any foreign country in respect of any property situated within such foreign country and included in the gross estate (not including any such taxes paid with respect to the estate of a person other than the decedent). The determination of the country within which property is situated shall be made in accordance with the rules applicable under subchapter B (sec. 2101 and following) in determining whether property is situated within or without the United States.

(b) Limitations on credit

The credit provided in this section with respect to such taxes paid to any foreign country—

(1) shall not, with respect to any such tax, exceed an amount which bears the same ratio to the amount of such tax actually paid to such foreign country as the value of property which is—

(A) situated within such foreign country,

(B) subjected to such tax, and

(C) included in the gross estate

bears to the value of all property subjected to such tax; and

(2) shall not, with respect to all such taxes, exceed an amount which bears the same ratio to the tax imposed by section 2001 (after deducting from such tax the credits provided by sections 2010 and 2012) as the value of property which is—

(A) situated within such foreign country,

(B) subjected to the taxes of such foreign country, and

(C) included in the gross estate

bears to the value of the entire gross estate reduced by the aggregate amount of the deductions allowed under sections 2055 and 2056.

(c) Valuation of property

(1) The values referred to in the ratio stated in subsection (b)(1) are the values determined for

purposes of the tax imposed by such foreign country.

(2) The values referred to in the ratio stated in subsection (b)(2) are the values determined under this chapter; but, in applying such ratio, the value of any property described in subparagraphs (A), (B), and (C) thereof shall be reduced by such amount as will properly reflect, in accordance with regulations prescribed by the Secretary, the deductions allowed in respect of such property under sections 2055 and 2056 (relating to charitable and marital deductions).

(d) Proof of credit

The credit provided in this section shall be allowed only if the taxpayer establishes to the satisfaction of the Secretary—

(1) the amount of taxes actually paid to the foreign country,

(2) the amount and date of each payment thereof,

(3) the description and value of the property in respect of which such taxes are imposed, and

(4) all other information necessary for the verification and computation of the credit.

(e) Period of limitation

The credit provided in this section shall be allowed only for such taxes as were actually paid and credit therefor claimed within 4 years after the filing of the return required by section 6018, except that—

(1) If a petition for redetermination of a deficiency has been filed with the Tax Court within the time prescribed in section 6213(a), then within such 4-year period or before the expiration of 60 days after the decision of the Tax Court becomes final.

(2) If, under section 6161, an extension of time has been granted for payment of the tax shown on the return, or of a deficiency, then within such 4-year period or before the date of the expiration of the period of the extension.

Refund based on such credit may (despite the provisions of sections 6511 and 6512) be made if claim therefor is filed within the period above provided. Any such refund shall be made without interest.

(f) Additional limitation in cases involving a deduction under section 2053(d)

In any case where a deduction is allowed under section 2053(d) for an estate, succession, legacy, or inheritance tax imposed by and actually paid to any foreign country upon a transfer by the decedent for public, charitable, or religious uses described in section 2055, the property described in subparagraphs (A), (B), and (C) of paragraphs (1) and (2) of subsection (b) of this section shall not include any property in respect of which such deduction is allowed under section 2053(d).

(g) Possession of United States deemed a foreign country

For purposes of the credits authorized by this section, each possession of the United States shall be deemed to be a foreign country.

(h) Similar credit required for certain alien residents

Whenever the President finds that—

(1) a foreign country, in imposing estate, inheritance, legacy, or succession taxes, does not allow to citizens of the United States resident in such foreign country at the time of death a credit similar to the credit allowed under subsection (a),

(2) such foreign country, when requested by the United States to do so has not acted to provide such a similar credit in the case of citizens of the United States resident in such foreign country at the time of death, and

(3) it is in the public interest to allow the credit under subsection (a) in the case of citizens or subjects of such foreign country only if it allows such a similar credit in the case of citizens of the United States resident in such foreign country at the time of death,

the President shall proclaim that, in the case of citizens or subjects of such foreign country dying while the proclamation remains in effect, the credit under subsection (a) shall be allowed only if such foreign country allows such a similar credit in the case of citizens of the United States resident in such foreign country at the time of death.

(Aug. 16, 1954, ch. 736, 68A Stat. 378; Pub. L. 85–866, title I, §102(c)(2), Sept. 2, 1958, 72 Stat. 1674; Pub. L. 86–175, §2, Aug. 21, 1959, 73 Stat. 397; Pub. L. 89–809, title I, §106(b)(3), Nov. 13, 1966, 80 Stat. 1570; Pub. L. 94–455, title XIX, §1906(b)(13)(A), title XX, §2001(c)(1)(G), Oct. 4, 1976, 90 Stat. 1834, 1852; Pub. L. 107–16, title V, §532(c)(3), June 7, 2001, 115 Stat. 74.)

AMENDMENTS

2001—Subsec. (b)(2). Pub. L. 107–16 struck out ‘‘, 2011,’’ after ‘‘sections 2010’’ in introductory provisions.

1976—Subsec. (b)(2). Pub. L. 94–455, §2001(c)(1)(G), inserted reference to section 2010 in introductory provisions.

Subsecs. (c), (d). Pub. L. 94–455, §1906(b)(13)(A), struck out ‘‘or his delegate’’ after ‘‘Secretary’’.

1966—Subsec. (a). Pub. L. 89–809 struck out provision that, if the decedent at the time of his death was not a citizen of the United States, credit would not be allowed under this section unless the foreign country of which the decedent was a citizen or subject, in imposing estate, inheritance, legacy, or succession taxes, allows a similar credit in the case of a citizen of the United States resident in such country.

Subsec. (h). Pub. L. 89–809 added subsec. (h).

1959—Subsecs. (f), (g). Pub. L. 86–175 added subsec. (f) and redesignated former subsec. (f) as (g).

1958—Subsec. (f). Pub. L. 85–866 added subsec. (f).

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to estates of decedents dying, and generation-skipping transfers, after Dec. 31, 2004, see section 532(d) of Pub. L. 107–16, set out as a note under section 2012 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to estates of decedents dying after Nov. 13, 1966, see section 106(b)(4) of Pub. L. 89–809, set out as a note under section 901 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–175 applicable with respect to estates of decedents dying on or after July 1, 1955, see section 4 of Pub. L. 86–175, set out as a note under section 2053 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–866, title I, §102(d), Sept. 2, 1958, 72 Stat. 1675, provided that: ‘‘The amendments made by this

section (other than by subsection (b)) [enacting section 2208 of this title and amending this section and sections 2011 and 2053 of this title] shall apply to the estates of decedents dying after the date of the enactment of this Act [Sept. 2, 1958]. The amendment made by subsection (b) [amending section 2501 of this title] shall apply to gifts made after the date of the enactment of this Act.''

§ 2015. Credit for death taxes on remainders

Where an election is made under section 6163(a) to postpone payment of the tax imposed by section 2001, or 2101, such part of any estate, inheritance, legacy, or succession taxes allowable as a credit under section 2014, as is attributable to a reversionary or remainder interest may be allowed as a credit against the tax attributable to such interest, subject to the limitations on the amount of the credit contained in such sections, if such part is paid, and credit therefor claimed, at any time before the expiration of the time for payment of the tax imposed by section 2001 or 2101 as postponed and extended under section 6163.

(Aug. 16, 1954, ch. 736, 68A Stat. 379; Pub. L. 85–866, title I, § 66(a)(1), Sept. 2, 1958, 72 Stat. 1657; Pub. L. 107–16, title V, § 532(c)(4), June 7, 2001, 115 Stat. 74.)

AMENDMENTS

2001—Pub. L. 107–16 struck out ''2011 or'' before ''2014''.

1958—Pub. L. 85–866 substituted ''the time for payment of the tax imposed by section 2001 or 2101 as postponed and extended under section 6163'' for ''60 days after the termination of the precedent interest or interests in the property''.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to estates of decedents dying, and generation-skipping transfers, after Dec. 31, 2004, see section 532(d) of Pub. L. 107–16, set out as a note under section 2012 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–866, title I, § 66(a)(3), Sept. 2, 1958, 72 Stat. 1658, provided that: ''The amendments made by paragraphs (1) and (2) [amending this section and section 927 of I.R.C. 1939] shall apply in the case of any reversionary or remainder interest in property only if the precedent interest or interests in the property did not terminate before the beginning of the 60-day period which ends on the date of the enactment of this Act [Sept. 2, 1958].''

§ 2016. Recovery of taxes claimed as credit

If any tax claimed as a credit under section 2014 is recovered from any foreign country, the executor, or any other person or persons recovering such amount, shall give notice of such recovery to the Secretary at such time and in such manner as may be required by regulations prescribed by him, and the Secretary shall (despite the provisions of section 6501) redetermine the amount of the tax under this chapter and the amount, if any, of the tax due on such redetermination, shall be paid by the executor or such person or persons, as the case may be, on notice and demand. No interest shall be assessed or collected on any amount of tax due on any redetermination by the Secretary resulting from a refund to the executor of tax claimed as a credit under section 2014, for any period before the receipt of such refund, except to the extent interest was paid by the foreign country on such refund.

(Aug. 16, 1954, ch. 736, 68A Stat. 380; Pub. L. 94–455, title XIX, §§ 1902(a)(12)(C), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1806, 1834; Pub. L. 107–16, title V, § 532(c)(4), June 7, 2001, 115 Stat. 74; Pub. L. 107–147, title IV, § 411(h), Mar. 9, 2002, 116 Stat. 46.)

AMENDMENTS

2002—Pub. L. 107–147 struck out ''any State, any possession of the United States, or the District of Columbia,'' after ''any foreign country,''.

2001—Pub. L. 107–16 struck out ''2011 or'' before ''2014 is recovered''.

1976—Pub. L. 94–455 struck out ''Territory or'' after ''any State, any'' and ''or his delegate'' after ''Secretary''.

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. 107–16 applicable to estates of decedents dying, and generation-skipping transfers, after Dec. 31, 2004, see section 532(d) of Pub. L. 107–16, set out as a note under section 2012 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1902(a)(12)(C) of Pub. L. 94–455 applicable to estates of decedents dying after Oct. 4, 1976, see section 1902(c)(1) of Pub. L. 94–455, set out as a note under section 2012 of this title.

PART III—GROSS ESTATE

AMENDMENTS

1998—Pub. L. 105–206, title VI, § 6007(b)(1)(E), July 22, 1998, 112 Stat. 808, struck out item 2033A ''Family-owned business exclusion''.

