EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–181, § 2(b), May 20, 2002, 116 Stat. 583, provided that:

''(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2001.

''(2) RETURNS POSITIONS.—The amendment made by this section also shall apply to any taxable year beginning before January 1, 2002, for which the taxpayer—

''(A) on a return filed before April 17, 2002, limited the exclusion under section 107 of the Internal Revenue Code of 1986 as provided in such amendment, or

''(B) filed a return after April 16, 2002.

''(3) OTHER YEARS BEFORE 2002.—Except as provided in paragraph (2), notwithstanding any prior regulation, revenue ruling, or other guidance issued by the Internal Revenue Service, no person shall be subject to the limitations added to section 107 of such Code by this Act for any taxable year beginning before January 1, 2002.''

§ 108. Income from discharge of indebtedness

(a) Exclusion from gross income

(1) In general

Gross income does not include any amount which (but for this subsection) would be includible in gross income by reason of the discharge (in whole or in part) of indebtedness of the taxpayer if—

(A) the discharge occurs in a title 11 case,

(B) the discharge occurs when the taxpayer is insolvent,

(C) the indebtedness discharged is qualified farm indebtedness,

(D) in the case of a taxpayer other than a C corporation, the indebtedness discharged is qualified real property business indebtedness, or

(E) the indebtedness discharged is qualified principal residence indebtedness which is discharged before January 1, 2013.

(2) Coordination of exclusions

(A) Title 11 exclusion takes precedence

Subparagraphs (B), (C), (D), and (E) of paragraph (1) shall not apply to a discharge which occurs in a title 11 case.

(B) Insolvency exclusion takes precedence over qualified farm exclusion and qualified real property business exclusion

Subparagraphs (C) and (D) of paragraph (1) shall not apply to a discharge to the extent the taxpayer is insolvent.

(C) Principal residence exclusion takes precedence over insolvency exclusion unless elected otherwise

Paragraph (1)(B) shall not apply to a discharge to which paragraph (1)(E) applies unless the taxpayer elects to apply paragraph (1)(B) in lieu of paragraph (1)(E).

(3) Insolvency exclusion limited to amount of insolvency

In the case of a discharge to which paragraph (1)(B) applies, the amount excluded under paragraph (1)(B) shall not exceed the amount by which the taxpayer is insolvent.

(b) Reduction of tax attributes

(1) In general

The amount excluded from gross income under subparagraph (A), (B), or (C) of subsection (a)(1) shall be applied to reduce the tax attributes of the taxpayer as provided in paragraph (2).

(2) Tax attributes affected; order of reduction

Except as provided in paragraph (5), the reduction referred to in paragraph (1) shall be made in the following tax attributes in the following order:

(A) NOL

Any net operating loss for the taxable year of the discharge, and any net operating loss carryover to such taxable year.

(B) General business credit

Any carryover to or from the taxable year of a discharge of an amount for purposes for determining the amount allowable as a credit under section 38 (relating to general business credit).

(C) Minimum tax credit

The amount of the minimum tax credit available under section 53(b) as of the beginning of the taxable year immediately following the taxable year of the discharge.

(D) Capital loss carryovers

Any net capital loss for the taxable year of the discharge, and any capital loss carryover to such taxable year under section 1212.

(E) Basis reduction

(i) In general

The basis of the property of the taxpayer.

(ii) Cross reference

For provisions for making the reduction described in clause (i), see section 1017.

(F) Passive activity loss and credit carryovers

Any passive activity loss or credit carryover of the taxpayer under section 469(b) from the taxable year of the discharge.

(G) Foreign tax credit carryovers

Any carryover to or from the taxable year of the discharge for purposes of determining the amount of the credit allowable under section 27.

(3) Amount of reduction

(A) In general

Except as provided in subparagraph (B), the reductions described in paragraph (2) shall be one dollar for each dollar excluded by subsection (a).

(B) Credit carryover reduction

The reductions described in subparagraphs (B), (C), and (G) shall be 33⅓ cents for each dollar excluded by subsection (a). The reduction described in subparagraph (F) in any passive activity credit carryover shall be 33⅓ cents for each dollar excluded by subsection (a).

(4) Ordering rules

(A) Reductions made after determination of tax for year

The reductions described in paragraph (2) shall be made after the determination of the

tax imposed by this chapter for the taxable year of the discharge.

(B) Reductions under subparagraph (A) or (D) of paragraph (2)

The reductions described in subparagraph (A) or (D) of paragraph (2) (as the case may be) shall be made first in the loss for the taxable year of the discharge and then in the carryovers to such taxable year in the order of the taxable years from which each such carryover arose.

(C) Reductions under subparagraphs (B) and (G) of paragraph (2)

The reductions described in subparagraphs (B) and (G) of paragraph (2) shall be made in the order in which carryovers are taken into account under this chapter for the taxable year of the discharge.

(5) Election to apply reduction first against depreciable property

(A) In general

The taxpayer may elect to apply any portion of the reduction referred to in paragraph (1) to the reduction under section 1017 of the basis of the depreciable property of the taxpayer.

(B) Limitation

The amount to which an election under subparagraph (A) applies shall not exceed the aggregate adjusted bases of the depreciable property held by the taxpayer as of the beginning of the taxable year following the taxable year in which the discharge occurs.

(C) Other tax attributes not reduced

Paragraph (2) shall not apply to any amount to which an election under this paragraph applies.

(c) Treatment of discharge of qualified real property business indebtedness

(1) Basis reduction

(A) In general

The amount excluded from gross income under subparagraph (D) of subsection (a)(1) shall be applied to reduce the basis of the depreciable real property of the taxpayer.

(B) Cross reference

For provisions making the reduction described in subparagraph (A), see section 1017.

(2) Limitations

(A) Indebtedness in excess of value

The amount excluded under subparagraph (D) of subsection (a)(1) with respect to any qualified real property business indebtedness shall not exceed the excess (if any) of—

(i) the outstanding principal amount of such indebtedness (immediately before the discharge), over

(ii) the fair market value of the real property described in paragraph (3)(A) (as of such time), reduced by the outstanding principal amount of any other qualified real property business indebtedness secured by such property (as of such time).

(B) Overall limitation

The amount excluded under subparagraph (D) of subsection (a)(1) shall not exceed the aggregate adjusted bases of depreciable real property (determined after any reductions under subsections (b) and (g)) held by the taxpayer immediately before the discharge (other than depreciable real property acquired in contemplation of such discharge).

(3) Qualified real property business indebtedness

The term ''qualified real property business indebtedness'' means indebtedness which—

(A) was incurred or assumed by the taxpayer in connection with real property used in a trade or business and is secured by such real property,

(B) was incurred or assumed before January 1, 1993, or if incurred or assumed on or after such date, is qualified acquisition indebtedness, and

(C) with respect to which such taxpayer makes an election to have this paragraph apply.

Such term shall not include qualified farm indebtedness. Indebtedness under subparagraph (B) shall include indebtedness resulting from the refinancing of indebtedness under subparagraph (B) (or this sentence), but only to the extent it does not exceed the amount of the indebtedness being refinanced.

(4) Qualified acquisition indebtedness

For purposes of paragraph (3)(B), the term ''qualified acquisition indebtedness'' means, with respect to any real property described in paragraph (3)(A), indebtedness incurred or assumed to acquire, construct, reconstruct, or substantially improve such property.

(5) Regulations

The Secretary shall issue such regulations as are necessary to carry out this subsection, including regulations preventing the abuse of this subsection through cross-collateralization or other means.

(d) Meaning of terms; special rules relating to certain provisions

(1) Indebtedness of taxpayer

For purposes of this section, the term ''indebtedness of the taxpayer'' means any indebtedness—

(A) for which the taxpayer is liable, or

(B) subject to which the taxpayer holds property.

(2) Title 11 case

For purposes of this section, the term ''title 11 case'' means a case under title 11 of the United States Code (relating to bankruptcy), but only if the taxpayer is under the jurisdiction of the court in such case and the discharge of indebtedness is granted by the court or is pursuant to a plan approved by the court.

(3) Insolvent

For purposes of this section, the term ''insolvent'' means the excess of liabilities over the fair market value of assets. With respect to any discharge, whether or not the taxpayer

is insolvent, and the amount by which the taxpayer is insolvent, shall be determined on the basis of the taxpayer's assets and liabilities immediately before the discharge.

