''(A) For purposes of applying section 163(h) of the 1986 Code to any taxable year beginning during 1987, if, incident to a divorce or legal separation—

''(i) an individual acquires the interest of a spouse or former spouse in a qualified residence in a transfer to which section 1041 of the 1986 Code applies, and

''(ii) such individual incurs indebtedness which is secured by such qualified residence,

the amount determined under paragraph (3)(B)(ii)(I) of section 163(h) of the 1986 Code (as in effect before the amendments made by the Revenue Act of 1987 [Pub. L. 100–203, title X]) with respect to such qualified residence shall be increased by the amount determined under subparagraph (B).

''(B) The amount determined under this subparagraph shall be equal to the excess (if any) of—

''(i) the lesser of the amount of the indebtedness described in subparagraph (A)(ii), or the fair market value of the spouse's or former spouse's interest in the qualified residence as of the time of the transfer, over

''(ii) the basis of the spouse or former spouse in such interest in such residence (adjusted only by the cost of any improvements to such residence).''

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 TREATMENT OF CERTAIN INCOME FROM S CORPORATIONS

Section 1066 of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) IN GENERAL.—If—

''(1) a corporation had an election in effect under subchapter S of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for the taxable years of such corporation beginning in 1982, 1983, and 1984, and

''(2) a shareholder of such corporation makes an election to have this section apply,

then any qualified income which such shareholder takes into account by reason of holding stock in such corporation for any taxable year of such corporation beginning in 1983 or 1984 shall be treated for purposes of section 163(d) of the Internal Revenue Code of 1986 as such income would have been treated but for the enactment of the Subchapter S Revision Act of 1982 [Pub. L. 97–354, see Tables for classification].

''(b) QUALIFIED INCOME.—For purposes of subsection (a), the term 'qualified income' means any income other than income which is attributable to personal services performed by the shareholder for the corporation.

''(c) ELECTION.—The election under subsection (a)(2) shall be made at such time and in such manner as the Secretary of the Treasury or his delegate may by regulations prescribe.''

TRANSITIONAL RULE

For provision that, for purposes of amendments by section 231(b) of Pub. L. 97–248, any evidence of indebtedness issued pursuant to a written commitment which was binding on July 1, 1982, and at all times thereafter be treated as issued on July 1, 1982, see section 231(e) of Pub. L. 97–248, set out as a note under section 1232A of this title.

§ 164. Taxes

(a) General rule

Except as otherwise provided in this section, the following taxes shall be allowed as a deduction for the taxable year within which paid or accrued:

(1) State and local, and foreign, real property taxes.

(2) State and local personal property taxes.

(3) State and local, and foreign, income, war profits, and excess profits taxes.

(4) The GST tax imposed on income distributions.

(5) The environmental tax imposed by section 59A.

(6) Qualified motor vehicle taxes.

In addition, there shall be allowed as a deduction State and local, and foreign, taxes not described in the preceding sentence which are paid or accrued within the taxable year in carrying on a trade or business or an activity described in section 212 (relating to expenses for production of income). Notwithstanding the preceding sentence, any tax (not described in the first sentence of this subsection) which is paid or accrued by the taxpayer in connection with an acquisition or disposition of property shall be treated as part of the cost of the acquired property or, in the case of a disposition, as a reduction in the amount realized on the disposition.

(b) Definitions and special rules

For purposes of this section—

(1) Personal property taxes

The term ''personal property tax'' means an ad valorem tax which is imposed on an annual basis in respect of personal property.

(2) State or local taxes

A State or local tax includes only a tax imposed by a State, a possession of the United States, or a political subdivision of any of the foregoing, or by the District of Columbia.

(3) Foreign taxes

A foreign tax includes only a tax imposed by the authority of a foreign country.

(4) Special rules for GST tax

(A) In general

The GST tax imposed on income distributions is—

(i) the tax imposed by section 2601, and

(ii) any State tax described in section 2604,

but only to the extent such tax is imposed on a transfer which is included in the gross income of the distributee and to which section 666 does not apply.