1997—Pub. L. 105–34, title V, § 502(b), title XIII, § 1310(b), Aug. 5, 1997, 111 Stat. 852, 1044, added item 2033A and substituted ''certain gifts'' for ''gifts'' in item 2035.

1981—Pub. L. 97–34, title IV, § 403(d)(3)(A)(ii), Aug. 13, 1981, 95 Stat. 304, added item 2044 and redesignated former items 2044 and 2045 as items 2045 and 2046, respectively.

1976—Pub. L. 94–455, title XX, §§ 2001(c)(1)(N)(iii), 2003(d)(1), 2009(b)(3)(B), Oct. 4, 1976, 90 Stat. 1853, 1862,

1894, added items 2032A and 2045 and substituted ''Adjustments for gifts made within 3 years of decedent's death'' for ''Transactions in contemplation of death'' in item 2035.

§ 2031. Definition of gross estate

(a) General

The value of the gross estate of the decedent shall be determined by including to the extent provided for in this part, the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated.

(b) Valuation of unlisted stock and securities

In the case of stock and securities of a corporation the value of which, by reason of their not being listed on an exchange and by reason of the absence of sales thereof, cannot be determined with reference to bid and asked prices or with reference to sales prices, the value thereof shall be determined by taking into consideration, in addition to all other factors, the value of stock or securities of corporations engaged in the same or a similar line of business which are listed on an exchange.

(c) Estate tax with respect to land subject to a qualified conservation easement

(1) In general

If the executor makes the election described in paragraph (6), then, except as otherwise provided in this subsection, there shall be excluded from the gross estate the lesser of—

(A) the applicable percentage of the value of land subject to a qualified conservation easement, reduced by the amount of any deduction under section 2055(f) with respect to such land, or

(II)[1] $500,000.

(2) Applicable percentage

For purposes of paragraph (1), the term ''applicable percentage'' means 40 percent reduced (but not below zero) by 2 percentage points for each percentage point (or fraction thereof) by which the value of the qualified conservation easement is less than 30 percent of the value of the land ([2]determined without regard to the value of such easement and reduced by the value of any retained development right (as defined in paragraph (5)). The values taken into account under the preceding sentence shall be such values as of the date of the contribution referred to in paragraph (8)(B).

[(3) Repealed. Pub. L. 113–295, div. A, title II, § 221(a)(96), Dec. 19, 2014, 128 Stat. 4051]

(4) Treatment of certain indebtedness

(A) In general

The exclusion provided in paragraph (1) shall not apply to the extent that the land is debt-financed property.

(B) Definitions

For purposes of this paragraph—

(i) Debt-financed property

The term ''debt-financed property'' means any property with respect to which there is an acquisition indebtedness (as defined in clause (ii)) on the date of the decedent's death.

(ii) Acquisition indebtedness

The term ''acquisition indebtedness'' means, with respect to debt-financed property, the unpaid amount of—

(I) the indebtedness incurred by the donor in acquiring such property,

(II) the indebtedness incurred before the acquisition of such property if such indebtedness would not have been incurred but for such acquisition,

(III) the indebtedness incurred after the acquisition of such property if such indebtedness would not have been incurred but for such acquisition and the incurrence of such indebtedness was reasonably foreseeable at the time of such acquisition, and

(IV) the extension, renewal, or refinancing of an acquisition indebtedness.

(5) Treatment of retained development right

(A) In general

Paragraph (1) shall not apply to the value of any development right retained by the donor in the conveyance of a qualified conservation easement.

(B) Termination of retained development right

If every person in being who has an interest (whether or not in possession) in the land executes an agreement to extinguish permanently some or all of any development rights (as defined in subparagraph (D)) retained by the donor on or before the date for filing the return of the tax imposed by section 2001, then any tax imposed by section 2001 shall be reduced accordingly. Such agreement shall be filed with the return of the tax imposed by section 2001. The agreement shall be in such form as the Secretary shall prescribe.

(C) Additional tax

Any failure to implement the agreement described in subparagraph (B) not later than the earlier of—

(i) the date which is 2 years after the date of the decedent's death, or

(ii) the date of the sale of such land subject to the qualified conservation easement,

shall result in the imposition of an additional tax in the amount of the tax which would have been due on the retained development rights subject to such agreement. Such additional tax shall be due and payable on the last day of the 6th month following such date.

(D) Development right defined

For purposes of this paragraph, the term ''development right'' means any right to use the land subject to the qualified conservation easement in which such right is retained for any commercial purpose which is not subordinate to and directly supportive of the use of such land as a farm for farming purposes (within the meaning of section 2032A(e)(5)).

[1] So in original. Probably should be ''(B)''.

[2] So in original. There is no corresponding closing parenthesis.

(6) Election

The election under this subsection shall be made on or before the due date (including extensions) for filing the return of tax imposed by section 2001 and shall be made on such return. Such an election, once made, shall be irrevocable.

(7) Calculation of estate tax due

An executor making the election described in paragraph (6) shall, for purposes of calculating the amount of tax imposed by section 2001, include the value of any development right (as defined in paragraph (5)) retained by the donor in the conveyance of such qualified conservation easement. The computation of tax on any retained development right prescribed in this paragraph shall be done in such manner and on such forms as the Secretary shall prescribe.

(8) Definitions

For purposes of this subsection—

(A) Land subject to a qualified conservation easement

The term ''land subject to a qualified conservation easement'' means land—

(i) which is located in the United States or any possession of the United States,

(ii) which was owned by the decedent or a member of the decedent's family at all times during the 3-year period ending on the date of the decedent's death, and

(iii) with respect to which a qualified conservation easement has been made by an individual described in subparagraph (C), as of the date of the election described in paragraph (6).

(B) Qualified conservation easement

The term ''qualified conservation easement'' means a qualified conservation contribution (as defined in section 170(h)(1)) of a qualified real property interest (as defined in section 170(h)(2)(C)), except that clause (iv) of section 170(h)(4)(A) shall not apply, and the restriction on the use of such interest described in section 170(h)(2)(C) shall include a prohibition on more than a de minimis use for a commercial recreational activity.

(C) Individual described

An individual is described in this subparagraph if such individual is—

(i) the decedent,

(ii) a member of the decedent's family,

(iii) the executor of the decedent's estate, or

(iv) the trustee of a trust the corpus of which includes the land to be subject to the qualified conservation easement.

(D) Member of family

The term ''member of the decedent's family'' means any member of the family (as defined in section 2032A(e)(2)) of the decedent.

(9) Treatment of easements granted after death

In any case in which the qualified conservation easement is granted after the date of the decedent's death and on or before the due date (including extensions) for filing the return of tax imposed by section 2001, the deduction under section 2055(f) with respect to such easement shall be allowed to the estate but only if no charitable deduction is allowed under chapter 1 to any person with respect to the grant of such easement.

(10) Application of this section to interests in partnerships, corporations, and trusts

This section shall apply to an interest in a partnership, corporation, or trust if at least 30 percent of the entity is owned (directly or indirectly) by the decedent, as determined under the rules described in section 2057(e)(3) (as in effect before its repeal).

(d) Cross reference

For executor's right to be furnished on request a statement regarding any valuation made by the Secretary within the gross estate, see section 7517.

(Aug. 16, 1954, ch. 736, 68A Stat. 380; Pub. L. 87–834, § 18(a)(1), Oct. 16, 1962, 76 Stat. 1052; Pub. L. 94–455, title XX, § 2008(a)(2)(A), Oct. 4, 1976, 90 Stat. 1891; Pub. L. 105–34, title V, § 508(a), Aug. 5, 1997, 111 Stat. 857; Pub. L. 105–206, title VI, § 6007(g), July 22, 1998, 112 Stat. 810; Pub. L. 105–277, div. J, title IV, § 4006(c)(3), Oct. 21, 1998, 112 Stat. 2681–913; Pub. L. 107–16, title V, § 551(a), (b), June 7, 2001, 115 Stat. 86; Pub. L. 113–295, div. A, title II, § 221(a)(96), (97)(B), Dec. 19, 2014, 128 Stat. 4051.)

REFERENCES IN TEXT

Section 2057, referred to in subsec. (c)(10), was repealed by Pub. L. 113–295, div. A, title II, § 221(a)(97)(A), Dec. 19, 2014, 128 Stat. 4051, effective Dec. 19, 2014.

AMENDMENTS

2014—Subsec. (c)(1). Pub. L. 113–295, § 221(a)(96), substituted ''(II) $500,000.'' for ''(B) the exclusion limitation.''

Subsec. (c)(3). Pub. L. 113–295, § 221(a)(96), struck out par. (3), which set out table of exclusion limitations.

Subsec. (c)(10). Pub. L. 113–295, § 221(a)(97)(B), inserted ''(as in effect before its repeal)'' before period at end.

2001—Subsec. (c)(2). Pub. L. 107–16, § 551(b), inserted at end ''The values taken into account under the preceding sentence shall be such values as of the date of the contribution referred to in paragraph (8)(B).''

Subsec. (c)(8)(A)(i). Pub. L. 107–16, § 551(a), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''which is located—

''(I) in or within 25 miles of an area which, on the date of the decedent's death, is a metropolitan area (as defined by the Office of Management and Budget),

''(II) in or within 25 miles of an area which, on the date of the decedent's death, is a national park or wilderness area designated as part of the National Wilderness Preservation System (unless it is determined by the Secretary that land in or within 25 miles of such a park or wilderness area is not under significant development pressure), or

''(III) in or within 10 miles of an area which, on the date of the decedent's death, is an Urban National Forest (as designated by the Forest Service),''.

1998—Subsec. (c)(6). Pub. L. 105–206, § 6007(g)(2), substituted ''on or before the due date (including extensions) for filing the return of tax imposed by section 2001 and shall be made on such return.'' for ''on the return of the tax imposed by section 2001.''

Subsec. (c)(9). Pub. L. 105–206, § 6007(g)(1), added par. (9). Former par. (9) redesignated (10).

Subsec. (c)(10). Pub. L. 105–277, § 4006(c)(3), substituted ''section 2057(e)(3)'' for ''section 2033A(e)(3)''.

Pub. L. 105–206, § 6007(g)(1), redesignated par. (9) as (10).

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

1976—Subsec. (c). Pub. L. 94–455 added subsec. (c).