[(4) Repealed. Pub. L. 99–514, title VIII, § 822(b)(3)(A), Oct. 22, 1986, 100 Stat. 2373]

(5) Depreciable property

The term ''depreciable property'' has the same meaning as when used in section 1017.

(6) Certain provisions to be applied at partner level

In the case of a partnership, subsections (a), (b), (c), and (g) shall be applied at the partner level.

(7) Special rules for S corporation

(A) Certain provisions to be applied at corporate level

In the case of an S corporation, subsections (a), (b), (c), and (g) shall be applied at the corporate level, including by not taking into account under section 1366(a) any amount excluded under subsection (a) of this section.

(B) Reduction in carryover of disallowed losses and deductions

In the case of an S corporation, for purposes of subparagraph (A) of subsection (b)(2), any loss or deduction which is disallowed for the taxable year of the discharge under section 1366(d)(1) shall be treated as a net operating loss for such taxable year. The preceding sentence shall not apply to any discharge to the extent that subsection (a)(1)(D) applies to such discharge.

(C) Coordination with basis adjustments under section 1367(b)(2)

For purposes of subsection (e)(6), a shareholder's adjusted basis in indebtedness of an S corporation shall be determined without regard to any adjustments made under section 1367(b)(2).

(8) Reductions of tax attributes in title 11 cases of individuals to be made by estate

In any case under chapter 7 or 11 of title 11 of the United States Code to which section 1398 applies, for purposes of paragraphs (1) and (5) of subsection (b) the estate (and not the individual) shall be treated as the taxpayer. The preceding sentence shall not apply for purposes of applying section 1017 to property transferred by the estate to the individual.

(9) Time for making election, etc.

(A) Time

An election under paragraph (5) of subsection (b) or under paragraph (3)(C) of subsection (c) 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.

(B) Revocation only with consent

An election referred to in subparagraph (A), once made, may be revoked only with the consent of the Secretary.

(C) Manner

An election referred to in subparagraph (A) shall be made in such manner as the Secretary may by regulations prescribe.

(10) Cross reference

For provision that no reduction is to be made in the basis of exempt property of an individual debtor, see section 1017(c)(1).

(e) General rules for discharge of indebtedness (including discharges not in title 11 cases or insolvency)

For purposes of this title—

(1) No other insolvency exception

Except as otherwise provided in this section, there shall be no insolvency exception from the general rule that gross income includes income from the discharge of indebtedness.

(2) Income not realized to extent of lost deductions

No income shall be realized from the discharge of indebtedness to the extent that payment of the liability would have given rise to a deduction.

(3) Adjustments for unamortized premium and discount

The amount taken into account with respect to any discharge shall be properly adjusted for unamortized premium and unamortized discount with respect to the indebtedness discharged.

(4) Acquisition of indebtedness by person related to debtor

(A) Treated as acquisition by debtor

For purposes of determining income of the debtor from discharge of indebtedness, to the extent provided in regulations prescribed by the Secretary, the acquisition of outstanding indebtedness by a person bearing a relationship to the debtor specified in section 267(b) or 707(b)(1) from a person who does not bear such a relationship to the debtor shall be treated as the acquisition of such indebtedness by the debtor. Such regulations shall provide for such adjustments in the treatment of any subsequent transactions involving the indebtedness as may be appropriate by reason of the application of the preceding sentence.

(B) Members of family

For purposes of this paragraph, sections 267(b) and 707(b)(1) shall be applied as if section 267(c)(4) provided that the family of an individual consists of the individual's spouse, the individual's children, grandchildren, and parents, and any spouse of the individual's children or grandchildren.

(C) Entities under common control treated as related

For purposes of this paragraph, two entities which are treated as a single employer under subsection (b) or (c) of section 414 shall be treated as bearing a relationship to each other which is described in section 267(b).

(5) Purchase-money debt reduction for solvent debtor treated as price reduction

If—

(A) the debt of a purchaser of property to the seller of such property which arose out of the purchase of such property is reduced,

(B) such reduction does not occur—

(i) in a title 11 case, or

(ii) when the purchaser is insolvent, and

(C) but for this paragraph, such reduction would be treated as income to the purchaser from the discharge of indebtedness,

then such reduction shall be treated as a purchase price adjustment.

(6) Indebtedness contributed to capital

Except as provided in regulations, for purposes of determining income of the debtor from discharge of indebtedness, if a debtor corporation acquires its indebtedness from a shareholder as a contribution to capital—

(A) section 118 shall not apply, but

(B) such corporation shall be treated as having satisfied the indebtedness with an amount of money equal to the shareholder's adjusted basis in the indebtedness.

(7) Recapture of gain on subsequent sale of stock

(A) In general

If a creditor acquires stock of a debtor corporation in satisfaction of such corporation's indebtedness, for purposes of section 1245—

(i) such stock (and any other property the basis of which is determined in whole or in part by reference to the adjusted basis of such stock) shall be treated as section 1245 property,

(ii) the aggregate amount allowed to the creditor—

(I) as deductions under subsection (a) or (b) of section 166 (by reason of the worthlessness or partial worthlessness of the indebtedness), or

(II) as an ordinary loss on the exchange,

shall be treated as an amount allowed as a deduction for depreciation, and

(iii) an exchange of such stock qualifying under section 354(a), 355(a), or 356(a) shall be treated as an exchange to which section 1245(b)(3) applies.

The amount determined under clause (ii) shall be reduced by the amount (if any) included in the creditor's gross income on the exchange.

(B) Special rule for cash basis taxpayers

In the case of any creditor who computes his taxable income under the cash receipts and disbursements method, proper adjustment shall be made in the amount taken into account under clause (ii) of subparagraph (A) for any amount which was not included in the creditor's gross income but which would have been included in such gross income if such indebtedness had been satisfied in full.

(C) Stock of parent corporation

For purposes of this paragraph, stock of a corporation in control (within the meaning of section 368(c)) of the debtor corporation shall be treated as stock of the debtor corporation.

(D) Treatment of successor corporation

For purposes of this paragraph, the term ''debtor corporation'' includes a successor corporation.

(E) Partnership rule

Under regulations prescribed by the Secretary, rules similar to the rules of the foregoing subparagraphs of this paragraph shall apply with respect to the indebtedness of a partnership.

(8) Indebtedness satisfied by corporate stock or partnership interest

For purposes of determining income of a debtor from discharge of indebtedness, if—

(A) a debtor corporation transfers stock, or

(B) a debtor partnership transfers a capital or profits interest in such partnership,

to a creditor in satisfaction of its recourse or nonrecourse indebtedness, such corporation or partnership shall be treated as having satisfied the indebtedness with an amount of money equal to the fair market value of the stock or interest. In the case of any partnership, any discharge of indebtedness income recognized under this paragraph shall be included in the distributive shares of taxpayers which were the partners in the partnership immediately before such discharge.

(9) Discharge of indebtedness income not taken into account in determining whether entity meets REIT qualifications

Any amount included in gross income by reason of the discharge of indebtedness shall not be taken into account for purposes of paragraphs (2) and (3) of section 856(c).

(10) Indebtedness satisfied by issuance of debt instrument

(A) In general

For purposes of determining income of a debtor from discharge of indebtedness, if a debtor issues a debt instrument in satisfaction of indebtedness, such debtor shall be treated as having satisfied the indebtedness with an amount of money equal to the issue price of such debt instrument.

(B) Issue price

For purposes of subparagraph (A), the issue price of any debt instrument shall be determined under sections 1273 and 1274. For purposes of the preceding sentence, section 1273(b)(4) shall be applied by reducing the stated redemption price of any instrument by the portion of such stated redemption price which is treated as interest for purposes of this chapter.

(f) Student loans

(1) In general

In the case of an individual, gross income does not include any amount which (but for this subsection) would be includible in gross income by reason of the discharge (in whole or

in part) of any student loan if such discharge was pursuant to a provision of such loan under which all or part of the indebtedness of the individual would be discharged if the individual worked for a certain period of time in certain professions for any of a broad class of employers.