(B) Special rule for tax paid before due date

Any tax referred to in subparagraph (A) imposed with respect to a transfer occurring during the taxable year of the distributee (or, in the case of a taxable termination, the trust) which is paid not later than the time prescribed by law (including extensions) for filing the return with respect to such transfer shall be treated as having been paid on the last day of the taxable year in which the transfer was made.

(5) General sales taxes

For purposes of subsection (a)—

(A) Election to deduct State and local sales taxes in lieu of State and local income taxes

At the election of the taxpayer for the taxable year, subsection (a) shall be applied—

(i) without regard to the reference to State and local income taxes, and

(ii) as if State and local general sales taxes were referred to in a paragraph thereof.

(B) Definition of general sales tax

The term ''general sales tax'' means a tax imposed at one rate with respect to the sale at retail of a broad range of classes of items.

(C) Special rules for food, etc.

In the case of items of food, clothing, medical supplies, and motor vehicles—

(i) the fact that the tax does not apply with respect to some or all of such items shall not be taken into account in determining whether the tax applies with respect to a broad range of classes of items, and

(ii) the fact that the rate of tax applicable with respect to some or all of such items is lower than the general rate of tax shall not be taken into account in determining whether the tax is imposed at one rate.

(D) Items taxed at different rates

Except in the case of a lower rate of tax applicable with respect to an item described in subparagraph (C), no deduction shall be allowed under this paragraph for any general sales tax imposed with respect to an item at a rate other than the general rate of tax.

(E) Compensating use taxes

A compensating use tax with respect to an item shall be treated as a general sales tax. For purposes of the preceding sentence, the term ''compensating use tax'' means, with respect to any item, a tax which—

(i) is imposed on the use, storage, or consumption of such item, and

(ii) is complementary to a general sales tax, but only if a deduction is allowable under this paragraph with respect to items sold at retail in the taxing jurisdiction which are similar to such item.

(F) Special rule for motor vehicles

In the case of motor vehicles, if the rate of tax exceeds the general rate, such excess shall be disregarded and the general rate shall be treated as the rate of tax.

(G) Separately stated general sales taxes

If the amount of any general sales tax is separately stated, then, to the extent that the amount so stated is paid by the consumer (other than in connection with the consumer's trade or business) to the seller, such amount shall be treated as a tax imposed on, and paid by, such consumer.

(H) Amount of deduction may be determined under tables

(i) In general

At the election of the taxpayer for the taxable year, the amount of the deduction allowed under this paragraph for such year shall be—

(I) the amount determined under this paragraph (without regard to this subparagraph) with respect to motor vehicles, boats, and other items specified by the Secretary, and

(II) the amount determined under tables prescribed by the Secretary with respect to items to which subclause (I) does not apply.

(ii) Requirements for tables

The tables prescribed under clause (i)—

(I) shall reflect the provisions of this paragraph,

(II) shall be based on the average consumption by taxpayers on a State-by-State basis (as determined by the Secretary) of items to which clause (i)(I) does not apply, taking into account filing status, number of dependents, adjusted gross income, and rates of State and local general sales taxation, and

(III) need only be determined with respect to adjusted gross incomes up to the applicable amount (as determined under section 68(b)).

(I) Application of paragraph

This paragraph shall apply to taxable years beginning after December 31, 2003, and before January 1, 2010.

(6) Qualified motor vehicle taxes

(A) In general

For purposes of this section, the term ''qualified motor vehicle taxes'' means any State or local sales or excise tax imposed on the purchase of a qualified motor vehicle.

(B) Limitation based on vehicle price

The amount of any State or local sales or excise tax imposed on the purchase of a qualified motor vehicle taken into account under subparagraph (A) shall not exceed the portion of such tax attributable to so much of the purchase price as does not exceed $49,500.

(C) Income limitation

The amount otherwise taken into account under subparagraph (A) (after the application of subparagraph (B)) for any taxable year shall be reduced (but not below zero) by the amount which bears the same ratio to the amount which is so treated as—

(i) the excess (if any) of—

(I) the taxpayer's modified adjusted gross income for such taxable year, over

(II) $125,000 ($250,000 in the case of a joint return), bears to

(ii) $10,000.

For purposes of the preceding sentence, the term ''modified adjusted gross income'' means the adjusted gross income of the taxpayer for the taxable year (determined without regard to sections 911, 931, and 933).