1962—Subsec. (a). Pub. L. 87–834 struck out provisions which excepted real property situated outside the United States.

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 2001 AMENDMENT

Pub. L. 107–16, title V, §551(c), June 7, 2001, 115 Stat. 86, provided that: ''The amendments made by this section [amending this section] shall apply to estates of decedents dying after December 31, 2000.''

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 estates of decedents dying after Dec. 31, 1997, see section 508(e)(1) of Pub. L. 105–34, set out as a note under section 1014 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87–834, §18(b), Oct. 16, 1962, 76 Stat. 1052, provided that:

''(1) Except as provided in paragraph (2), the amendments made by subsection (a) [amending this section and sections 2033, 2034, 2035, 2036, 2037, 2038, 2040, and 2041 of this title] shall apply to the estates of decedents dying after the date of the enactment of this Act [Oct. 16, 1962].

''(2) In the case of a decedent dying after the date of the enactment of this Act [Oct. 16, 1962] and before July 1, 1964, the value of real property situated outside of the United States shall not be included in the gross estate (as defined in section 2031(a)) of the decedent—

''(A) under section 2033, 2034, 2035(a), 2036(a), 2037(a), or 2038(a) to the extent the real property, or the decedent's interest in it, was acquired by the decedent before February 1, 1962;

''(B) under section 2040 to the extent such property or interest was acquired by the decedent before February 1, 1962, or was held by the decedent and the survivor in a joint tenancy or tenancy by the entirety before February 1, 1962; or

''(C) under section 2041(a) to the extent that before February 1, 1962, such property or interest was subject to a general power of appointment (as defined in section 2041) possessed by the decedent.

In the case of real property, or an interest therein, situated outside of the United States (including a general power of appointment in respect of such property or interest, and including property held by the decedent and the survivor in a joint tenancy or tenancy by the entirety) which was acquired by the decedent after January 31, 1962, by gift within the meaning of section 2511, or from a prior decedent by devise or inheritance, or by reason of death, form of ownership, or other conditions (including the exercise or nonexercise of a power of appointment), for purposes of this paragraph such property or interest therein shall be deemed to have been acquired by the decedent before February 1, 1962, if before that date the donor or prior decedent had acquired the property or his interest therein or had possessed a power of appointment in respect of the property or interest.''

§ 2032. Alternate valuation

(a) General

The value of the gross estate may be determined, if the executor so elects, by valuing all the property included in the gross estate as follows:

(1) In the case of property distributed, sold, exchanged, or otherwise disposed of, within 6 months after the decedent's death such property shall be valued as of the date of distribution, sale, exchange, or other disposition.

(2) In the case of property not distributed, sold, exchanged, or otherwise disposed of, within 6 months after the decedent's death such property shall be valued as of the date 6 months after the decedent's death.

(3) Any interest or estate which is affected by mere lapse of time shall be included at its value as of the time of death (instead of the later date) with adjustment for any difference in its value as of the later date not due to mere lapse of time.

(b) Special rules

No deduction under this chapter of any item shall be allowed if allowance for such items is in effect given by the alternate valuation provided by this section. Wherever in any other subsection or section of this chapter reference is made to the value of property at the time of the decedent's death, such reference shall be deemed to refer to the value of such property used in determining the value of the gross estate. In case of an election made by the executor under this section, then—

(1) for purposes of the charitable deduction under section 2055 or 2106(a)(2), any bequest, legacy, devise, or transfer enumerated therein, and

(2) for the purpose of the marital deduction under section 2056, any interest in property passing to the surviving spouse,

shall be valued as of the date of the decedent's death with adjustment for any difference in value (not due to mere lapse of time or the occurrence or nonoccurrence of a contingency) of the property as of the date 6 months after the decedent's death (substituting, in the case of property distributed by the executor or trustee, or sold, exchanged, or otherwise disposed of, during such 6-month period, the date thereof).

(c) Election must decrease gross estate and estate tax

No election may be made under this section with respect to an estate unless such election will decrease—

(1) the value of the gross estate, and

(2) the sum of the tax imposed by this chapter and the tax imposed by chapter 13 with respect to property includible in the decedent's gross estate (reduced by credits allowable against such taxes).

(d) Election

(1) In general

The election provided for in this section shall be made by the executor on the return of the tax imposed by this chapter. Such election, once made, shall be irrevocable.

(2) Exception

No election may be made under this section if such return is filed more than 1 year after the time prescribed by law (including extensions) for filing such return.

(Aug. 16, 1954, ch. 736, 68A Stat. 381; Pub. L. 91–614, title I, § 101(a), Dec. 31, 1970, 84 Stat. 1836; Pub. L. 98–369, div. A, title X, §§ 1023(a), 1024(a), July 18, 1984, 98 Stat. 1030; Pub. L. 99–514, title XIV, § 1432(c)(1), Oct. 22, 1986, 100 Stat. 2730.)

AMENDMENTS

1986—Subsec. (c)(2). Pub. L. 99–514 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''the amount of the tax imposed by this chapter (reduced by credits allowable against such tax).''

1984—Subsec. (c). Pub. L. 98–369, § 1023(a), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 98–369, § 1024(a), substituted ''Election'' for ''Time of election'' in heading, designated existing text as par. (1), inserted heading ''In general'', substituted ''shall be made by the executor on the return of the tax imposed by this chapter'' for ''shall be exercised by the executor on his return if filed within the time prescribed by law or before the expiration of any extension of time granted pursuant to law for the filing of the return'', inserted sentence providing that an election, once made, is irrevocable, and added par. (2).

Pub. L. 98–369, § 1023(a), redesignated subsec. (c) as (d).

1970—Pub. L. 91–614 substituted ''6 months'' for ''1 year'' in four places and substituted ''6-month'' for ''1-year''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by 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

Pub. L. 98–369, div. A, title X, § 1023(b), July 18, 1984, 98 Stat. 1030, provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to estates of decedents dying after the date of the enactment of this Act [July 18, 1984].''

Pub. L. 98–369, div. A, title X, § 1024(b), July 18, 1984, 98 Stat. 1030, 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 estates of decedents dying after the date of the enactment of this Act [July 18, 1984].

''(2) TRANSITIONAL RULE.—In the case of an estate of a decedent dying before the date of the enactment of this Act [July 18, 1984] if—

''(A) a credit or refund of the tax imposed by chapter 11 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] is not prevented on the date of the enactment of this Act by the operation of any law or rule of law,

''(B) the election under section 2032 of the Internal Revenue Code of 1986 would have met the requirements of such section (as amended by this section and section 1023) had the decedent died after the date of enactment of this Act, and

''(C) a claim for credit or refund of such tax with respect to such estate is filed not later than the 90th day after the date of the enactment of this Act,

then such election shall be treated as a valid election under such section 2032. The statutory period for the assessment of any deficiency which is attributable to an election under this paragraph shall not expire before the close of the 2-year period beginning on the date of the enactment of this Act.''

EFFECTIVE DATE OF 1970 AMENDMENT

Pub. L. 91–614, title I, § 101(j), Dec. 31, 1970, 84 Stat. 1838, provided that: ''The amendments made by this section [enacting section 6905 of this title, amending this section and sections 1223, 2055, 2204, 6040, 6075, 6091, 6161, 6314, 6324, and 6504 of this title, and enacting provisions set out as notes under this section and sections 2204 and 6905 of this title] (other than subsection (f)) [amending sections 2204 and 6905 of this title] shall apply with respect to decedents dying after December 31, 1970.''

§ 2032A. Valuation of certain farm, etc., real property

(a) Value based on use under which property qualifies

(1) General rule

If—

(A) the decedent was (at the time of his death) a citizen or resident of the United States, and

(B) the executor elects the application of this section and files the agreement referred to in subsection (d)(2),

then, for purposes of this chapter, the value of qualified real property shall be its value for the use under which it qualifies, under subsection (b), as qualified real property.

(2) Limitation on aggregate reduction in fair market value

The aggregate decrease in the value of qualified real property taken into account for purposes of this chapter which results from the application of paragraph (1) with respect to any decedent shall not exceed $750,000.

(3) Inflation adjustment

In the case of estates of decedents dying in a calendar year after 1998, the $750,000 amount contained in paragraph (2) shall be increased by an amount equal to—

(A) $750,000, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting ''calendar year 1997'' for ''calendar year 2016'' in subparagraph (A)(ii) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of $10,000, such amount shall be rounded to the next lowest multiple of $10,000.

(b) Qualified real property

(1) In general

For purposes of this section, the term ''qualified real property'' means real property located in the United States which was acquired from or passed from the decedent to a qualified heir of the decedent and which, on the date of the decedent's death, was being used for a qualified use by the decedent or a member of the decedent's family, but only if—

(A) 50 percent or more of the adjusted value of the gross estate consists of the adjusted value of real or personal property which—

(i) on the date of the decedent's death, was being used for a qualified use by the decedent or a member of the decedent's family, and

(ii) was acquired from or passed from the decedent to a qualified heir of the decedent.

(B) 25 percent or more of the adjusted value of the gross estate consists of the ad-

justed value of real property which meets the requirements of subparagraphs (A)(ii) and (C),

(C) during the 8-year period ending on the date of the decedent's death there have been periods aggregating 5 years or more during which—

(i) such real property was owned by the decedent or a member of the decedent's family and used for a qualified use by the decedent or a member of the decedent's family, and

(ii) there was material participation by the decedent or a member of the decedent's family in the operation of the farm or other business, and

(D) such real property is designated in the agreement referred to in subsection (d)(2).

(2) Qualified use

For purposes of this section, the term ''qualified use'' means the devotion of the property to any of the following:

(A) use as a farm for farming purposes, or

(B) use in a trade or business other than the trade or business of farming.

(3) Adjusted value

For purposes of paragraph (1), the term ''adjusted value'' means—

(A) in the case of the gross estate, the value of the gross estate for purposes of this chapter (determined without regard to this section), reduced by any amounts allowable as a deduction under paragraph (4) of section 2053(a), or

(B) in the case of any real or personal property, the value of such property for purposes of this chapter (determined without regard to this section), reduced by any amounts allowable as a deduction in respect of such property under paragraph (4) of section 2053(a).