(2) Student loan

For purposes of this subsection, the term ''student loan'' means any loan to an individual to assist the individual in attending an educational organization described in section 170(b)(1)(A)(ii) made by—

(A) the United States, or an instrumentality or agency thereof,

(B) a State, territory, or possession of the United States, or the District of Columbia, or any political subdivision thereof,

(C) a public benefit corporation—

(i) which is exempt from taxation under section 501(c)(3),

(ii) which has assumed control over a State, county, or municipal hospital, and

(iii) whose employees have been deemed to be public employees under State law, or

(D) any educational organization described in section 170(b)(1)(A)(ii) if such loan is made—

(i) pursuant to an agreement with any entity described in subparagraph (A), (B), or (C) under which the funds from which the loan was made were provided to such educational organization, or

(ii) pursuant to a program of such educational organization which is designed to encourage its students to serve in occupations with unmet needs or in areas with unmet needs and under which the services provided by the students (or former students) are for or under the direction of a governmental unit or an organization described in section 501(c)(3) and exempt from tax under section 501(a).

The term ''student loan'' includes any loan made by an educational organization described in section 170(b)(1)(A)(ii) or by an organization exempt from tax under section 501(a) to refinance a loan to an individual to assist the individual in attending any such educational organization but only if the refinancing loan is pursuant to a program of the refinancing organization which is designed as described in subparagraph (D)(ii).

(3) Exception for discharges on account of services performed for certain lenders

Paragraph (1) shall not apply to the discharge of a loan made by an organization described in paragraph (2)(D) if the discharge is on account of services performed for either such organization.

(4) Payments under National Health Service Corps Loan Repayment Program and certain State loan repayment programs

In the case of an individual, gross income shall not include any amount received under section 338B(g) of the Public Health Service Act or under a State program described in section 338I of such Act.

(g) Special rules for discharge of qualified farm indebtedness

(1) Discharge must be by qualified person

(A) In general

Subparagraph (C) of subsection (a)(1) shall apply only if the discharge is by a qualified person.

(B) Qualified person

For purposes of subparagraph (A), the term ''qualified person'' has the meaning given to such term by section 49(a)(1)(D)(iv); except that such term shall include any Federal, State, or local government or agency or instrumentality thereof.

(2) Qualified farm indebtedness

For purposes of this section, indebtedness of a taxpayer shall be treated as qualified farm indebtedness if—

(A) such indebtedness was incurred directly in connection with the operation by the taxpayer of the trade or business of farming, and

(B) 50 percent or more of the aggregate gross receipts of the taxpayer for the 3 taxable years preceding the taxable year in which the discharge of such indebtedness occurs is attributable to the trade or business of farming.

(3) Amount excluded cannot exceed sum of tax attributes and business and investment assets

(A) In general

The amount excluded under subparagraph (C) of subsection (a)(1) shall not exceed the sum of—

(i) the adjusted tax attributes of the taxpayer, and

(ii) the aggregate adjusted bases of qualified property held by the taxpayer as of the beginning of the taxable year following the taxable year in which the discharge occurs.

(B) Adjusted tax attributes

For purposes of subparagraph (A), the term ''adjusted tax attributes'' means the sum of the tax attributes described in subparagraphs (A), (B), (C), (D), (F), and (G) of subsection (b)(2) determined by taking into account $3 for each $1 of the attributes described in subparagraphs (B), (C), and (G) of subsection (b)(2) and the attribute described in subparagraph (F) of subsection (b)(2) to the extent attributable to any passive activity credit carryover.

(C) Qualified property

For purposes of this paragraph, the term ''qualified property'' means any property which is used or is held for use in a trade or business or for the production of income.

(D) Coordination with insolvency exclusion

For purposes of this paragraph, the adjusted basis of any qualified property and the amount of the adjusted tax attributes shall be determined after any reduction under subsection (b) by reason of amounts excluded from gross income under subsection (a)(1)(B).

(h) Special rules relating to qualified principal residence indebtedness

(1) Basis reduction

The amount excluded from gross income by reason of subsection (a)(1)(E) shall be applied to reduce (but not below zero) the basis of the principal residence of the taxpayer.

(2) Qualified principal residence indebtedness

For purposes of this section, the term ''qualified principal residence indebtedness'' means acquisition indebtedness (within the meaning of section 163(h)(3)(B), applied by substituting ''$2,000,000 ($1,000,000'' for ''$1,000,000 ($500,000'' in clause (ii) thereof) with respect to the principal residence of the taxpayer.

(3) Exception for certain discharges not related to taxpayer's financial condition

Subsection (a)(1)(E) shall not apply to the discharge of a loan if the discharge is on account of services performed for the lender or any other factor not directly related to a decline in the value of the residence or to the financial condition of the taxpayer.

(4) Ordering rule

If any loan is discharged, in whole or in part, and only a portion of such loan is qualified principal residence indebtedness, subsection (a)(1)(E) shall apply only to so much of the amount discharged as exceeds the amount of the loan (as determined immediately before such discharge) which is not qualified principal residence indebtedness.

(5) Principal residence

For purposes of this subsection, the term ''principal residence'' has the same meaning as when used in section 121.

(i) Deferral and ratable inclusion of income arising from business indebtedness discharged by the reacquisition of a debt instrument

(1) In general

At the election of the taxpayer, income from the discharge of indebtedness in connection with the reacquisition after December 31, 2008, and before January 1, 2011, of an applicable debt instrument shall be includible in gross income ratably over the 5-taxable-year period beginning with—

(A) in the case of a reacquisition occurring in 2009, the fifth taxable year following the taxable year in which the reacquisition occurs, and

(B) in the case of a reacquisition occurring in 2010, the fourth taxable year following the taxable year in which the reacquisition occurs.

(2) Deferral of deduction for original issue discount in debt for debt exchanges

(A) In general

If, as part of a reacquisition to which paragraph (1) applies, any debt instrument is issued for the applicable debt instrument being reacquired (or is treated as so issued under subsection (e)(4) and the regulations thereunder) and there is any original issue discount determined under subpart A of part V of subchapter P of this chapter with respect to the debt instrument so issued—

(i) except as provided in clause (ii), no deduction otherwise allowable under this chapter shall be allowed to the issuer of such debt instrument with respect to the portion of such original issue discount which—

(I) accrues before the 1st taxable year in the 5-taxable-year period in which income from the discharge of indebtedness attributable to the reacquisition of the debt instrument is includible under paragraph (1), and

(II) does not exceed the income from the discharge of indebtedness with respect to the debt instrument being reacquired, and

(ii) the aggregate amount of deductions disallowed under clause (i) shall be allowed as a deduction ratably over the 5-taxable-year period described in clause (i)(I).

If the amount of the original issue discount accruing before such 1st taxable year exceeds the income from the discharge of indebtedness with respect to the applicable debt instrument being reacquired, the deductions shall be disallowed in the order in which the original issue discount is accrued.

(B) Deemed debt for debt exchanges

For purposes of subparagraph (A), if any debt instrument is issued by an issuer and the proceeds of such debt instrument are used directly or indirectly by the issuer to reacquire an applicable debt instrument of the issuer, the debt instrument so issued shall be treated as issued for the debt instrument being reacquired. If only a portion of the proceeds from a debt instrument are so used, the rules of subparagraph (A) shall apply to the portion of any original issue discount on the newly issued debt instrument which is equal to the portion of the proceeds from such instrument used to reacquire the outstanding instrument.

(3) Applicable debt instrument

For purposes of this subsection—

(A) Applicable debt instrument

The term ''applicable debt instrument'' means any debt instrument which was issued by—

(i) a C corporation, or

(ii) any other person in connection with the conduct of a trade or business by such person.

(B) Debt instrument

The term ''debt instrument'' means a bond, debenture, note, certificate, or any other instrument or contractual arrangement constituting indebtedness (within the meaning of section 1275(a)(1)).

(4) Reacquisition

For purposes of this subsection—

(A) In general

The term ''reacquisition'' means, with respect to any applicable debt instrument, any acquisition of the debt instrument by—

(i) the debtor which issued (or is otherwise the obligor under) the debt instrument, or

(ii) a related person to such debtor.

(B) Acquisition

The term ''acquisition'' shall, with respect to any applicable debt instrument, include an acquisition of the debt instrument for cash, the exchange of the debt instrument for another debt instrument (including an exchange resulting from a modification of the debt instrument), the exchange of the debt instrument for corporate stock or a partnership interest, and the contribution of the debt instrument to capital. Such term shall also include the complete forgiveness of the indebtedness by the holder of the debt instrument.

(5) Other definitions and rules

For purposes of this subsection—

(A) Related person

The determination of whether a person is related to another person shall be made in the same manner as under subsection (e)(4).