(D) Qualified motor vehicle

For purposes of this paragraph—

(i) In general

The term ''qualified motor vehicle'' means—

(I) a passenger automobile or light truck which is treated as a motor vehicle for purposes of title II of the Clean Air Act, the gross vehicle weight rating of which is not more than 8,500 pounds, and the original use of which commences with the taxpayer,

(II) a motorcycle the gross vehicle weight rating of which is not more than 8,500 pounds and the original use of which commences with the taxpayer, and

(III) a motor home the original use of which commences with the taxpayer.

(ii) Other terms

The terms ''motorcycle'' and ''motor home'' have the meanings given such terms under section 571.3 of title 49, Code of Federal Regulations (as in effect on the date of the enactment of this paragraph).

(E) Qualified motor vehicle taxes not included in cost of acquired property

The last sentence of subsection (a) shall not apply to any qualified motor vehicle taxes.

(F) Coordination with general sales tax

This paragraph shall not apply in the case of a taxpayer who makes an election under paragraph (5) for the taxable year.

(G) Termination

This paragraph shall not apply to purchases after December 31, 2009.

(c) Deduction denied in case of certain taxes

No deduction shall be allowed for the following taxes:

(1) Taxes assessed against local benefits of a kind tending to increase the value of the property assessed; but this paragraph shall not prevent the deduction of so much of such taxes as is properly allocable to maintenance or interest charges.

(2) Taxes on real property, to the extent that subsection (d) requires such taxes to be treated as imposed on another taxpayer.

(d) Apportionment of taxes on real property between seller and purchaser

(1) General rule

For purposes of subsection (a), if real property is sold during any real property tax year, then—

(A) so much of the real property tax as is properly allocable to that part of such year which ends on the day before the date of the sale shall be treated as a tax imposed on the seller, and

(B) so much of such tax as is properly allocable to that part of such year which begins on the date of the sale shall be treated as a tax imposed on the purchaser.

(2) Special rules

(A) in the case of any sale of real property, if—

(i) a taxpayer may not, by reason of his method of accounting, deduct any amount for taxes unless paid, and

(ii) the other party to the sale is (under the law imposing the real property tax) liable for the real property tax for the real property tax year,

then for purposes of subsection (a) the taxpayer shall be treated as having paid, on the date of the sale, so much of such tax as, under paragraph (1) of this subsection, is treated as imposed on the taxpayer. For purposes of the preceding sentence, if neither party is liable for the tax, then the party holding the property at the time the tax becomes a lien on the property shall be considered liable for the real property tax for the real property tax year.

(B) In the case of any sale of real property, if the taxpayer's taxable income for the taxable year during which the sale occurs is computed under an accrual method of accounting, and if no election under section 461(c) (relating to the accrual of real property taxes) applies, then, for purposes of subsection (a), that portion of such tax which—

(i) is treated, under paragraph (1) of this subsection, as imposed on the taxpayer, and

(ii) may not, by reason of the taxpayer's method of accounting, be deducted by the taxpayer for any taxable year,

shall be treated as having accrued on the date of the sale.

(e) Taxes of shareholder paid by corporation

Where a corporation pays a tax imposed on a shareholder on his interest as a shareholder, and where the shareholder does not reimburse the corporation, then—

(1) the deduction allowed by subsection (a) shall be allowed to the corporation; and

(2) no deduction shall be allowed the shareholder for such tax.

(f) Deduction for one-half of self-employment taxes

(1) In general

In the case of an individual, in addition to the taxes described in subsection (a), there shall be allowed as a deduction for the taxable year an amount equal to one-half of the taxes imposed by section 1401 for such taxable year.

(2) Deduction treated as attributable to trade or business

For purposes of this chapter, the deduction allowed by paragraph (1) shall be treated as attributable to a trade or business carried on by the taxpayer which does not consist of the performance of services by the taxpayer as an employee.

(g) Cross references

(1) For provisions disallowing any deduction for certain taxes, see section 275.

(2) For treatment of taxes imposed by Indian tribal governments (or their subdivisions), see section 7871.