(4) Decedents who are retired or disabled

(A) In general

If, on the date of the decedent's death, the requirements of paragraph (1)(C)(ii) with respect to the decedent for any property are not met, and the decedent—

(i) was receiving old-age benefits under title II of the Social Security Act for a continuous period ending on such date, or

(ii) was disabled for a continuous period ending on such date,

then paragraph (1)(C)(ii) shall be applied with respect to such property by substituting ''the date on which the longer of such continuous periods began'' for ''the date of the decedent's death'' in paragraph (1)(C).

(B) Disabled defined

For purposes of subparagraph (A), an individual shall be disabled if such individual has a mental or physical impairment which renders him unable to materially participate in the operation of the farm or other business.

(C) Coordination with recapture

For purposes of subsection (c)(6)(B)(i), if the requirements of paragraph (1)(C)(ii) are met with respect to any decedent by reason of subparagraph (A), the period ending on the date on which the continuous period taken into account under subparagraph (A) began shall be treated as the period immediately before the decedent's death.

(5) Special rules for surviving spouses

(A) In general

If property is qualified real property with respect to a decedent (hereinafter in this paragraph referred to as the ''first decedent'') and such property was acquired from or passed from the first decedent to the surviving spouse of the first decedent, for purposes of applying this subsection and subsection (c) in the case of the estate of such surviving spouse, active management of the farm or other business by the surviving spouse shall be treated as material participation by such surviving spouse in the operation of such farm or business.

(B) Special rule

For the purposes of subparagraph (A), the determination of whether property is qualified real property with respect to the first decedent shall be made without regard to subparagraph (D) of paragraph (1) and without regard to whether an election under this section was made.

(C) Coordination with paragraph (4)

In any case in which to do so will enable the requirements of paragraph (1)(C)(ii) to be met with respect to the surviving spouse, this subsection and subsection (c) shall be applied by taking into account any application of paragraph (4).

(c) Tax treatment of dispositions and failures to use for qualified use

(1) Imposition of additional estate tax

If, within 10 years after the decedent's death and before the death of the qualified heir—

(A) the qualified heir disposes of any interest in qualified real property (other than by a disposition to a member of his family), or

(B) the qualified heir ceases to use for the qualified use the qualified real property which was acquired (or passed) from the decedent,

then, there is hereby imposed an additional estate tax.

(2) Amount of additional tax

(A) In general

The amount of the additional tax imposed by paragraph (1) with respect to any interest shall be the amount equal to the lesser of—

(i) the adjusted tax difference attributable to such interest, or

(ii) the excess of the amount realized with respect to the interest (or, in any case other than a sale or exchange at arm's length, the fair market value of the interest) over the value of the interest determined under subsection (a).

(B) Adjusted tax difference attributable to interest

For purposes of subparagraph (A), the adjusted tax difference attributable to an in-

terest is the amount which bears the same ratio to the adjusted tax difference with respect to the estate (determined under subparagraph (C)) as—

(i) the excess of the value of such interest for purposes of this chapter (determined without regard to subsection (a)) over the value of such interest determined under subsection (a), bears to

(ii) a similar excess determined for all qualified real property.

(C) Adjusted tax difference with respect to the estate

For purposes of subparagraph (B), the term ''adjusted tax difference with respect to the estate'' means the excess of what would have been the estate tax liability but for subsection (a) over the estate tax liability. For purposes of this subparagraph, the term ''estate tax liability'' means the tax imposed by section 2001 reduced by the credits allowable against such tax.

(D) Partial dispositions

For purposes of this paragraph, where the qualified heir disposes of a portion of the interest acquired by (or passing to) such heir (or a predecessor qualified heir) or there is a cessation of use of such a portion—

(i) the value determined under subsection (a) taken into account under subparagraph (A)(ii) with respect to such portion shall be its pro rata share of such value of such interest, and

(ii) the adjusted tax difference attributable to the interest taken into account with respect to the transaction involving the second or any succeeding portion shall be reduced by the amount of the tax imposed by this subsection with respect to all prior transactions involving portions of such interest.

(E) Special rule for disposition of timber

In the case of qualified woodland to which an election under subsection (e)(13)(A) applies, if the qualified heir disposes of (or severs) any standing timber on such qualified woodland—

(i) such disposition (or severance) shall be treated as a disposition of a portion of the interest of the qualified heir in such property, and

(ii) the amount of the additional tax imposed by paragraph (1) with respect to such disposition shall be an amount equal to the lesser of—

(I) the amount realized on such disposition (or, in any case other than a sale or exchange at arm's length, the fair market value of the portion of the interest disposed or severed), or

(II) the amount of additional tax determined under this paragraph (without regard to this subparagraph) if the entire interest of the qualified heir in the qualified woodland had been disposed of, less the sum of the amount of the additional tax imposed with respect to all prior transactions involving such woodland to which this subparagraph applied.

For purposes of the preceding sentence, the disposition of a right to sever shall be treated as the disposition of the standing timber. The amount of additional tax imposed under paragraph (1) in any case in which a qualified heir disposes of his entire interest in the qualified woodland shall be reduced by any amount determined under this subparagraph with respect to such woodland.

(3) Only 1 additional tax imposed with respect to any 1 portion

In the case of an interest acquired from (or passing from) any decedent, if subparagraph (A) or (B) of paragraph (1) applies to any portion of an interest, subparagraph (B) or (A), as the case may be, of paragraph (1) shall not apply with respect to the same portion of such interest.

(4) Due date

The additional tax imposed by this subsection shall become due and payable on the day which is 6 months after the date of the disposition or cessation referred to in paragraph (1).

(5) Liability for tax; furnishing of bond

The qualified heir shall be personally liable for the additional tax imposed by this subsection with respect to his interest unless the heir has furnished bond which meets the requirements of subsection (e)(11).

(6) Cessation of qualified use

For purposes of paragraph (1)(B), real property shall cease to be used for the qualified use if—

(A) such property ceases to be used for the qualified use set forth in subparagraph (A) or (B) of subsection (b)(2) under which the property qualified under subsection (b), or

(B) during any period of 8 years ending after the date of the decedent's death and before the date of the death of the qualified heir, there had been periods aggregating more than 3 years during which—

(i) in the case of periods during which the property was held by the decedent, there was no material participation by the decedent or any member of his family in the operation of the farm or other business, and

(ii) in the case of periods during which the property was held by any qualified heir, there was no material participation by such qualified heir or any member of his family in the operation of the farm or other business.

(7) Special rules

(A) No tax if use begins within 2 years

If the date on which the qualified heir begins to use the qualified real property (hereinafter in this subparagraph referred to as the commencement date) is before the date 2 years after the decedent's death—

(i) no tax shall be imposed under paragraph (1) by reason of the failure by the qualified heir to so use such property before the commencement date, and

(ii) the 10-year period under paragraph (1) shall be extended by the period after

the decedent's death and before the commencement date.

(B) Active management by eligible qualified heir treated as material participation

For purposes of paragraph (6)(B)(ii), the active management of a farm or other business by—

(i) an eligible qualified heir, or

(ii) a fiduciary of an eligible qualified heir described in clause (ii) or (iii) of subparagraph (C),

shall be treated as material participation by such eligible qualified heir in the operation of such farm or business. In the case of an eligible qualified heir described in clause (ii), (iii), or (iv) of subparagraph (C), the preceding sentence shall apply only during periods during which such heir meets the requirements of such clause.

(C) Eligible qualified heir

For purposes of this paragraph, the term ''eligible qualified heir'' means a qualified heir who—

(i) is the surviving spouse of the decedent,

(ii) has not attained the age of 21,

(iii) is disabled (within the meaning of subsection (b)(4)(B)), or

(iv) is a student.

(D) Student

For purposes of subparagraph (C), an individual shall be treated as a student with respect to periods during any calendar year if (and only if) such individual is a student (within the meaning of section 152(f)(2)) for such calendar year.

(E) Certain rents treated as qualified use

For purposes of this subsection, a surviving spouse or lineal descendant of the decedent shall not be treated as failing to use qualified real property in a qualified use solely because such spouse or descendant rents such property to a member of the family of such spouse or descendant on a net cash basis. For purposes of the preceding sentence, a legally adopted child of an individual shall be treated as the child of such individual by blood.

(8) Qualified conservation contribution is not a disposition

A qualified conservation contribution (as defined in section 170(h)) by gift or otherwise shall not be deemed a disposition under subsection (c)(1)(A).

(d) Election; agreement

(1) Election

The election under this section shall be made on the return of the tax imposed by section 2001. Such election shall be made in such manner as the Secretary shall by regulations prescribe. Such an election, once made, shall be irrevocable.

(2) Agreement

The agreement referred to in this paragraph is a written agreement signed by each person in being who has an interest (whether or not in possession) in any property designated in such agreement consenting to the application of subsection (c) with respect to such property.

(3) Modification of election and agreement to be permitted

The Secretary shall prescribe procedures which provide that in any case in which the executor makes an election under paragraph (1) (and submits the agreement referred to in paragraph (2)) within the time prescribed therefor, but—

(A) the notice of election, as filed, does not contain all required information, or

(B) signatures of 1 or more persons required to enter into the agreement described in paragraph (2) are not included on the agreement as filed, or the agreement does not contain all required information,

the executor will have a reasonable period of time (not exceeding 90 days) after notification of such failures to provide such information or signatures.

(e) Definitions; special rules

For purposes of this section—

(1) Qualified heir

The term ''qualified heir'' means, with respect to any property, a member of the decedent's family who acquired such property (or to whom such property passed) from the decedent. If a qualified heir disposes of any interest in qualified real property to any member of his family, such member shall thereafter be treated as the qualified heir with respect to such interest.

(2) Member of family

The term ''member of the family'' means, with respect to any individual, only—

(A) an ancestor of such individual,

(B) the spouse of such individual,

(C) a lineal descendant of such individual, of such individual's spouse, or of a parent of such individual, or

(D) the spouse of any lineal descendant described in subparagraph (C).

For purposes of the preceding sentence, a legally adopted child of an individual shall be treated as the child of such individual by blood.

(3) Certain real property included

In the case of real property which meets the requirements of subparagraph (C) of subsection (b)(1), residential buildings and related improvements on such real property occupied on a regular basis by the owner or lessee of such real property or by persons employed by such owner or lessee for the purpose of operating or maintaining such real property, and roads, buildings, and other structures and improvements functionally related to the qualified use shall be treated as real property devoted to the qualified use.