(B) Election

(i) In general

An election under this subsection with respect to any applicable debt instrument shall be made by including with the return of tax imposed by chapter 1 for the taxable year in which the reacquisition of the debt instrument occurs a statement which—

(I) clearly identifies such instrument, and

(II) includes the amount of income to which paragraph (1) applies and such other information as the Secretary may prescribe.

(ii) Election irrevocable

Such election, once made, is irrevocable.

(iii) Pass-thru entities

In the case of a partnership, S corporation, or other pass-thru entity, the election under this subsection shall be made by the partnership, the S corporation, or other entity involved.

(C) Coordination with other exclusions

If a taxpayer elects to have this subsection apply to an applicable debt instrument, subparagraphs (A), (B), (C), and (D) of subsection (a)(1) shall not apply to the income from the discharge of such indebtedness for the taxable year of the election or any subsequent taxable year.

(D) Acceleration of deferred items

(i) In general

In the case of the death of the taxpayer, the liquidation or sale of substantially all the assets of the taxpayer (including in a title 11 or similar case), the cessation of business by the taxpayer, or similar circumstances, any item of income or deduction which is deferred under this subsection (and has not previously been taken into account) shall be taken into account in the taxable year in which such event occurs (or in the case of a title 11 or similar case, the day before the petition is filed).

(ii) Special rule for pass-thru entities

The rule of clause (i) shall also apply in the case of the sale or exchange or redemption of an interest in a partnership, S corporation, or other pass-thru entity by a partner, shareholder, or other person holding an ownership interest in such entity.

(6) Special rule for partnerships

In the case of a partnership, any income deferred under this subsection shall be allocated to the partners in the partnership immediately before the discharge in the manner such amounts would have been included in the distributive shares of such partners under section 704 if such income were recognized at such time. Any decrease in a partner's share of partnership liabilities as a result of such discharge shall not be taken into account for purposes of section 752 at the time of the discharge to the extent it would cause the partner to recognize gain under section 731. Any decrease in partnership liabilities deferred under the preceding sentence shall be taken into account by such partner at the same time, and to the extent remaining in the same amount, as income deferred under this subsection is recognized.

(7) Secretarial authority

The Secretary may prescribe such regulations, rules, or other guidance as may be necessary or appropriate for purposes of applying this subsection, including—

(A) extending the application of the rules of paragraph (5)(D) to other circumstances where appropriate,

(B) requiring reporting of the election (and such other information as the Secretary may require) on returns of tax for subsequent taxable years, and

(C) rules for the application of this subsection to partnerships, S corporations, and other pass-thru entities, including for the allocation of deferred deductions.

(Aug. 16, 1954, ch. 736, 68A Stat. 32; June 29, 1956, ch. 463, § 5, 70 Stat. 403; Pub. L. 88–496, § 1(a), June 8, 1960, 74 Stat. 164; Pub. L. 94–455, title XIX, §§ 1906(b)(13)(A), 1951(b)(2)(A), Oct. 4, 1976, 90 Stat. 1834, 1836; Pub. L. 96–589, § 2(a), Dec. 24, 1980, 94 Stat. 3389; Pub. L. 97–354, § 3(e), Oct. 19, 1982, 96 Stat. 1689; Pub. L. 97–448, title I, § 102(h)(1), title III, § 304(d), Jan. 12, 1983, 96 Stat. 2372, 2398; Pub. L. 98–369, div. A, title I, § 59(a), (b)(1), title IV, § 474(r)(5), title VII, § 721(b)(2), title X, § 1076(a), July 18, 1984, 98 Stat. 576, 839, 966, 1053; Pub. L. 99–514, title I, § 104(b)(2), title II, § 231(d)(3)(D), title IV, § 405(a), title VI, § 621(e)(1), title VIII, §§ 805(c)(2)–(4), 822(a), (b)(1)–(3), title XI, § 1171(b)(4), title XVIII, § 1847(b)(7), Oct. 22, 1986, 100 Stat. 2105, 2179, 2224, 2266, 2362, 2373, 2513, 2856; Pub. L. 100–647, title I, § 1004(a)(1)–(4), (6), Nov. 10, 1988, 102 Stat. 3385, 3387; Pub. L. 101–508, title XI, §§ 11325(a)(1), (b), 11813(b)(6), Nov. 5, 1990, 104 Stat. 1388–466, 1388–551; Pub. L. 103–66, title XIII, §§ 13150(a)–(c)(5), 13226(a)(1), (2)(B), (b)(1)–(3), Aug. 10, 1993, 107 Stat. 446–448, 487, 488; Pub. L. 104–188, title I, § 1703(n)(2), Aug. 20, 1996, 110 Stat. 1877; Pub. L. 105–34, title II, § 225(a), Aug. 5, 1997, 111 Stat. 820; Pub. L. 105–206, title VI, § 6004(f), July 22, 1998, 112 Stat. 795; Pub. L. 107–147, title

IV, §402(a), Mar. 9, 2002, 116 Stat. 40; Pub. L. 108–357, title III, §320(a), title VIII, §896(a), Oct. 22, 2004, 118 Stat. 1473, 1648; Pub. L. 110–142, §2(a)–(c), Dec. 20, 2007, 121 Stat. 1803, 1804; Pub. L. 110–343, div. A, title III, §303(a), Oct. 3, 2008, 122 Stat. 3807; Pub. L. 111–5, div. B, title I, §1231(a), Feb. 17, 2009, 123 Stat. 338.)

REFERENCES IN TEXT

Sections 338B(g) and 338I of the Public Health Service Act, referred to in subsec. (f)(4), are classified to sections 254*l*–1(g) and 254q–1, respectively, of Title 42, The Public Health and Welfare.

AMENDMENTS

2009—Subsec. (i). Pub. L. 111–5 added subsec. (i).

2008—Subsec. (a)(1)(E). Pub. L. 110–343 substituted ''January 1, 2013'' for ''January 1, 2010''.

2007—Subsec. (a)(1)(E). Pub. L. 110–142, §2(a), added subpar. (E).

Subsec. (a)(2)(A). Pub. L. 110–142, §2(c)(1), substituted ''(D), and (E)'' for ''and (D)''.

Subsec. (a)(2)(C). Pub. L. 110–142, §2(c)(2), added subpar. (C).

Subsec. (h). Pub. L. 110–142, §2(b), added subsec. (h).

2004—Subsec. (e)(8). Pub. L. 108–357, §896(a), amended heading and text of par. (8) generally. Prior to amendment, text read as follows: ''For purposes of determining income of a debtor from discharge of indebtedness, if a debtor corporation transfers stock to a creditor in satisfaction of its indebtedness, such corporation shall be treated as having satisfied the indebtedness with an amount of money equal to the fair market value of the stock.''

Subsec. (f)(4). Pub. L. 108–357, §320(a), added par. (4).

2002—Subsec. (d)(7)(A). Pub. L. 107–147 inserted '', including by not taking into account under section 1366(a) any amount excluded under subsection (a) of this section'' before period at end.

1998—Subsec. (f)(2). Pub. L. 105–206, §6004(f)(1), amended concluding provisions generally. Prior to amendment, concluding provisions read as follows: ''The term 'student loan' includes any loan made by an educational organization so described or by an organization exempt from tax under section 501(a) to refinance a loan meeting the requirements of the preceding sentence.''

Subsec. (f)(3). Pub. L. 105–206, §6004(f)(2), struck out ''(or by an organization described in paragraph (2)(E) from funds provided by an organization described in paragraph (2)(D))'' after ''paragraph (2)(D)''.

1997—Subsec. (f)(2). Pub. L. 105–34, §225(a)(1), added subpar. (D) and concluding provisions and struck out former subpar. (D) which read as follows: ''any educational organization so described pursuant to an agreement with any entity described in subparagraph (A), (B), or (C) under which the funds from which the loan was made were provided to such educational organization.''

Subsec. (f)(2)(B). Pub. L. 105–34, §225(a)(1), struck out ''or'' at end.

Subsec. (f)(3). Pub. L. 105–34, §225(a)(2), added par. (3).

1996—Subsec. (d)(9)(A). Pub. L. 104–188 substituted ''paragraph (3)(C)'' for ''paragraph (3)(B)''.

1993—Subsec. (a)(1)(D). Pub. L. 103–66, §13150(a), added subpar. (D).