(Aug. 16, 1954, ch. 736, 68A Stat. 47; Pub. L. 85–866, title I, § 6(a), Sept. 2, 1958, 72 Stat. 1608; Pub. L. 88–272, title II, § 207(a), (b)(1), (2), Feb. 26, 1964, 78 Stat. 40–42; Pub. L. 92–580, § 4(a), Oct. 27, 1972, 86 Stat. 1277; Pub. L. 94–455, title XIX, §§ 1901(a)(25), 1951(b)(3)(A), Oct. 4, 1976, 90 Stat. 1767, 1837; Pub. L. 95–600, title I, § 111(a), (b), Nov. 6, 1978, 92 Stat.

2777; Pub. L. 96–223, title I, §101(b), Apr. 2, 1980, 94 Stat. 250; Pub. L. 97–473, title II, §202(b)(3), Jan. 14, 1983, 96 Stat. 2609; Pub. L. 98–21, title I, §124(c)(1), Apr. 20, 1983, 97 Stat. 90; Pub. L. 98–369, div. A, title IV, §474(r)(29)(F), July 18, 1984, 98 Stat. 844; Pub. L. 99–499, title V, §516(b)(2)(A), Oct. 17, 1986, 100 Stat. 1771; Pub. L. 99–514, title I, §134, title XIV, §1432(a)(1), (2), Oct. 22, 1986, 100 Stat. 2116, 2729; Pub. L. 100–418, title I, §1941(b)(2)(A), Aug. 23, 1988, 102 Stat. 1323; Pub. L. 100–647, title I, §1018(u)(11), Nov. 10, 1988, 102 Stat. 3590; Pub. L. 104–188, title I, §1704(t)(79), Aug. 20, 1996, 110 Stat. 1891; Pub. L. 108–357, title V, §501(a), Oct. 22, 2004, 118 Stat. 1520; Pub. L. 109–135, title IV, §403(r)(1), Dec. 21, 2005, 119 Stat. 2628; Pub. L. 109–432, div. A, title I, §103(a), Dec. 20, 2006, 120 Stat. 2934; Pub. L. 110–343, div. C, title II, §201(a), Oct. 3, 2008, 122 Stat. 3864; Pub. L. 111–5, div. B, title I, §1008(a), (b), Feb. 17, 2009, 123 Stat. 317.)

REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (b)(6)(D)(i)(I), is act July 14, 1955, ch. 360, 69 Stat. 322. Title II of the Act, known as the National Emission Standards Act, is classified generally to subchapter II (§7521 et seq.) of chapter 85 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 7401 of Title 42 and Tables.

The date of the enactment of this paragraph, referred to in subsec. (b)(6)(D)(ii), is the date of enactment of Pub. L. 111–5, which was approved Feb. 17, 2009.

AMENDMENTS

2009—Subsec. (a)(6). Pub. L. 111–5, §1008(a), added par. (6).

Subsec. (b)(6). Pub. L. 111–5, §1008(b), added par. (6).

2008—Subsec. (b)(5)(I). Pub. L. 110–343 substituted ''January 1, 2010'' for ''January 1, 2008''.

2006—Subsec. (b)(5)(I). Pub. L. 109–432 substituted ''2008'' for ''2006''.

2005—Subsec. (b)(5)(A). Pub. L. 109–135 reenacted heading without change and amended text generally. Prior to amendment, text read as follows:

''(i) IN GENERAL.—At the election of the taxpayer for the taxable year, subsection (a) shall be applied—

''(I) without regard to the reference to State and local income taxes, and

''(II) as if State and local general sales taxes were referred to in a paragraph thereof.''

2004—Subsec. (b)(5). Pub. L. 108–357 added par. (5).

1996—Subsec. (a)(4), (5). Pub. L. 104–188 added pars. (4) and (5) and struck out former pars. (4) and (5) which read as follows:

''(4) The environmental tax imposed by section 59A.

''(5) The GST tax imposed on income distributions.''

1988—Subsec. (a)(4). Pub. L. 100–418 struck out par. (4) relating to windfall profit tax imposed by section 4986 and redesignated par. (5) relating to environmental tax as (4).

Subsec. (a)(5). Pub. L. 100–647 substituted ''The GST'' for ''the GST''.

Pub. L. 100–418 redesignated par. (5), relating to environmental tax, as (4).