(4) Farm

The term ''farm'' includes stock, dairy, poultry, fruit, furbearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used pri-

marily for the raising of agricultural or horticultural commodities, and orchards and woodlands.

(5) Farming purposes

The term ''farming purposes'' means—

(A) cultivating the soil or raising or harvesting any agricultural or horticultural commodity (including the raising, shearing, feeding, caring for, training, and management of animals) on a farm;

(B) handling, drying, packing, grading, or storing on a farm any agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant, or operator of the farm regularly produces more than one-half of the commodity so treated; and

(C)(i) the planting, cultivating, caring for, or cutting of trees, or

(ii) the preparation (other than milling) of trees for market.

(6) Material participation

Material participation shall be determined in a manner similar to the manner used for purposes of paragraph (1) of section 1402(a) (relating to net earnings from self-employment).

(7) Method of valuing farms

(A) In general

Except as provided in subparagraph (B), the value of a farm for farming purposes shall be determined by dividing—

(i) the excess of the average annual gross cash rental for comparable land used for farming purposes and located in the locality of such farm over the average annual State and local real estate taxes for such comparable land, by

(ii) the average annual effective interest rate for all new Federal Land Bank loans.

For purposes of the preceding sentence, each average annual computation shall be made on the basis of the 5 most recent calendar years ending before the date of the decedent's death.

(B) Value based on net share rental in certain cases

(i) In general

If there is no comparable land from which the average annual gross cash rental may be determined but there is comparable land from which the average net share rental may be determined, subparagraph (A)(i) shall be applied by substituting ''average annual net share rental'' for ''average annual gross cash rental''.

(ii) Net share rental

For purposes of this paragraph, the term ''net share rental'' means the excess of—

(I) the value of the produce received by the lessor of the land on which such produce is grown, over

(II) the cash operating expenses of growing such produce which, under the lease, are paid by the lessor.

(C) Exception

The formula provided by subparagraph (A) shall not be used—

(i) where it is established that there is no comparable land from which the average annual gross cash rental may be determined, or

(ii) where the executor elects to have the value of the farm for farming purposes determined and that there is no comparable land from which the average net share rental may be determined under paragraph (8).

(8) Method of valuing closely held business interests, etc.

In any case to which paragraph (7)(A) does not apply, the following factors shall apply in determining the value of any qualified real property:

(A) The capitalization of income which the property can be expected to yield for farming or closely held business purposes over a reasonable period of time under prudent management using traditional cropping patterns for the area, taking into account soil capacity, terrain configuration, and similar factors,

(B) The capitalization of the fair rental value of the land for farm land or closely held business purposes,

(C) Assessed land values in a State which provides a differential or use value assessment law for farmland or closely held business,

(D) Comparable sales of other farm or closely held business land in the same geographical area far enough removed from a metropolitan or resort area so that nonagricultural use is not a significant factor in the sales price, and

(E) Any other factor which fairly values the farm or closely held business value of the property.

(9) Property acquired from decedent

Property shall be considered to have been acquired from or to have passed from the decedent if—

(A) such property is so considered under section 1014(b) (relating to basis of property acquired from a decedent),

(B) such property is acquired by any person from the estate, or

(C) such property is acquired by any person from a trust (to the extent such property is includible in the gross estate of the decedent).

(10) Community property

If the decedent and his surviving spouse at any time held qualified real property as community property, the interest of the surviving spouse in such property shall be taken into account under this section to the extent necessary to provide a result under this section with respect to such property which is consistent with the result which would have obtained under this section if such property had not been community property.

(11) Bond in lieu of personal liability

If the qualified heir makes written application to the Secretary for determination of the maximum amount of the additional tax which

may be imposed by subsection (c) with respect to the qualified heir's interest, the Secretary (as soon as possible, and in any event within 1 year after the making of such application) shall notify the heir of such maximum amount. The qualified heir, on furnishing a bond in such amount and for such period as may be required, shall be discharged from personal liability for any additional tax imposed by subsection (c) and shall be entitled to a receipt or writing showing such discharge.

(12) Active management

The term ''active management'' means the making of the management decisions of a business (other than the daily operating decisions).

(13) Special rules for woodlands

(A) In general

In the case of any qualified woodland with respect to which the executor elects to have this subparagraph apply, trees growing on such woodland shall not be treated as a crop.

(B) Qualified woodland

The term ''qualified woodland'' means any real property which—

(i) is used in timber operations, and

(ii) is an identifiable area of land such as an acre or other area for which records are normally maintained in conducting timber operations.

(C) Timber operations

The term ''timber operations'' means—

(i) the planting, cultivating, caring for, or cutting of trees, or

(ii) the preparation (other than milling) of trees for market.

(D) Election

An election under subparagraph (A) shall be made on the return of the tax imposed by section 2001. Such election shall be made in such manner as the Secretary shall by regulations prescribe. Such an election, once made, shall be irrevocable.

(14) Treatment of replacement property acquired in section 1031 or 1033 transactions

(A) In general

In the case of any qualified replacement property, any period during which there was ownership, qualified use, or material participation with respect to the replaced property by the decedent or any member of his family shall be treated as a period during which there was such ownership, use, or material participation (as the case may be) with respect to the qualified replacement property.

(B) Limitation

Subparagraph (A) shall not apply to the extent that the fair market value of the qualified replacement property (as of the date of its acquisition) exceeds the fair market value of the replaced property (as of the date of its disposition).

(C) Definitions

For purposes of this paragraph—

(i) Qualified replacement property

The term ''qualified replacement property'' means any real property which is—

(I) acquired in an exchange which qualifies under section 1031, or

(II) the acquisition of which results in the nonrecognition of gain under section 1033.

Such term shall only include property which is used for the same qualified use as the replaced property was being used before the exchange.

(ii) Replaced property

The term ''replaced property'' means—

(I) the property transferred in the exchange which qualifies under section 1031, or

(II) the property compulsorily or involuntarily converted (within the meaning of section 1033).

(f) Statute of limitations

If qualified real property is disposed of or ceases to be used for a qualified use, then—

(1) the statutory period for the assessment of any additional tax under subsection (c) attributable to such disposition or cessation shall not expire before the expiration of 3 years from the date the Secretary is notified (in such manner as the Secretary may by regulations prescribe) of such disposition or cessation (or if later in the case of an involuntary conversion or exchange to which subsection (h) or (i) applies, 3 years from the date the Secretary is notified of the replacement of the converted property or of an intention not to replace or of the exchange of property), and

(2) such additional tax may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

(g) Application of this section and section 6324B to interests in partnerships, corporations, and trusts

The Secretary shall prescribe regulations setting forth the application of this section and section 6324B in the case of an interest in a partnership, corporation, or trust which, with respect to the decedent, is an interest in a closely held business (within the meaning of paragraph (1) of section 6166(b)). For purposes of the preceding sentence, an interest in a discretionary trust all the beneficiaries of which are qualified heirs shall be treated as a present interest.

(h) Special rules for involuntary conversions of qualified real property

(1) Treatment of converted property

(A) In general

If there is an involuntary conversion of an interest in qualified real property—

(i) no tax shall be imposed by subsection (c) on such conversion if the cost of the qualified replacement property equals or exceeds the amount realized on such conversion, or

(ii) if clause (i) does not apply, the amount of the tax imposed by subsection (c) on such conversion shall be the amount determined under subparagraph (B).

(B) Amount of tax where there is not complete reinvestment

The amount determined under this subparagraph with respect to any involuntary conversion is the amount of the tax which (but for this subsection) would have been imposed on such conversion reduced by an amount which—

(i) bears the same ratio to such tax, as

(ii) the cost of the qualified replacement property bears to the amount realized on the conversion.

(2) Treatment of replacement property

For purposes of subsection (c)—

(A) any qualified replacement property shall be treated in the same manner as if it were a portion of the interest in qualified real property which was involuntarily converted; except that with respect to such qualified replacement property the 10-year period under paragraph (1) of subsection (c) shall be extended by any period, beyond the 2-year period referred to in section 1033(a)(2)(B)(i), during which the qualified heir was allowed to replace the qualified real property,

(B) any tax imposed by subsection (c) on the involuntary conversion shall be treated as a tax imposed on a partial disposition, and

(C) paragraph (6) of subsection (c) shall be applied—

(i) by not taking into account periods after the involuntary conversion and before the acquisition of the qualified replacement property, and

(ii) by treating material participation with respect to the converted property as material participation with respect to the qualified replacement property.

(3) Definitions and special rules

For purposes of this subsection—

(A) Involuntary conversion

The term ''involuntary conversion'' means a compulsory or involuntary conversion within the meaning of section 1033.

(B) Qualified replacement property

The term ''qualified replacement property'' means—

(i) in the case of an involuntary conversion described in section 1033(a)(1), any real property into which the qualified real property is converted, or

(ii) in the case of an involuntary conversion described in section 1033(a)(2), any real property purchased by the qualified heir during the period specified in section 1033(a)(2)(B) for purposes of replacing the qualified real property.

Such term only includes property which is to be used for the qualified use set forth in subparagraph (A) or (B) of subsection (b)(2) under which the qualified real property qualified under subsection (a).

(4) Certain rules made applicable

The rules of the last sentence of section 1033(a)(2)(A) shall apply for purposes of paragraph (3)(B)(ii).

(i) Exchanges of qualified real property

(1) Treatment of property exchanged

(A) Exchanges solely for qualified exchange property

If an interest in qualified real property is exchanged solely for an interest in qualified exchange property in a transaction which qualifies under section 1031, no tax shall be imposed by subsection (c) by reason of such exchange.

(B) Exchanges where other property received

If an interest in qualified real property is exchanged for an interest in qualified exchange property and other property in a transaction which qualifies under section 1031, the amount of the tax imposed by subsection (c) by reason of such exchange shall be the amount of tax which (but for this subparagraph) would have been imposed on such exchange under subsection (c)(1), reduced by an amount which—

(i) bears the same ratio to such tax, as

(ii) the fair market value of the qualified exchange property bears to the fair market value of the qualified real property exchanged.

For purposes of clause (ii) of the preceding sentence, fair market value shall be determined as of the time of the exchange.

(2) Treatment of qualified exchange property

For purposes of subsection (c)—

(A) any interest in qualified exchange property shall be treated in the same manner as if it were a portion of the interest in qualified real property which was exchanged,

(B) any tax imposed by subsection (c) by reason of the exchange shall be treated as a tax imposed on a partial disposition, and

(C) paragraph (6) of subsection (c) shall be applied by treating material participation with respect to the exchanged property as material participation with respect to the qualified exchange property.