Subsec. (a)(2)(A). Pub. L. 103–66, §13150(c)(1), substituted '', (C), and (D)'' for ''and (C)''.

Subsec. (a)(2)(B). Pub. L. 103–66, §13150(c)(2), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: ''Subparagraph (C) of paragraph (1) shall not apply to a discharge to the extent the taxpayer is insolvent.''

Subsec. (b)(2)(C) to (E). Pub. L. 103–66, §13226(b)(1), added subpar. (C) and redesignated former subpars. (C) and (D) as (D) and (E), respectively. Former subpar. (E) redesignated (F).

Subsec. (b)(2)(F). Pub. L. 103–66, §13226(b)(2), added subpar. (F). Former subpar. (F) redesignated (G).

Pub. L. 103–66, §13226(b)(1), redesignated subpar. (E) as (F).

Subsec. (b)(2)(G). Pub. L. 103–66, §13226(b)(2), redesignated subpar. (F) as (G).

Subsec. (b)(3)(B). Pub. L. 103–66, §13226(b)(3)(A), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: ''The reductions described in subparagraphs (B) and (E) of paragraph (2) shall be 33⅓ cents for each dollar excluded by subsection (a).''

Subsec. (b)(4)(B). Pub. L. 103–66, §13226(b)(3)(B), substituted ''(D)'' for ''(C)'' in heading and text.

Subsec. (b)(4)(C). Pub. L. 103–66, §13226(b)(3)(C), substituted ''(G)'' for ''(E)'' in heading and text.

Subsec. (c). Pub. L. 103–66, §13150(b), added subsec. (c).

Subsec. (d). Pub. L. 103–66, §13150(c)(3)(B), substituted ''certain provisions'' for ''subsections (a), (b) and (g)'' in heading.

Subsec. (d)(6), (7)(A). Pub. L. 103–66, §13150(c)(3)(A), (C), substituted ''Certain provisions'' for ''Subsections (a), (b) and (g)'' in heading and ''subsections (a), (b), (c), and (g)'' for ''subsections (a), (b), and (g)'' in text.

Subsec. (d)(7)(B). Pub. L. 103–66, §13150(c)(4), inserted at end ''The preceding sentence shall not apply to any discharge to the extent that subsection (a)(1)(D) applies to such discharge.''

Subsec. (d)(9)(A). Pub. L. 103–66, §13150(c)(5), inserted ''or under paragraph (3)(B) of subsection (c)'' after ''subsection (b)''.

Subsec. (e)(6). Pub. L. 103–66, §13226(a)(2)(B), substituted ''Except as provided in regulations, for'' for ''For''.

Subsec. (e)(8). Pub. L. 103–66, §13226(a)(1)(B), amended heading and text of par. (8) generally. Prior to amendment, text read as follows: ''For purposes of determining income of the debtor from discharge of indebtedness, the stock for debt exception shall not apply—

''(A) to the issuance of nominal or token shares, or

''(B) with respect to an unsecured creditor, where the ratio of the value of the stock received by such unsecured creditor to the amount of his indebtedness cancelled or exchanged for stock in the workout is less than 50 percent of a similar ratio computed for all unsecured creditors participating in the workout.

Any stock which is disqualified stock (as defined in paragraph (10)(B)(ii)) shall not be treated as stock for purposes of this paragraph.''

Subsec. (e)(10), (11). Pub. L. 103–66, §13226(a)(1)(A), redesignated par. (11) as (10) and struck out former par. (10) which related to satisfaction of indebtedness by transfer of corporation's stock.

Subsec. (g)(3)(B). Pub. L. 103–66, §13226(b)(3)(D), substituted ''subparagraphs (A), (B), (C), (D), (F), and (G)'' for ''subparagraphs (A), (B), (C), and (E)'' and ''subparagraphs (B), (C), and (G)'' for ''subparagraphs (B) and (E)'' and inserted before period at end ''and the attribute described in subparagraph (F) of subsection (b)(2) to the extent attributable to any passive activity credit carryover''.

1990—Subsec. (e)(8). Pub. L. 101–508, §11325(b)(2), inserted provision at end that any stock which is a disqualified stock, as so defined, not be treated as stock for purposes of this paragraph.

Subsec. (e)(10)(B). Pub. L. 101–508, §11325(b)(1), substituted heading for one which read: ''Exception for title 11 cases and insolvent debtors'' and amended text generally. Prior to amendment, text read as follows: ''Subparagraph (A) shall not apply in the case of a debtor in a title 11 case or to the extent the debtor is insolvent.''

Subsec. (e)(11). Pub. L. 101–508, §11325(a)(1), added par. (11).

Subsec. (g)(1)(B). Pub. L. 101–508, §11813(b)(6), substituted ''section 49(a)(1)(D)(iv)'' for ''section 46(c)(8)(D)(iv)''.

1988—Subsec. (a)(1)(C). Pub. L. 100–647, §1004(a)(1), added subpar. (C).

Subsec. (a)(2). Pub. L. 100–647, §1004(a)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Subparagraph (B) of paragraph (1) shall not apply to a discharge which occurs in a title 11 case.''

Subsec. (b). Pub. L. 100–647, § 1004(a)(3), struck out ''in title 11 case or insolvency'' after ''Reduction of tax attributes'' in heading and substituted ''subparagraph (A), (B), or (C)'' for ''subparagraph (A) or (B)'' in text of par. (1).

Subsec. (d). Pub. L. 100–647, § 1004(a)(6)(B), which directed amendment of subsec. (d) heading by substituting ''subsections (a), (b), and (g)'' for ''subsections (a), and (b)'', was executed by making the substitution for ''subsections (a) and (b)'' as the probable intent of Congress.

Subsec. (d)(6). Pub. L. 100–647, § 1004(a)(6)(A), (C), substituted ''Subsections (a), (b), and (g)'' for ''Subsections (a) and (b)'' in heading and ''subsections (a), (b), and (g)'' for ''subsections (a) and (b)'' in text.

Subsec. (d)(7)(A). Pub. L. 100–647, § 1004(a)(6)(A), (C), substituted ''Subsections (a), (b), and (g)'' for ''Subsections (a) and (b)'' in heading and ''subsections (a), (b), and (g)'' for ''subsections (a) and (b)'' in text.

Subsec. (g). Pub. L. 100–647, § 1004(a)(4), substituted ''indebtedness'' for ''indebtedness of solvent farmers'' in heading and amended text generally. Prior to amendment, text read as follows:

''(1) IN GENERAL.—For purposes of this section and section 1017, the discharge by a qualified person of qualified farm indebtedness of a taxpayer who is not insolvent at the time of the discharge shall be treated in the same manner as if the discharge had occurred when the taxpayer was insolvent.

''(2) QUALIFIED FARM INDEBTEDNESS.—For purposes of this subsection, indebtedness of a taxpayer shall be treated as qualified farm indebtedness if—

''(A) such indebtedness was incurred directly in connection with the operation by the taxpayer of the trade or business of farming, and

''(B) 50 percent or more of the average annual gross receipts of the taxpayer for the 3 taxable years preceding the taxable year in which the discharge of such indebtedness occurs is attributable to the trade or business of farming.

''(3) QUALIFIED PERSON.—For purposes of this subsection, the term 'qualified person' means a person described in section 46(c)(8)(D)(iv).''

1986—Subsec. (a)(1)(C). Pub. L. 99–514, § 822(a), struck out subpar. (C) relating to exclusion from gross income if the indebtedness discharged is qualified business indebtedness.

Subsec. (a)(2). Pub. L. 99–514, § 822(b)(1), substituted ''Subparagraph (B) of paragraph (1)'' for ''Subparagraphs (B) and (C) of paragraph (1)'' in subpar. (A), struck out subpar. (A) designation and heading, and struck out subpar. (B) providing that insolvency exclusion takes precedence over qualified business exclusion.

Subsec. (b)(2)(B). Pub. L. 99–514, § 231(d)(3)(D), substituted ''General business credit'' for ''Research credit and general business credit'' in heading and amended text, as amended by this Act (Pub. L. 99–514, § 1171(b)(4) (see below)), generally. Prior to amendment, text read as follows: ''Any carryover to or from the taxable year of a discharge of an amount for purposes of determining the amount allowable as a credit under—

''(i) section 30 (relating to credit for increasing research activities), or

''(ii) section 38 (relating to general business credit).