1986—Subsec. (a). Pub. L. 99–514, §134(a)(2), inserted ''Notwithstanding the preceding sentence, any tax (not described in the first sentence of this subsection) which is paid or accrued by the taxpayer in connection with an acquisition or disposition of property shall be treated as part of the cost of the acquired property or, in the case of a disposition, as a reduction in the amount realized on the disposition.''

Subsec. (a)(4). Pub. L. 99–514, §134(a)(1), struck out par. (4) relating to ''State and local general sales taxes'' and redesignated as par. (4) former par. (5) relating to windfall profit tax.

Subsec. (a)(5). Pub. L. 99–514, §1432(a)(1), added par. (5) relating to GST tax imposed on income distributions.

Pub. L. 99–499 added par. (5) relating to environmental tax.

Subsec. (b)(2). Pub. L. 99–514, §134(b)(1), (2), redesignated par. (3) as (2) and struck out former par. (2), general sales taxes provisions, subpars. (A) to (E) of which covered in general rule, special rules for food, etc., items taxed at different rates, compensating use taxes, and special rules for motor vehicles, respectively.

Subsec. (b)(3). Pub. L. 99–514, §134(b)(2), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Subsec. (b)(4). Pub. L. 99–514, §1432(a)(2), added par. (4).

Pub. L. 99–514, §134(b)(2), redesignated par. (4) as (3).

Subsec. (b)(5). Pub. L. 99–514, §134(b)(1), struck out par. (5), separately stated general sales taxes, which read as follows: ''If the amount of any general sales tax is separately stated, then, to the extent that the amount so stated is paid by the consumer (otherwise than in connection with the consumer's trade or business) to his seller, such amount shall be treated as a tax imposed on, and paid by, such consumer.''

1984—Subsec. (f). Pub. L. 98–369 redesignated pars. (2) and (3) as pars. (1) and (2), respectively. Former par. (1), which referred to section 1451 for provisions disallowing any deduction for the payment of the tax imposed by subchapter B of chapter 3 (relating to tax-free covenant bonds), was struck out.

1983—Subsec. (f). Pub. L. 98–21 added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (f)(3). Pub. L. 97–473 added par. (3).

Subsec. (g). Pub. L. 98–21 redesignated subsec. (f) as (g).

1980—Subsec. (a)(5). Pub. L. 96–223 added par. (5).

1978—Subsec. (a)(5). Pub. L. 95–600, §111(a), struck out par. (5) relating to a deduction for State and local taxes on the sale of gasoline, diesel fuel, and other motor fuels.

Subsec. (b)(5). Pub. L. 95–600, §111(b), struck out in heading ''and gasoline taxes'' after ''sales taxes'', and in text ''or of any tax on the sale of gasoline, diesel fuel, or other motor fuel'' after ''sales tax''.

1976—Subsec. (d)(2). Pub. L. 94–455, §1901(a)(25), redesignated subpar. (D) as (B), and struck out subpar. (B) which related to the taxable years that subsec. (d)(1) applied and subpar. (C) which related to the limitations on subsec. (d)(1) where real property tax was allowable as a deduction under the Internal Revenue Code of 1939.

Subsecs. (f), (g). Pub. L. 94–455, §1951(b)(3)(A), redesignated subsec. (g) as (f). Former subsec. (f), which related to payments for municipal services in atomic energy communities, was struck out.

1972—Subsec. (b)(2)(E). Pub. L. 92–580 added subpar. (E).

1964—Subsec. (a). Pub. L. 88–272, §207(a), limited the subsection to State, local and foreign real property, income, war profits, excess profits, and unspecified taxes, on a business or activity described in section 212, and to State and local personal property, general sales, gasoline, diesel fuel and other motor fuel taxes.

Subsec. (b). Pub. L. 88–272, §207(a), added subsec. (b). Former subsec. (b), which denied the deduction for certain Federal income taxes, for Federal war profits and excess profits taxes, import duties, excise and stamp taxes, and estate, inheritance, legacy, succession and gift taxes, local assessments against benefits increasing property values, and certain taxes imposed by any foreign country or possession of the United States if the taxpayer chose to benefit by section 901 relating to foreign tax credit, and for taxes on real property to the extent that they are treated as imposed on another taxpayer, was struck out.