(3) Qualified exchange property

For purposes of this subsection, the term ''qualified exchange property'' means real property which is to be used for the qualified use set forth in subparagraph (A) or (B) of subsection (b)(2) under which the real property exchanged therefor originally qualified under subsection (a).

(Added Pub. L. 94–455, title XX, § 2003(a), Oct. 4, 1976, 90 Stat. 1856; amended Pub. L. 95–472, § 4(a), (c), Oct. 17, 1978, 92 Stat. 1334, 1336; Pub. L. 95–600, title VII, § 702(d)(1), (2), (4), (5), Nov. 6, 1978, 92 Stat. 2928, 2929; Pub. L. 97–34, title IV, § 421(a)–(d)(2)(A), (e), (f), (h)–(j)(2)(A), (3), (4), Aug. 13, 1981, 95 Stat. 306–313; Pub. L. 97–448, title I, § 104(b)(1), (2), Jan. 12, 1983, 96 Stat. 2381; Pub. L. 98–369, div. A, title X, § 1025(a), July 18, 1984, 98 Stat. 1030; Pub. L. 99–514, title I, § 104(b)(3), Oct. 22, 1986, 100 Stat. 2105; Pub. L. 100–647, title VI, § 6151(a), Nov. 10, 1988, 102 Stat. 3724; Pub. L. 101–508, title XI, § 11802(f)(5), Nov. 5, 1990, 104 Stat. 1388–530; Pub. L. 105–34, title V, §§ 501(b), 504(a), (b), 508(c), title XIII, § 1313(a), Aug. 5, 1997,

111 Stat. 845, 853, 854, 860, 1045; Pub. L. 108–311, title II, § 207(22), Oct. 4, 2004, 118 Stat. 1178; Pub. L. 115–97, title I, § 11002(d)(1)(DD), 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

The Social Security Act, referred to in subsec. (b)(4)(A)(i), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§ 401 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.

AMENDMENTS

2017—Subsec. (a)(3)(B). Pub. L. 115–97 substituted ''for 'calendar year 2016' in subparagraph (A)(ii)'' for ''for 'calendar year 1992' in subparagraph (B)''.

2004—Subsec. (c)(7)(D). Pub. L. 108–311 substituted ''section 152(f)(2)'' for ''section 151(c)(4)''.

1997—Subsec. (a)(3). Pub. L. 105–34, § 501(b), added par. (3).

Subsec. (b)(5)(A). Pub. L. 105–34, § 504(b), struck out at end ''For purposes of subsection (c), such surviving spouse shall not be treated as failing to use such property in a qualified use solely because such spouse rents such property to a member of such spouse's family on a net cash basis.''

Subsec. (c)(7)(E). Pub. L. 105–34, § 504(a), added subpar. (E).

Subsec. (c)(8). Pub. L. 105–34, § 508(c), added par. (8).

Subsec. (d)(3). Pub. L. 105–34, § 1313(a), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: ''The Secretary shall prescribe procedures which provide that in any case in which—

''(A) the executor makes an election under paragraph (1) within the time prescribed for filing such election, and

''(B) substantially complies with the regulations prescribed by the Secretary with respect to such election, but—

''(i) the notice of election, as filed, does not contain all required information, or

''(ii) signatures of 1 or more persons required to enter into the agreement described in paragraph (2) are not included on the agreement as filed, or the agreement does not contain all required information,

the executor will have a reasonable period of time (not exceeding 90 days) after notification of such failures to provide such information or agreements.''

1990—Subsec. (a)(2). Pub. L. 101–508 amended par. (2) generally, substituting present provisions for provisions which established graduated increase in applicable limit on aggregate reduction in fair market value from $600,000 in the case of decedents dying in 1981 to $750,000 in the case of decedents dying in 1983 or thereafter.

1988—Subsec. (b)(5)(A). Pub. L. 100–647 inserted at end ''For purposes of subsection (c), such surviving spouse shall not be treated as failing to use such property in a qualified use solely because such spouse rents such property to a member of such spouse's family on a net cash basis.''

1986—Subsec. (c)(7)(D). Pub. L. 99–514 substituted ''section 151(c)(4)'' for ''section 151(e)(4)''.

1984—Subsec. (d)(3). Pub. L. 98–369 added par. (3).

1983—Subsec. (b)(5)(C). Pub. L. 97–448, § 104(b)(1), added subpar. (C).

Subsec. (i)(1)(B)(ii). Pub. L. 97–448, § 104(b)(2)(A), substituted ''the qualified exchange property'' for ''the other property''.

Subsec. (i)(3). Pub. L. 97–448, § 104(b)(2)(B), substituted ''subparagraph (A) or (B)'' for ''subparagraph (A), (B), or (C)''.

1981—Subsec. (a)(2). Pub. L. 97–34, § 421(a), substituted ''Limit on aggregate reduction in fair market value'' for ''Limitation'' in heading ''shall not exceed the applicable limit set forth in the following table:'' for ''shall not exceed $500,000'' in text, and inserted table.

Subsec. (b)(1). Pub. L. 97–34, § 421(b)(1), substituted ''qualified use by the decedent or a member of the decedent's family'' for ''qualified use'' in provision preceding subpar. (A), and in subpars. (A)(i) and (C)(i).

Subsec. (b)(4), (5). Pub. L. 97–34, § 421(b)(2), added pars. (4) and (5).

Subsec. (c)(1). Pub. L. 97–34, § 421(c)(1)(A), substituted ''10 years'' for ''15 years''.

Subsec. (c)(2)(E). Pub. L. 97–34, § 421(h)(2), added subpar. (E).

Subsec. (c)(3). Pub. L. 97–34, § 421(c)(1)(B)(i), redesignated par. (4) as (3) and struck out former par. (3), which provided for a phaseout of additional tax between the 10th and 15th years.

Subsec. (c)(4), (5). Pub. L. 97–34, § 421(c)(1)(B)(i), redesignated pars. (5) and (6) as (4) and (5), respectively. Former par. (4) redesignated (3).

Subsec. (c)(6). Pub. L. 97–34, § 421(c)(2)(B)(ii), in subpar. (B) substituted ''more than 3 years'' for ''3 years or more''.

Pub. L. 97–34, § 421(c)(1)(B)(i), redesignated par. (7) as (6). Former par. (6) redesignated (5).

Subsec. (c)(7). Pub. L. 97–34, § 421(c)(1)(B)(i), (2)(A), added par. (7). Former par. (7) redesignated (6).

Subsec. (d)(1). Pub. L. 97–34, § 421(j)(3), substituted ''The election under this section shall be made on the return of the tax imposed by section 2001. Such election shall be made in such manner as the Secretary shall by regulations prescribe. Such an election, once made, shall be irrevocable.'' for ''The election under this section shall be made not later than the time prescribed by section 6075(a) for filing the return of tax imposed by section 2001 (including extensions thereof), and shall be made in such manner as the Secretary shall by regulations prescribe.''

Subsec. (e)(2). Pub. L. 97–34, § 421(i), substituted provisions designated subpars. (A) through (D) for ''such individual's ancestor or lineal descendant, a lineal descendant of a grandparent of such individual, the spouse of such individual, or the spouse of any such descendant''.

Subsec. (e)(7). Pub. L. 97–34, § 421(f), added subpar. (B), redesignated former subpar. (B) as (C), and inserted ''and that there is no comparable land from which the average net share rental may be determined'' after ''determined'' in subpar. (C), without specifying whether the language was to be inserted in cl. (i) or (ii) of subpar. (C). In view of H. Rept. No. 97–201, 97th Cong., July 14, 1981, p. 492, the language was inserted in cl. (ii) as the probable intent of Congress.

Subsec. (e)(9). Pub. L. 97–34, § 421(j)(2)(A), struck out from subpar. (B) ''in satisfaction of the right of such person to a pecuniary bequest'' after ''from the estate'' and in subpar. (C) substituted ''(to the extent such property is includible in the gross estate of the decedent)'' for ''in satisfaction of a right (which such person has by reason of the death of the decedent) to receive from the trust a specific dollar amount which is the equivalent of a pecuniary bequest''.

Subsec. (e)(12). Pub. L. 97–34, § 421(c)(2)(B)(i), added par. (12).

Subsec. (e)(13), (14). Pub. L. 97–34, § 421(h)(1), (j)(4), added pars. (13) and (14).

Subsec. (f)(1). Pub. L. 97–34, § 421(e)(2), substituted ''to which subsection (h)'' for ''to which an election under subsection (h)''.

Pub. L. 97–34, § 421(d)(2)(A), substituted ''conversion or exchange'', ''(h) or (i)'', and ''replace or of the exchange of property'' for ''conversion'', ''(h)'', and ''replace''.

Subsec. (g). Pub. L. 97–34, § 421(j)(1), inserted provision that for purposes of the preceding sentence, an interest in a discretionary trust all the beneficiaries of which are qualified heirs shall be treated as a present interest.

Subsec. (h)(1)(A). Pub. L. 97–34, § 421(e)(1)(A), struck out ''and the qualified heir makes an election under this subsection'' after ''qualified real property''.

Subsec. (h)(2)(A). Pub. L. 97–34, § 421(c)(1)(B)(ii), substituted ''; except that'' for '', except that'' and ''the 10-year period'' for ''the 15-year period'', deleted cl. (i) designation, and struck out cl. (ii), which provided the phaseout period under par. (3) of subsec. (c) be appropriately adjusted to take into account the extension referred to in cl. (i).

Subsec. (h)(2)(C). Pub. L. 97–34, § 421(c)(1)(B)(iii), substituted ''(6)'' for ''(7)'' in provisions preceding cl. (i).

Subsec. (h)(5). Pub. L. 97–34, § 421(e)(1)(B), struck out par. (5) which provided for making a subsec. (h) election at such time and in such manner as the Secretary may by regulations prescribe.

Subsec. (i). Pub. L. 97–34, § 421(d)(1), added subsec. (i).

1978—Subsec. (b)(1). Pub. L. 95–600, § 702(d)(1), inserted ''which was acquired from or passed from the decedent to a qualified heir of the decedent and'' after ''located in the United States''.