For purposes of this subparagraph, there shall not be taken into account any portion of a carryover which is attributable to the employee stock ownership credit determined under section 41.''

Pub. L. 99–514, § 1171(b)(4), struck out last sentence which had been eliminated by the general amendment of subpar. (B) by Pub. L. 99–514, § 231(d)(3)(D). See above.

Subsec. (b)(2)(E). Pub. L. 99–514, § 1847(b)(7), substituted ''section 27'' for ''section 33''.

Subsec. (b)(3). Pub. L. 99–514, § 104(b)(2), substituted ''33⅓ cents'' for ''50 cents''.

Subsec. (c). Pub. L. 99–514, § 822(b)(2), struck out subsec. (c) relating to tax treatment of discharge of qualified business indebtedness.

Subsec. (d). Pub. L. 99–514, § 822(b)(3)(B), struck out reference to subsec. (c) in heading.

Subsec. (d)(4). Pub. L. 99–514, § 822(b)(3)(A), struck out par. (4) relating to treatment of indebtedness as qualified business indebtedness.

Subsec. (d)(6), (7)(A). Pub. L. 99–514, § 822(b)(3)(B), struck out reference to subsec. (c) in heading and text.

Subsec. (d)(7)(B). Pub. L. 99–514, § 822(b)(3)(C), struck out ''The preceding sentence shall not apply to any discharge to the extent that subsection (a)(1)(C) applies to such discharge.''

Subsec. (d)(9)(A). Pub. L. 99–514, § 822(b)(3)(D), struck out ''under paragraph (4) of this subsection or'' after ''An election''.

Subsec. (e)(7)(A)(ii)(I). Pub. L. 99–514, § 805(c)(2), substituted ''subsection (a) or (b) of section 166'' for ''subsection (a), (b), or (c) of section 166''.

Subsec. (e)(7)(B) to (D). Pub. L. 99–514, § 805(c)(3), redesignated subpars. (C) to (E) as (B) to (D), respectively, and struck out former subpar. (B) which related to taxpayers on reserve method.

Subsec. (e)(7)(E), (F). Pub. L. 99–514, § 805(c)(3), (4), redesignated subpar. (F) as (E) and substituted ''the foregoing subparagraphs'' for ''subparagraphs (A), (B), (C), (D), and (E)''. Former subpar. (E) redesignated (D).

Subsec. (e)(10)(C). Pub. L. 99–514, § 621(e), repealed the amendment by Pub. L. 98–369, § 59(b)(1), which had added subpar. (C) creating an exception for transfers in certain workouts of the satisfaction of indebtedness by corporation's stock. See 1984 Amendment note below.

Subsec. (g). Pub. L. 99–514, § 405(a), added subsec. (g).

1984—Subsec. (b)(2)(B). Pub. L. 98–369, § 474(r)(5), substituted provisions relating to research credits and general business credits covering carryovers to or from the taxable year of a discharge of an amount for purposes of determining the amount allowable as a credit under section 30 (relating to credit for increasing research activities), or section 38 (relating to general business credit), and directing that there shall not be taken into account any portion of a carryover which is attributable to the employee stock ownership credit determined under section 41 for former provisions covering carryovers to or from the taxable year of the discharge of an amount for purposes of determining the amount of a credit allowable under section 38 (relating to investment in certain depreciable property), section 40 (relating to expenses of work incentive programs), section 44B (relating to credit for employment of certain new employees), section 44E (relating to alcohol used as a fuel), or section 44F (relating to credit for increasing research activities), and directing that, for purposes of clause (i), there could not be taken into account any portion of a carryover which was attributable to the employee plan credit (within the meaning of section 48(*o*)(3)).

Subsec. (d)(6). Pub. L. 98–369, § 721(b)(2), struck out ''or S corporation shareholder level'' in heading and second sentence which provided that ''In the case of an S corporation, subsections (a), (b), and (c) shall apply at the shareholder level.''. See par. (7)(A).

Subsec. (d)(7) to (10). Pub. L. 98–369, § 721(b)(2), added par. (7) and redesignated former pars. (7) to (9) as (8) to (10), respectively.

Subsec. (e)(10). Pub. L. 98–369, § 59(a), added par. (10).

Subsec. (e)(10)(C). Pub. L. 98–369, § 59(b)(1), which added subpar. (C), effective as if included in the amendments made by section 806(e) and (f) of Pub. L. 94–455, was repealed by Pub. L. 99–514, § 621(e), (f)(2), eff. Jan. 1, 1986, with certain exceptions, see Effective Date of 1986 Amendment note below.

Subsec. (f). Pub. L. 98–369, § 1076(a), added subsec. (f).

1983—Subsec. (b)(2)(B)(v). Pub. L. 97–448, § 102(h)(1), added cl. (v).

Subsec. (e)(7)(A)(iii). Pub. L. 97–448, § 304(d), added cl. (iii).

1982—Subsec. (d)(6). Pub. L. 97–354 inserted ''or S corporation shareholder level'' in heading and inserted ''In the case of an S corporation, subsections (a), (b), and (c) shall be applied at the shareholder level.''

1980—Pub. L. 96–589 completely revised and expanded provisions by specifying the types of indebtedness and by setting out priorities among the exclusions, to reflect the revision of Title 11, Bankruptcy, in 1978.

1976—Pub. L. 94–455, §1951(b)(2)(A), struck out ''(a) Special rule of exclusion.—'' after ''Income from discharge of indebtedness'' and struck out subsec. (b) which related to discharge, cancellation, or modification of indebtedness of certain railroad corporations.

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

1960—Subsec. (b). Pub. L. 86–496 provided that if the discharge, cancellation, or modification of any indebtedness is effected pursuant to a court order in a receivership proceeding or in a proceeding under section 77 of the Bankruptcy Act, commenced before Jan. 1, 1960, then no amount is to be included in gross income with respect to it, and struck out provisions which made subsection inapplicable to discharges occurring in a taxable year beginning after Dec. 31, 1957.

1956—Subsec. (b). Act June 29, 1956, substituted ''December 31, 1957'' for ''December 31, 1955''.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1231(b), Feb. 17, 2009, 123 Stat. 341, provided that: ''The amendments made by this section [amending this section] shall apply to discharges in taxable years ending after December 31, 2008.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. A, title III, §303(b), Oct. 3, 2008, 122 Stat. 3807, provided that: ''The amendment made by this section [amending this section] shall apply to discharges of indebtedness occurring on or after January 1, 2010.''

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–142, §2(d), Dec. 20, 2007, 121 Stat. 1804, provided that: ''The amendments made by this section [amending this section] shall apply to discharges of indebtedness on or after January 1, 2007.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title III, §320(c), Oct. 22, 2004, 118 Stat. 1473, provided that: ''The amendments made by this section [amending this section, sections 3121, 3231, 3306, and 3401 of this title, and section 409 of Title 42, The Public Health and Welfare] shall apply to amounts received by an individual in taxable years beginning after December 31, 2003.''

Pub. L. 108–357, title VIII, §896(b), Oct. 22, 2004, 118 Stat. 1649, provided that: ''The amendment made by this section [amending this section] shall apply with respect to cancellations of indebtedness occurring on or after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title IV, §402(b), Mar. 9, 2002, 116 Stat. 40, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by this section [amending this section] shall apply to discharges of indebtedness after October 11, 2001, in taxable years ending after such date.

''(2) EXCEPTION.—The amendment made by this section shall not apply to any discharge of indebtedness before March 1, 2002, pursuant to a plan of reorganization filed with a bankruptcy court on or before October 11, 2001.''

EFFECTIVE DATE OF 1998 AMENDMENT

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

EFFECTIVE DATE OF 1997 AMENDMENT

Section 225(b) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section] shall apply to discharges of indebtedness 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.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13150(d) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section and sections 703 and 1017 of this title] shall apply to discharges after December 31, 1992, in taxable years ending after such date.''

Section 13226(a)(3) of Pub. L. 103–66 provided that:

''(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendments made by this subsection [amending this section and section 382 of this title] shall apply to stock transferred after December 31, 1994, in satisfaction of any indebtedness.

''(B) EXCEPTION FOR TITLE 11 CASES.—The amendments made by this subsection shall not apply to stock transferred in satisfaction of any indebtedness if such transfer is in a title 11 or similar case (as defined in section 368(a)(3)(A) of the Internal Revenue Code of 1986) which was filed on or before December 31, 1993.''