Subsec. (c). Pub. L. 88–272, §207(a), substituted provisions denying the deduction for taxes assessed against local benefits which increase property value, except for so much as is properly allocable to maintenance or interest charges, and for real property taxes to the extent they are treated as imposed on another taxpayer, for provisions relating to certain retail sales taxes and gas-

oline taxes, the extent to which they were deductible, and to definition of ''state or local sales tax''.

Subsec. (f). Pub. L. 88–272, § 207(b)(1), inserted ''State'' before ''real property taxes''.

Subsec. (g). Pub. L. 88–272, § 207(b)(2), designated existing provisions as par. (1), substituted ''1451'' for ''1451(f)'' and added par. (2).

1958—Subsecs. (f), (g). Pub. L. 85–866, § 6(a), added subsec. (f) and redesignated former subsec. (f) as (g).

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–5 applicable to purchases on or after Feb. 17, 2009, in taxable years ending after such date, see section 1008(e) of Pub. L. 111–5, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title II, § 201(b), Oct. 3, 2008, 122 Stat. 3864, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2007.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, § 103(b), Dec. 20, 2006, 120 Stat. 2934, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2005.''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title V, § 501(b), Oct. 22, 2004, 118 Stat. 1521, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2003.''

EFFECTIVE DATE OF 1988 AMENDMENTS

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.

Section 1941(c) of Pub. L. 100–418 provided that: ''The amendments made by this section [amending this section and sections 193, 291, 6161, 6211, 6212, 6213, 6214, 6302, 6344, 6501, 6511, 6512, 6611, 6654, 6655, 6724, 6862, 7422, and 7512 of this title, and repealing sections 280D, 4986 to 4998, 6050C, 6076, 6232, 6429, 6430, and 7241 of this title] shall apply to crude oil removed from the premises on or after the date of the enactment of this Act [Aug. 23, 1988].''

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 134 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 1432(a)(1), (2) of Pub. L. 99–514 applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99–514, set out as an Effective Date note under section 2601 of this title.

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 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 AMENDMENTS

Amendment by 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.

For effective date of amendment by Pub. L. 97–473, see section 204(1) of Pub. L. 97–473, set out as an Effective Date note under section 7871 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–223 applicable to periods after Feb. 29, 1980, see section 101(i) of Pub. L. 96–223, set out as an Effective Date note under section 6161 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 111(c) of Pub. L. 95–600 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1978.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see sections 1901(d) and 1951(d) of Pub. L. 94–455, set out as notes under sections 2 and 72 of this title, respectively.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 4(b) of Pub. L. 92–580 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years ending on or after January 1, 1971.''

EFFECTIVE DATE OF 1964 AMENDMENT

Section 207(c) of Pub. L. 88–272, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) GENERAL RULE.—Except as provided in paragraph (2), the amendments made by this section [enacting section 275 of this title and amending this section and sections 535, 545, 556, 901, and 903 of this title] shall apply to taxable years beginning after December 31, 1963.

''(2) SPECIAL TAXING DISTRICTS.—Section 164(c)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by subsection (a)) shall not prevent the deduction under section 164 of such Code (as so amended) of taxes levied by a special taxing district which is described in section 164(b)(5) of such Code (as in effect for a taxable year ending on December 31, 1963) and which was in existence on December 31, 1963, for the purpose of retiring indebtedness existing on such date.''

EFFECTIVE DATE OF 1958 AMENDMENT

Section 6(b) of Pub. L. 85–866 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1957.''

SAVINGS PROVISION

Section 1951(b)(3)(B) of Pub. L. 94–455 provided that: ''Notwithstanding subparagraph (A) [amending this section], any amount paid or accrued in a taxable year beginning after December 31, 1976, to the Atomic Energy Commission or its successors for municipal-type services shall be allowed as a deduction under section 164 if such amount would have been deductible by reason of section 164(f) (as in effect for a taxable year ending on December 31, 1976) and if the amount is paid or accrued with respect to real property in a community (within the meaning of section 21(b) of the Atomic Energy Community Act of 1955 (42 U.S.C. 2304(b))) in which the Commission on December 31, 1976, was rendering municipal-type services for which it received compensation from the owners of property within such community.''