Subsec. (c)(6). Pub. L. 95–600, § 702(d)(5)(A), inserted ''unless the heir has furnished bond which meets the requirements of subsection (e)(11)'' after ''respect to his interest''.

Subsec. (e)(9). Pub. L. 95–600, § 702(d)(2), added par. (9).

Subsec. (e)(10). Pub. L. 95–600, § 702(d)(4), added par. (10).

Subsec. (e)(11). Pub. L. 95–600, § 702(d)(5)(B), added par. (11).

Subsec. (f)(1). Pub. L. 95–472, § 4(c), inserted provision relating to the expiration of the statutory period for the assessment of additional tax due under subsec. (c) in the case of an involuntary conversion to which an election under subsec. (h) is applicable.

Subsec. (h). Pub. L. 95–472, § 4(a), added subsec. (h).

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 2004 AMENDMENT

Amendment by 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.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 501(b) of Pub. L. 105–34 applicable to estates of decedents dying, and gifts made, after Dec. 31, 1997, see section 501(f) of Pub. L. 105–34, set out as a note under section 2001 of this title.

Pub. L. 105–34, title V, § 504(c), Aug. 5, 1997, 111 Stat. 854, provided that: ''The amendments made by this section [amending this section] shall apply with respect to leases entered into after December 31, 1976.''

Amendment by section 508(c) of Pub. L. 105–34 applicable to easements granted after Dec. 31, 1997, see section 508(e)(2) of Pub. L. 105–34, set out as a note under section 170 of this title.

Pub. L. 105–34, title XIII, § 1313(b), Aug. 5, 1997, 111 Stat. 1045, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to the estates of decedents dying after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title VI, § 6151(b), Nov. 10, 1988, 102 Stat. 3724, provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply with respect to rentals occurring after December 31, 1976.

''(2) WAIVER OF STATUTE OF LIMITATIONS.—If on the date of the enactment of this Act [Nov. 10, 1988] (or at any time within 1 year after such date of enactment) refund or credit of any overpayment of tax resulting from the application of the amendment made by subsection (a) is barred by any law or rule of law, refund or credit of such overpayment shall, nevertheless, be made or allowed if claim therefore is filed before the date 1 year after the date of the enactment of this Act.''

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

Pub. L. 98–369, div. A, title X, § 1025(b), July 18, 1984, 98 Stat. 1031, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to estates of decedents dying after December 31, 1976.

''(2) REFUND OR CREDIT OF OVERPAYMENT BARRED BY STATUTE OF LIMITATIONS.—Notwithstanding section 6511(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] or any other period of limitation or lapse of time, a claim for credit or refund of overpayment of the tax imposed by such Code which arises by reason of this section may be filed by any person at any time within the 1-year period beginning on the date of the enactment of this Act [July 18, 1984]. Sections 6511(b) and 6514 of such Code shall not apply to any claim for credit or refund filed under this subsection within such 1-year period.''

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 IV, § 421(k), Aug. 13, 1981, 95 Stat. 313, as amended by Pub. L. 97–448, title I, § 104(b)(4), Jan. 12, 1983, 96 Stat. 2382; 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 [amending this section and sections 1016, 1040, and 6324B of this title] shall apply with respect to the estates of decedents dying after December 31, 1981.

''(2) INCREASE IN LIMITATION.—The amendment made by subsection (a) [amending this section] shall apply with respect to the estates of decedents dying after December 31, 1980.

''(3) SUBSECTION (d).—The amendments made by subsection (d) [amending this section and section 6324B of this title] shall apply with respect to exchanges after December 31, 1981.

''(4) SUBSECTION (e).—The amendments made by subsection (e) [amending this section] shall apply with respect to involuntary conversions after December 31, 1981.

''(5) CERTAIN AMENDMENTS MADE RETROACTIVE TO 1976.—

''(A) IN GENERAL.—The amendments made by subsections (b)(1), (j)(1), and (j)(2) [amending this section and section 1040 of this title] and the provisions of subparagraph (A) of section 2032A(c)(7) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (c)(2)) shall apply with respect to the estates of decedents dying after December 31, 1976.

''(B) TIMELY ELECTION REQUIRED.—Subparagraph (A) shall only apply in the case of an estate if a timely election under section 2032A was made with respect to such estate. If the estate of any decedent would not qualify under section 2032A of the Internal Revenue Code of 1986 but for the amendments described in subparagraph (A) and the time for making an election under section 2032A with respect to such estate would

(but for this sentence) expire after July 28, 1980, the time for making such election shall not expire before the close of February 16, 1982.

''(C) REINSTATEMENT OF ELECTIONS.—If any election under section 2032A was revoked before the date of the enactment of this Act [Aug. 13, 1981], such election may be reinstated at any time before February 17, 1982.

''(D) STATUTE OF LIMITATIONS.—If on the date of the enactment of this Act [Aug. 13, 1981] (or at any time before February 17, 1982) the making of a credit or refund of any overpayment of tax resulting from the amendments described in subparagraph (A) is barred by any law or rule of law, such credit or refund shall nevertheless be made if claim therefor is made before February 17, 1982.''

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title VII, §702(d)(6), Nov. 6, 1978, 92 Stat. 2929, provided that: ''The amendments made by this subsection [amending this section and section 1040 of this title] shall apply to the estates of decedents dying after December 31, 1976.''

Amendment of section by Pub. L. 95–472 applicable with respect to involuntary conversions after Dec. 31, 1976, see section 4(d) of Pub. L. 95–472, set out as a note under section 1016 of this title.

EFFECTIVE DATE

Pub. L. 94–455, title XX, §2003(e), Oct. 4, 1976, 90 Stat. 1862, provided that: ''The amendments made by this section [enacting this section and section 6324B of this title and amending section 2013 of this title] shall apply to the estates of decedents dying 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.

WAIVER OF STATUTE OF LIMITATION FOR TAXES ON CERTAIN FARM VALUATIONS

Pub. L. 107–16, title V, §581, June 7, 2001, 115 Stat. 93, provided that: ''If on the date of the enactment of this Act [June 7, 2001] (or at any time within 1 year after the date of the enactment) a refund or credit of any overpayment of tax resulting from the application of section 2032A(c)(7)(E) of the Internal Revenue Code of 1986 is barred by any law or rule of law, the refund or credit of such overpayment shall, nevertheless, be made or allowed if claim therefor is filed before the date 1 year after the date of the enactment of this Act.''

INFORMATION NECESSARY FOR VALID SPECIAL USE VALUATION ELECTION

Pub. L. 99–514, title XIV, §1421, Oct. 22, 1986, 100 Stat. 2716, as amended by Pub. L. 100–647, title I, §1014(f), Nov. 10, 1988, 102 Stat. 3562, provided that:

''(a) IN GENERAL.—In the case of any decedent dying before January 1, 1986, if the executor—

''(1) made an election under section 2032A of the Internal Revenue Code of 1954 [now 1986] on the return of tax imposed by section 2001 of such Code, and

''(2) provided substantially all the information with respect to such election required on such return of tax,

such election shall be a valid election for purposes of section 2032A of such Code.

''(b) EXECUTOR MUST PROVIDE INFORMATION.—An election described in subsection (a) shall not be valid if the Secretary of the Treasury or his delegate after the date of the enactment of this Act [Oct. 22, 1986] requests information from the executor with respect to such election and the executor does not provide such information within 90 days of receipt of such request.

''(c) EFFECTIVE DATE.—The provisions of this section shall not apply to the estate of any decedent if before the date of the enactment of this Act [Oct. 22, 1986] the statute of limitations has expired with respect to—

''(1) the return of tax imposed by section 2001 of the Internal Revenue Code of 1954 [now 1986], and

''(2) the period during which a claim for credit or refund may be timely filed.

''(d) SPECIAL RULE FOR CERTAIN ESTATE.—Notwithstanding subsection (a)(2), the provisions of this section shall apply to the estate of an individual who died on January 30, 1984, and with respect to which—

''(1) a Federal estate tax return was filed on October 30, 1984, electing current use valuation, and

''(2) the agreement required under section 2032A was filed on November 9, 1984.''

LAND DIVERTED UNDER 1983 PAYMENT-IN-KIND PROGRAM

Land diverted from production of agricultural commodities under a 1983 payment-in-kind program to be treated, for purposes of this section, as used during the 1983 crop year by qualified taxpayers in the active conduct of the trade or business of farming, with qualified taxpayers who materially participate in the diversion and devotion to conservation uses under a 1983 payment-in-kind program to be treated as materially participating in the operation of such land during the 1983 crop year, see section 3 of Pub. L. 98–4, set out as a note under section 61 of this title.

§ 2033. Property in which the decedent had an interest

The value of the gross estate shall include the value of all property to the extent of the interest therein of the decedent at the time of his death.

(Aug. 16, 1954, ch. 736, 68A Stat. 381; Pub. L. 87–834, §18(a)(2)(A), Oct. 16, 1962, 76 Stat. 1052.)

AMENDMENTS

1962—Pub. L. 87–834 struck out provisions which excepted real property situated outside of the United States.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable to estates of decedents dying after Oct. 16, 1962, except as otherwise provided, see section 18(b) of Pub. L. 87–834, set out as a note under section 2031 of this title.

[§ 2033A. Renumbered § 2057]

§ 2034. Dower or curtesy interests

The value of the gross estate shall include the value of all property to the extent of any interest therein of the surviving spouse, existing at the time of the decedent's death as dower or curtesy, or by virtue of a statute creating an estate in lieu of dower or curtesy.

(Aug. 16, 1954, ch. 736, 68A Stat. 381; Pub. L. 87–834, §18(a)(2)(B), Oct. 16, 1962, 76 Stat. 1052.)

AMENDMENTS

1962—Pub. L. 87–834 struck out provisions which excepted real property situated outside of the United States.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable to estates of decedents dying after Oct. 16, 1962, except as otherwise

provided, see section 18(b) of Pub. L. 87–834, set out as a note under section 2031 of this title.

§ 2035. Adjustments for certain gifts made within 3 years of decedent's death

(a) Inclusion of certain property in gross estate

If—

(1) the decedent made a transfer (by trust or otherwise) of an interest in any property, or relinquished a power with respect to any property, during the 3-year period ending on the date of the decedent's death, and

(2) the value of such property (or an interest therein) would have been included in the decedent's gross estate under section 2036, 2037, 2038, or 2042 if such transferred interest or relinquished power had been retained by the decedent on the date of his death,

the value of the gross estate shall include the value of any property (or interest therein) which would have been so included.