Section 13226(b)(4) of Pub. L. 103–66 provided that: ''The amendments made by this subsection [amending this section] shall apply to discharges of indebtedness in taxable years beginning after December 31, 1993.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11325(c) of Pub. L. 101–508 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 1275 of this title] shall apply to debt instruments issued, and stock transferred, after October 9, 1990, in satisfaction of any indebtedness.

''(2) EXCEPTIONS.—The amendments made by this section shall not apply to any debt instrument issued, or stock transferred, in satisfaction of any indebtedness if such issuance or transfer (as the case may be)—

''(A) is in a title 11 or similar case (as defined in section 368(a)(3)(A) of the Internal Revenue Code of 1986) which was filed on or before October 9, 1990,

''(B) is pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such issuance or transfer,

''(C) is pursuant to a transaction which was described in documents filed with the Securities and Exchange Commission on or before October 9, 1990, or

''(D) is pursuant to a transaction—

''(i) the material terms of which were described in a written public announcement on or before October 9, 1990,

''(ii) which was the subject of a prior filing with the Securities and Exchange Commission, and

''(iii) which is the subject of a subsequent filing with the Securities and Exchange Commission before January 1, 1991.''

Amendment by section 11813(b)(6) 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 1988 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(b)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 231(d)(3)(D) 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.

Section 405(c) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section and section 1017 of this title] shall apply to discharges of indebtedness occurring after April 9, 1986, in taxable years ending after such date.''

Repeal by section 621(e)(1) of Pub. L. 99–514 of amendment by section 59(b)(1) of Pub. L. 99–369, which was effective as if included in the amendments made by section 806(e) and (f) of Pub. L. 94–455, effective Jan. 1, 1986, with certain exceptions, see section 621(f)(2) of Pub. L. 99–514, set out as a note under section 382 of this title.

Amendment by section 805(c)(2), (4) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain changes required in method of accounting, see section 805(d) of Pub. L. 99–514, set out as a note under section 166 of this title.

Section 822(c) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section and section 1017 of this title] shall apply to discharges after December 31, 1986.''

Amendment by section 1171(b)(4) of Pub. L. 99–514 applicable to compensation paid or accrued after Dec. 31, 1986, in taxable years ending after such date, except as otherwise provided, see section 1171(c) of Pub. L. 99–514, set out as a note under section 38 of this title.

Amendment by section 1847(b)(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.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 59(b)(2) of Pub. L. 98–369 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if it had been included in the amendments made by subsections (e) and (f) of section 806 of the Tax Reform Act of 1976 [Pub. L. 94–455].'' See Effective Date of 1976 Amendment note set out under section 382 of this title.

Section 59(b)[(c)] of Pub. L. 98–369 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 after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.

''(2) TRANSITIONAL RULE.—The amendment made by subsection (a) shall not apply to the transfer by a corporation of its stock in exchange for debt of the corporation after the date of the enactment of this Act if such transfer is—

''(A) pursuant to a written contract requiring such transfer which was binding on the corporation at all times on June 7, 1984, and at all times after such date but only if the transfer takes place before January 1, 1985, and only if the transferee held the debt at all times on June 7, 1984, or

''(B) pursuant to the exercise of an option to exchange debt for stock but only if such option was in effect at all times on June 7, 1984, and at all times after such date and only if at all times on June 7, 1984, the option and the debt were held by the same person.

''(3) CERTAIN TRANSFERS TO CONTROLLING SHAREHOLDER.—The amendment made by subsection (a) shall not apply to any transfer before January 1, 1985, by a corporation of its stock in exchange for debt of such corporation if—

''(A) such transfer is to another corporation which at all times on June 7, 1984, owned 75 percent or more of the total value of the stock of the corporation making such transfer, and

''(B) immediately after such transfer, the transferee corporation owns 80 percent or more of the total value of the stock of the transferor corporation.

''(4) CERTAIN TRANSFERS PURSUANT TO DEBT RESTRUCTURE AGREEMENT.—The amendment made by subsection (a) shall not apply to the transfer by a corporation of its stock in exchange for debt of the corporation after the date of the enactment of this Act and before January 1, 1985, if—

''(A) such transfer is covered by a debt restructure agreement entered into by the corporation during November 1983, and

''(B) such agreement was specified in a registration statement filed with the Securities and Exchange Commission by the corporation on March 7, 1984.''

Amendment by section 474(r)(5) 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(b) of Pub. L. 98–369 applicable to contributions to capital after Dec. 31, 1980, in taxable years ending after such date, see section 721(y)(2) of Pub. L. 98–369, set out as a note under section 1361 of this title.

Section 1076(b) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section] shall apply to discharges of indebtedness made on or after January 1, 1983.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by title I of 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 1980 AMENDMENT

Section 7 of Pub. L. 96–589, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) FOR SECTION 2 (RELATING TO TAX TREATMENT OF DISCHARGE OF INDEBTEDNESS).—

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by section 2 [amending this section and sections 111, 118, 382, 703 and 1017 of this title] shall apply to any transaction which occurs after December 31, 1980, other than a transaction which occurs in a proceeding in a bankruptcy case or similar judicial proceeding (or in a proceeding under the Bankruptcy Act) [Title 11, Bankruptcy] commencing on or before December 31, 1980.

''(2) TRANSITIONAL RULE.—In the case of any discharge of indebtedness to which subparagraph (A) or (B) of section 108(a)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to exclusion from gross income), as amended by section 2, applies and which occurs before January 1, 1982, or which occurs in a proceeding in a bankruptcy case or similar judicial proceedings commencing before January 1, 1982, then—

''(A) section 108(b)(2) of the such Code (relating to reduction of tax attributes), as so amended, shall be applied without regard to subparagraphs (A), (B), (C), and (E) thereof, and

''(B) the basis of any property shall not be reduced under section 1017 of such Code (relating to reduction in basis in connection with discharges of indebtedness), as so amended, below the fair market value of such property on the date the debt is discharged.

''(b) FOR SECTION 3 (RELATING TO RULES RELATING TO TITLE 11 CASES FOR INDIVIDUALS).—The amendments made by section 3 [enacting sections 1398 and 1399 of this title and amending sections 443, 6012 and 6103 of this title] shall apply to any bankruptcy case commencing more than 90 days after the date of the enactment of this Act [Dec. 24, 1980].

''(c) FOR SECTION 4 (RELATING TO CORPORATE REORGANIZATION PROVISIONS).—

''(1) IN GENERAL.—The amendments made by section 4 [enacting section 370 of this title and amending sections 354, 355, 357, 368 and 381 of this title] shall apply to any bankruptcy case or similar judicial proceeding commencing after December 31, 1980.

''(2) EXCHANGES OF PROPERTY FOR ACCRUED INTEREST.—The amendments made by subsection (e) of section 4 [amending sections 354 and 355 of this title] (relating to treatment of property attributable to accrued interest) shall also apply to any exchange—

''(A) which occurs after December 31, 1980, and

''(B) which does not occur in a bankruptcy case or similar judicial proceeding (or in a proceeding under the Bankruptcy Act) commenced on or before December 31, 1980.

''(d) FOR SECTION 5 (RELATING TO MISCELLANEOUS CORPORATE AMENDMENTS).—

''(1) FOR SUBSECTION (a) (RELATING TO EXEMPTION FROM PERSONAL HOLDING COMPANY TAX).—The amendments made by subsection (a) of section 5 [amending section 542 of this title] shall apply to any bankruptcy case or similar judicial proceeding commenced after December 31, 1980.

''(2) FOR SUBSECTION (b) (RELATING TO REPEAL OF SPECIAL TREATMENT FOR CERTAIN RAILROAD REDEMPTIONS).—The amendments made by subsection (b) of section 5 [amending section 302 of this title] shall apply to stock which is issued after December 31, 1980 (other than stock issued pursuant to a plan of reorganization approved on or before that date).

''(3) FOR SUBSECTION (c) (RELATING TO APPLICATION OF 12-MONTH LIQUIDATION RULE).—The amendment made by subsection (c) of section 5 [amending section 337 of this title] shall apply to any bankruptcy case or similar judicial proceeding commenced after December 31, 1980.

''(4) FOR SUBSECTION (d) (RELATING TO PERMITTING BANKRUPTCY ESTATE TO BE SUBCHAPTER S SHAREHOLDER).—The amendment made by subsection (d) of section 5 [amending section 1371 of this title] shall apply to any bankruptcy case commenced on or after October 1, 1979.