§ 165. Losses

(a) General rule

There shall be allowed as a deduction any loss sustained during the taxable year and not compensated for by insurance or otherwise.

(b) Amount of deduction

For purposes of subsection (a), the basis for determining the amount of the deduction for any loss shall be the adjusted basis provided in section 1011 for determining the loss from the sale or other disposition of property.

(c) Limitation on losses of individuals

In the case of an individual, the deduction under subsection (a) shall be limited to—

(1) losses incurred in a trade or business;

(2) losses incurred in any transaction entered into for profit, though not connected with a trade or business; and

(3) except as provided in subsection (h), losses of property not connected with a trade or business or a transaction entered into for profit, if such losses arise from fire, storm, shipwreck, or other casualty, or from theft.

(d) Wagering losses

Losses from wagering transactions shall be allowed only to the extent of the gains from such transactions.

(e) Theft losses

For purposes of subsection (a), any loss arising from theft shall be treated as sustained during the taxable year in which the taxpayer discovers such loss.

(f) Capital losses

Losses from sales or exchanges of capital assets shall be allowed only to the extent allowed in sections 1211 and 1212.

(g) Worthless securities

(1) General rule

If any security which is a capital asset becomes worthless during the taxable year, the loss resulting therefrom shall, for purposes of this subtitle, be treated as a loss from the sale or exchange, on the last day of the taxable year, of a capital asset.

(2) Security defined

For purposes of this subsection, the term ''security'' means—

(A) a share of stock in a corporation;

(B) a right to subscribe for, or to receive, a share of stock in a corporation; or

(C) a bond, debenture, note, or certificate, or other evidence of indebtedness, issued by a corporation or by a government or political subdivision thereof, with interest coupons or in registered form.

(3) Securities in affiliated corporation

For purposes of paragraph (1), any security in a corporation affiliated with a taxpayer which is a domestic corporation shall not be treated as a capital asset. For purposes of the preceding sentence, a corporation shall be treated as affiliated with the taxpayer only if—

(A) the taxpayer owns directly stock in such corporation meeting the requirements of section 1504(a)(2), and

(B) more than 90 percent of the aggregate of its gross receipts for all taxable years has been from sources other than royalties, rents (except rents derived from rental of properties to employees of the corporation in the ordinary course of its operating business), dividends, interest (except interest received on deferred purchase price of operating assets sold), annuities, and gains from sales or exchanges of stocks and securities.

In computing gross receipts for purposes of the preceding sentence, gross receipts from sales or exchanges of stocks and securities shall be taken into account only to the extent of gains therefrom.

(h) Treatment of casualty gains and losses

(1) $100 limitation per casualty

Any loss of an individual described in subsection (c)(3) shall be allowed only to the extent that the amount of the loss to such individual arising from each casualty, or from each theft, exceeds $500 ($100 for taxable years beginning after December 31, 2009).

(2) Net casualty loss allowed only to the extent it exceeds 10 percent of adjusted gross income

(A) In general

If the personal casualty losses for any taxable year exceed the personal casualty gains for such taxable year, such losses shall be allowed for the taxable year only to the extent of the sum of—

(i) the amount of the personal casualty gains for the taxable year, plus

(ii) so much of such excess as exceeds 10 percent of the adjusted gross income of the individual.

(B) Special rule where personal casualty gains exceed personal casualty losses

If the personal casualty gains for any taxable year exceed the personal casualty losses for such taxable year—

(i) all such gains shall be treated as gains from sales or exchanges of capital assets, and

(ii) all such losses shall be treated as losses from sales or exchanges of capital assets.

(3) Special rule for losses in federally declared disasters

(A) In general

If an individual has a net disaster loss for any taxable year, the amount determined under paragraph (2)(A)(ii) shall be the sum of—

(i) such net disaster loss, and

(ii) so much of the excess referred to in the matter preceding clause (i) of paragraph (2)(A) (reduced by the amount in clause (i) of this subparagraph) as exceeds 10 percent of the adjusted gross income of the individual.

(B) Net disaster loss

For purposes of subparagraph (A), the term ''net disaster loss'' means the excess of—

(i) the personal casualty losses—