(b) Inclusion of gift tax on gifts made during 3 years before decedent's death

The amount of the gross estate (determined without regard to this subsection) shall be increased by the amount of any tax paid under chapter 12 by the decedent or his estate on any gift made by the decedent or his spouse during the 3-year period ending on the date of the decedent's death.

(c) Other rules relating to transfers within 3 years of death

(1) In general

For purposes of—

(A) section 303(b) (relating to distributions in redemption of stock to pay death taxes),

(B) section 2032A (relating to special valuation of certain farms, etc., real property), and

(C) subchapter C of chapter 64 (relating to lien for taxes),

the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, during the 3-year period ending on the date of the decedent's death.

(2) Coordination with section 6166

An estate shall be treated as meeting the 35 percent of adjusted gross estate requirement of section 6166(a)(1) only if the estate meets such requirement both with and without the application of subsection (a).

(3) Marital and small transfers

Paragraph (1) shall not apply to any transfer (other than a transfer with respect to a life insurance policy) made during a calendar year to any donee if the decedent was not required by section 6019 (other than by reason of section 6019(2)) to file any gift tax return for such year with respect to transfers to such donee.

(d) Exception

Subsection (a) and paragraph (1) of subsection (c) shall not apply to any bona fide sale for an adequate and full consideration in money or money's worth.

(e) Treatment of certain transfers from revocable trusts

For purposes of this section and section 2038, any transfer from any portion of a trust during any period that such portion was treated under section 676 as owned by the decedent by reason of a power in the grantor (determined without regard to section 672(e)) shall be treated as a transfer made directly by the decedent.

(Aug. 16, 1954, ch. 736, 68A Stat. 381; Pub. L. 87–834, § 18(a)(2)(C), Oct. 16, 1962, 76 Stat. 1052; Pub. L. 94–455, title XX, § 2001(a)(5), Oct. 4, 1976, 90 Stat. 1848; Pub. L. 95–600, title VII, § 702(f)(1), Nov. 6, 1978, 92 Stat. 2930; Pub. L. 97–34, title IV, §§ 403(b)(3)(B), 424(a), Aug. 13, 1981, 95 Stat. 301, 317; Pub. L. 97–448, title I, § 104(a)(9), (d)(1)(A), (C), (2), Jan. 12, 1983, 96 Stat. 2381, 2383; Pub. L. 105–34, title XIII, § 1310(a), Aug. 5, 1997, 111 Stat. 1043; Pub. L. 106–554, § 1(a)(7) [title III, § 319(14)], Dec. 21, 2000, 114 Stat. 2763, 2763A–646.)

AMENDMENTS

2000—Subsec. (c)(2). Pub. L. 106–554, § 1(a)(7) [title III, § 319(14)(A)], substituted ''subsection (a)'' for ''paragraph (1)''.

Subsec. (d). Pub. L. 106–554, § 1(a)(7) [title III, § 319(14)(B)], inserted ''and paragraph (1) of subsection (c)'' after ''Subsection (a)''.

1997—Pub. L. 105–34 amended section catchline and text generally. Prior to amendment, section consisted of subsecs. (a) to (d) relating to adjustments for gifts made within 3 years of decedent's death.

1983—Subsec. (b)(2). Pub. L. 97–448, § 104(a)(9), substituted ''section 6019(2)'' for ''section 6019(a)(2)''.

Subsec. (d)(2). Pub. L. 97–448, § 104(d)(2), inserted ''of this subsection and paragraph (2) of subsection (b)'' after ''Paragraph (1)'', and struck out ''2041,'' after ''2038,''.

Subsec. (d)(3)(C), (D). Pub. L. 97–448, § 104(d)(1)(C), redesignated subpar. (D) as (C). Former subpar. (C), which referred to section 6166 (relating to extension of time for payment of estate tax where estate consists largely of interest in closely held business), was struck out.

Subsec. (d)(4). Pub. L. 97–448, § 104(d)(1)(A), added par. (4).

1981—Subsec. (b)(2). Pub. L. 97–34, § 403(b)(3)(B), inserted ''(other than by reason of section 6019(a)(2))'' after ''section 6019''.

Subsec. (d). Pub. L. 97–34, § 424(a), added subsec. (d).

1978—Subsec. (b). Pub. L. 95–600 substituted in par. (2) provisions relating to gifts for which donee was not required by section 6019 to file gift tax returns for provisions relating to gifts excludable in computing taxable gifts by reason of section 2503(b) and inserted provisions following par. (2) relating to inapplicability of par. (2) to transfers respecting life insurance policies.

1976—Pub. L. 94–455 substituted provisions covering adjustments for gifts made within 3 years of decedent's death for provisions under which transfers by the decedent within 3 years of the decedent's death were deemed to have been made in contemplation of death and included in the value of the gross estate.

1962—Subsec. (a). Pub. L. 87–834 struck out provisions which excepted real property situated outside of the United States.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XIII, § 1310(c), Aug. 5, 1997, 111 Stat. 1044, provided that: ''The amendments made by this section [amending this section] shall apply to the estates of decedents dying after the date of the enactment of this Act [Aug. 5, 1997].''

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 403(b)(3)(B) of Pub. L. 97–34 applicable to estates of decedents dying after Dec. 31, 1981, see section 403(e) of Pub. L. 97–34, set out as a note under section 2056 of this title.

Pub. L. 97–34, title IV, §424(b), Aug. 13, 1981, 95 Stat. 317, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to the estates of decedents dying after December 31, 1981.''

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title VII, §702(f)(2), Nov. 6, 1978, 92 Stat. 2930, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to the estates of decedents dying after December 31, 1976, except that it shall not apply to transfers made before January 1, 1977.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable to estates of decedents dying after Dec. 31, 1976, but not to transfers made before Jan. 1, 1977, see section 2001(d)(1) of Pub. L. 94–455, set out as a note under section 2001 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable to estates of decedents dying after Oct. 16, 1962, except as otherwise provided, see section 18(b) of Pub. L. 87–834, set out as a note under section 2031 of this title.

TRANSFERS MADE BY DECEDENT DURING 1977; ELECTION AVAILABLE TO EXECUTOR ON OR BEFORE DUE DATE FOR FILING ESTATE TAX RETURN

Pub. L. 96–222, title I, §107(a)(2)(F), Apr. 1, 1980, 94 Stat. 223, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(i) If the executor elects the benefits of this subparagraph with respect to any estate, section 2035(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to adjustments for gifts made within 3 years of decedent's death) shall be applied with respect to transfers made by the decedent during 1977 as if paragraph (2) of such section 2035(b) read as follows:

'' '(2) to any gift to a donee made during 1977 to the extent of the amount of such gift which was excludable in computing taxable gifts by reason of section 2503(b) (relating to $3,000 annual exclusion for purposes of the gift tax) determined without regard to section 2513(a).'

''(ii) The election under clause (i) with respect to any estate shall be made on or before the later of—

''(I) the due date for filing the estate tax return, or

''(II) the day which is 120 days after the date of the enactment of this Act [Apr. 1, 1980].''

§ 2036. Transfers with retained life estate

(a) General rule

The value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death—

(1) the possession or enjoyment of, or the right to the income from, the property, or

(2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom.

(b) Voting rights

(1) In general

For purposes of subsection (a)(1), the retention of the right to vote (directly or indirectly) shares of stock of a controlled corporation shall be considered to be a retention of the enjoyment of transferred property.

(2) Controlled corporation

For purposes of paragraph (1), a corporation shall be treated as a controlled corporation if, at any time after the transfer of the property and during the 3-year period ending on the date of the decedent's death, the decedent owned (with the application of section 318), or had the right (either alone or in conjunction with any person) to vote, stock possessing at least 20 percent of the total combined voting power of all classes of stock.

(3) Coordination with section 2035

For purposes of applying section 2035 with respect to paragraph (1), the relinquishment or cessation of voting rights shall be treated as a transfer of property made by the decedent.

(c) Limitation on application of general rule

This section shall not apply to a transfer made before March 4, 1931; nor to a transfer made after March 3, 1931, and before June 7, 1932, unless the property transferred would have been includible in the decedent's gross estate by reason of the amendatory language of the joint resolution of March 3, 1931 (46 Stat. 1516).

(Aug. 16, 1954, ch. 736, 68A Stat. 382; Pub. L. 87–834, §18(a)(2)(D), Oct. 16, 1962, 76 Stat. 1052; Pub. L. 94–455, title XX, §2009(a), Oct. 4, 1976, 90 Stat. 1893; Pub. L. 95–600, title VII, §702(i)(1), (2), Nov. 6, 1978, 92 Stat. 2931; Pub. L. 100–203, title X, §10402(a), Dec. 22, 1987, 101 Stat. 1330–431; Pub. L. 100–647, title III, §3031(a)(1), (b)–(e), (g), Nov. 10, 1988, 102 Stat. 3634–3638; Pub. L. 101–508, title XI, §11601(a), Nov. 5, 1990, 104 Stat. 1388–490.)

AMENDMENTS

1990—Subsecs. (c), (d). Pub. L. 101–508 redesignated subsec. (d) as (c) and struck out former subsec. (c) which enunciated a rule that retention of retained interest would be considered to be a retention of enjoyment of transferred property if a person held a substantial interest in an enterprise, and such person in effect transferred after Dec. 17, 1987, property having a disproportionately large share of the potential appreciation in such person's interest in the enterprise while retaining an interest in the income of, or rights in, the enterprise.

1988—Subsec. (c)(1)(B). Pub. L. 100–647, §3031(e), substituted ''an interest'' for ''a disproportionately large share'' after ''whole retaining''.

Subsec. (c)(2). Pub. L. 100–647, §3031(g)(1), substituted ''consideration furnished by'' for ''sales to'' in heading, and amended text generally. Prior to amendment, text read as follows: ''The exception contained in subsection (a) for a bona fide sale shall not apply to a transfer described in paragraph (1) if such transfer is to a member of the transferor's family.''

Subsec. (c)(3)(C). Pub. L. 100–647, §3031(d), substituted ''Except as provided in regulations, an'' for ''An''.

Subsec. (c)(4). Pub. L. 100–647, §3031(a)(1), amended par. (4) generally, substituting provisions relating to treatment of certain transfers for provisions relating to coordination with section 2035.