''(5) FOR SUBSECTION (e) (RELATING TO CERTAIN TRANSFERS TO CONTROLLED CORPORATIONS).—The amendments made by subsection (e) of section 5 [amending section 351 of this title] shall apply as provided in subsection (a) of this section.

''(6) FOR SUBSECTION (f) (RELATING TO EFFECT OF DEBT DISCHARGE ON EARNINGS AND PROFITS).—The amendment made by subsection (f) of section 5 [amending section 312 of this title] shall apply as provided in subsection (a) of this section.

''(e) FOR SECTION 6 (RELATING TO CHANGES IN TAX PROCEDURES).—The amendments made by section 6 [enacting sections 6658 and 7464 of this title, amending sections 128, 354, 422, 1023, 3302, 6012, 6036, 6155, 6161, 6212, 6213, 6216, 6326 [now 6327], 6404, 6503, 6512, 6532, 6871, 6872, 6873, 7430, and 7508 of this title, repealing section 1018 of this title, and redesignating former section 7464 of this title as 7465] shall take effect on October 1, 1979, but shall not apply to any proceeding under the Bankruptcy Act [Title 11] commenced before October 1, 1979.

''(f) ELECTION TO SUBSTITUTE SEPTEMBER 30, 1979, FOR DECEMBER 31, 1980.—

''(1) IN GENERAL.—The debtor (or debtors) in a bankruptcy case or similar judicial proceeding may (with the approval of the court) elect to apply subsections (a), (c), and (d) by substituting 'September 30, 1979' for 'December 31, 1980' each place it appears in such subsections.

''(2) EFFECT OF ELECTION.—Any election made under paragraph (1) with respect to any proceeding shall apply to all parties to the proceeding.

''(3) REVOCATION ONLY WITH CONSENT.—Any election under this subsection may be revoked only with the consent of the Secretary of the Treasury or his delegate.

''(4) TIME AND MANNER OF ELECTION.—Any election under this subsection shall be made at such time, and in such manner, as the Secretary of the Treasury or his delegate may by regulations prescribe.

''(g) DEFINITIONS.—For purposes of this section—

''(1) BANKRUPTCY CASE.—The term 'bankruptcy case' means any case under title 11 of the United States Code (as recodified by Public Law 95–598).

''(2) SIMILAR JUDICIAL PROCEEDING.—The term 'similar judicial proceeding' means a receivership, foreclosure, or similar proceeding in a Federal or State court (as modified by section 368(a)(3)(D) of the Internal Revenue Code of 1986).''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1951(b)(2)(A) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1951(d) of Pub. L. 94–455, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 1(b) of Pub. L. 86–496 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after December 31, 1959, but only with respect to discharges occurring after such date.''

SAVINGS PROVISION

For provisions that nothing in amendment by section 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.

Section 1951(b)(2)(B) of Pub. L. 94–455 provided that: ''If any discharge, cancellation, or modification of indebtedness of a railroad corporation occurs in a taxable year beginning after December 31, 1976, pursuant to an order of a court in a proceeding referred to in section 108(b)(A) or (B) which commenced before January 1, 1960, then, notwithstanding the amendments made by subparagraph (A) [amending this section] the provisions of subsection (b) of section 108 shall be considered as not repealed with respect to such discharge, cancellation, or modification of indebtedness.''

EXCLUSION OF CERTAIN CANCELLATIONS OF INDEBTEDNESS

Pub. L. 107–134, title I, §105, Jan. 23, 2002, 115 Stat. 2432, provided that:

''(a) IN GENERAL.—For purposes of the Internal Revenue Code of 1986—

''(1) gross income shall not include any amount which (but for this section) would be includible in gross income by reason of the discharge (in whole or in part) of indebtedness of any taxpayer if the discharge is by reason of the death of an individual incurred as the result of the terrorist attacks against the United States on September 11, 2001, or as the result of illness incurred as a result of an attack involving anthrax occurring on or after September 11, 2001, and before January 1, 2002; and

''(2) return requirements under section 6050P of such Code shall not apply to any discharge described in paragraph (1).

''(b) EFFECTIVE DATE.—This section shall apply to discharges made on or after September 11, 2001, and before January 1, 2002.''

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.

§ 109. Improvements by lessee on lessor's property

Gross income does not include income (other than rent) derived by a lessor of real property on the termination of a lease, representing the value of such property attributable to buildings erected or other improvements made by the lessee.

(Aug. 16, 1954, ch. 736, 68A Stat. 33.)

§ 110. Qualified lessee construction allowances for short-term leases

(a) In general

Gross income of a lessee does not include any amount received in cash (or treated as a rent reduction) by a lessee from a lessor—

(1) under a short-term lease of retail space, and

(2) for the purpose of such lessee's constructing or improving qualified long-term real property for use in such lessee's trade or business at such retail space,

but only to the extent that such amount does not exceed the amount expended by the lessee for such construction or improvement.

(b) Consistent treatment by lessor

Qualified long-term real property constructed or improved in connection with any amount excluded from a lessee's income by reason of subsection (a) shall be treated as nonresidential real property of the lessor (including for purposes of section 168(i)(8)(B)).

(c) Definitions

For purposes of this section—

(1) Qualified long-term real property

The term ''qualified long-term real property'' means nonresidential real property which is part of, or otherwise present at, the retail space referred to in subsection (a) and which reverts to the lessor at the termination of the lease.

(2) Short-term lease

The term ''short-term lease'' means a lease (or other agreement for occupancy or use) of retail space for 15 years or less (as determined under the rules of section 168(i)(3)).

(3) Retail space

The term ''retail space'' means real property leased, occupied, or otherwise used by a lessee in its trade or business of selling tangible personal property or services to the general public.

(d) Information required to be furnished to Secretary

Under regulations, the lessee and lessor described in subsection (a) shall, at such times and in such manner as may be provided in such regulations, furnish to the Secretary—

(1) information concerning the amounts received (or treated as a rent reduction) and expended as described in subsection (a), and

(2) any other information which the Secretary deems necessary to carry out the provisions of this section.

(Added Pub. L. 105–34, title XII, § 1213(a), Aug. 5, 1997, 111 Stat. 1000.)

PRIOR PROVISIONS

A prior section 110, act Aug. 16, 1954, ch. 736, 68A Stat. 33, related to income taxes paid by lessee corporations, prior to repeal by Pub. L. 101–508, title XI, § 11801(a)(6), Nov. 5, 1990, 104 Stat. 1388–520.

EFFECTIVE DATE

Section 1213(e) of Pub. L. 105–34 provided that: ''The amendments made by this section [enacting this section and amending sections 168 and 6724 of this title] shall apply to leases entered into after the date of the enactment of this Act [Aug. 5, 1997].''

§ 111. Recovery of tax benefit items

(a) Deductions

Gross income does not include income attributable to the recovery during the taxable year of any amount deducted in any prior taxable year to the extent such amount did not reduce the amount of tax imposed by this chapter.

(b) Credits

(1) In general

If—

(A) a credit was allowable with respect to any amount for any prior taxable year, and

(B) during the taxable year there is a downward price adjustment or similar adjustment,

the tax imposed by this chapter for the taxable year shall be increased by the amount of the credit attributable to the adjustment.

(2) Exception where credit did not reduce tax

Paragraph (1) shall not apply to the extent that the credit allowable for the recovered amount did not reduce the amount of tax imposed by this chapter.

(3) Exception for investment tax credit and foreign tax credit

This subsection shall not apply with respect to the credit determined under section 46 and the foreign tax credit.

(c) Treatment of carryovers

For purposes of this section, an increase in a carryover which has not expired before the beginning of the taxable year in which the recovery or adjustment takes place shall be treated as reducing tax imposed by this chapter.

(d) Special rules for accumulated earnings tax and for personal holding company tax

In applying subsection (a) for the purpose of determining the accumulated earnings tax under section 531 or the tax under section 541 (relating to personal holding companies)—

(1) any excluded amount under subsection (a) allowed for the purposes of this subtitle (other than section 531 or section 541) shall be allowed whether or not such amount resulted in a reduction of the tax under section 531 or the tax under section 541 for the prior taxable year; and

(2) where any excluded amount under subsection (a) was not allowable as a deduction